

HIGH COURT OF KARNATAKA**Bench: Justices Krishna S. Dixit and Ramachandra D. Huddar****Date of Decision: 13th June 2024**

Case No.:

REGULAR FIRST APPEAL NO. 6 OF 2013

APPELLANT(S):**Smt. Lakkamma @ Lakshamma . Ors****VERSUS****RESPONDENT(S):****Smt. Jayamma . Ors****Legislation:**

Sections 16(c) of the Specific Relief Act, 1963

Section 96 read with Order 41 Rule 31 of the Civil Procedure Code, 1908

Subject: Appeal against the judgment and decree in a suit for specific performance of a sale agreement. The primary issue is the plaintiff's readiness and willingness to perform her part of the contract and the alleged failure by the defendants to execute the sale deed.

Headnotes:

Specific Performance – Readiness and Willingness – Suit for specific performance based on a sale agreement dated 02.08.2007 – Plaintiff alleged continuous readiness and willingness to perform her part of the contract – Defendants contended plaintiff's financial inability to pay the balance consideration in time – Trial court decreed the suit in favor of the plaintiff – High Court found plaintiff failed to prove continuous readiness and willingness – Plaintiff's conduct of depositing balance consideration only after trial arguments questioned – Appeal allowed, trial court judgment set aside [Paras 1-44].

Plaint as Proof – Power of Attorney Evidence – Plaintiff's readiness and willingness must be personally proven – Plaintiff's power of attorney holder, her son, failed to establish plaintiff's financial capacity at the relevant time – Evidence of readiness through third-party financial arrangement deemed inadequate – Appellate court emphasized the need for plaintiff's personal testimony when asserting readiness and willingness [Paras 18-34].

Market Value Consideration – Time of Essence – Trial court failed to appreciate significant rise in property value over years – Appellate court noted economic changes and price increases as factors making specific performance inequitable – Original contract price no longer just due to property appreciation – Appeal allowed, refund of earnest money with interest granted instead [Paras 37-39].

Decision: Appeal allowed – Impugned judgment and decree set aside – Plaintiff entitled to refund of earnest money with interest at 12% p.a. from date of payment – Appellants to pay any balance interest on deposit made by plaintiff [Paras 44-46].

Referred Cases:

- Man Kaur v. Harthar Singh Sangha (2010) 10 SCC 512
- His Holiness Acharya Swamy Ganeshdasji vs. Seetharam Apar (1996) 4 SCC 526
- Kalavathi vs. Rakesh Kumar (2018) 3 SCC 658
- Santosh Hazari vs. Purushottam Tiwari (2001) 3 SCC 179
- Saradamani Kandappan vs. S. Rajalakshmi (2011) 12 SCC 18

Representing Advocates:

For Appellants: Sri. C. Shankar Reddy

For Respondent: Sri. S.V. Prakash

JUDGMENT

Appellants-defendants have called in question the Judgment rendered by the Sr.Civil Judge, Channarayapatna dated 20th October 2012 in OS No.4/2008 decreeing the suit of the plaintiff against the defendants for the relief of specific performance of the suit agreement dated 02.08.2007 one executed by the defendants by directing them to execute the registered sale deed in respect of the suit schedule property in accordance with agreement of sale dated 02.08.2007 within three months as the plaintiff has already deposited remaining balance consideration of amount of Rs.16,00,000/- before the Court and if the defendants fail to execute the above said registered sale deed then, the plaintiff is at liberty to get it executed by the Court by appointing a Commissioner in this behalf at the cost of the defendants.

2. The facts of the case in brief are stated; the defendants are the owners of the suit schedule property having agreed to sell the same in favour of the plaintiff for a sum of Rs.17,00,000/-. To that effect, they executed an agreement of sale on 02.08.2007 by receiving advance consideration amount of Rs.50,000/- in part performance of the contract executed an agreement of sale. It is further averred that the defendants agreed to execute the registered sale in favour of the plaintiff within six months after getting the Khatha and other documents changed in their name and also on receipt of balance consideration of Rs.16,50,000/-. It is further averred that during the month of September 2007, the defendants approached the plaintiff and requested to pay Rs.50,000/- and accordingly, plaintiff paid the same. To that effect, defendants acknowledged and an undertaking was given as per the aforesaid agreement of sale.

3. It is alleged that defendants did not come forward to execute the registered sale deed in favour of the plaintiff. It is alleged that plaintiff was and is always ever ready and willing to perform her part of contract. It is stated that as such, plaintiff got issued a legal notice to the defendants on 04.02.2008 and called upon to execute the sale deed in respect of the suit schedule property. But, defendants refused to receive the notices. The plaintiff got the knowledge that defendants are making

attempts to alienate the suit schedule property to the strangers therefore, plaintiff filed the suit in OS No.4/2008 seeking the aforesaid reliefs.

4. Before the trial Court, pursuant to the suit summons, all the defendants appeared and filed their written statement *inter alia* contending, that so far as their ownership of the suit schedule property it is admitted. They also admit about execution of the agreement of sale dated 02.08.2007, receipt of advance amount of Rs.50,000/- on the said day and also further receipt of Rs.50,000/- on 10.09.2007. They specifically denied the other averments made in the plaint with regard to the ready and willingness alleged by the plaintiff in the plaint. According to defendants, such averments are all false. It is contended that, since at that time, defendants were in dire need of money to meet the domestic necessities, therefore, they entered into agreement of sale. It is contended that, plaintiff pleaded her financial difficulties to pay the entire balance sale consideration amount and only paid a sum of Rs.50,000/-. She undertook to complete the sale transaction within the time agreed under the said sale agreement. It is contended that though the defendants were ready to perform their part of the contract, but, plaintiff herself went on postponing the same expressing her financial difficulties. It is their contention that, infact, they obtained the Khatha and other documents in their name at the time of agreement of sale itself. Despite that plaintiff has not come forward to complete the sale transaction and thus, failed to perform her part of the contract within the time stipulated. It is contended that thereby she has lost her right to enforce the performance of her agreement. Because of the conduct of the plaintiff in not completing the sale transaction within the time stipulated, it was defendants who suffered great loss and experienced difficulties. They managed to clear off their financial difficulties. It is contended that without any cause of action, the suit is filed and the said suit so filed is barred by law of limitation. Hence, it was prayed to dismiss the suit.

5. Based upon the rival pleadings of both the parties, the learned trial Court framed in all six issues. They read as under:

1. Whether the plaintiff proves that she was already ready and willing to take the registered sale deed from the defendants?

2. Whether the plaintiff proves that the defendants have refused to perform their part of obligation without any reasonable and justifiable cause?
3. Whether the defendants prove that due to the inactiveness shown by the plaintiff, they put to lose and as such the plaintiff has lost her right to enforce the performance of her agreement?
4. Whether the defendants prove that time is essence of the contract as such the plaintiff is not entitled for any kind of relief?
5. To what reliefs the parties are entitled for?
6. What order or Decree?"

6. To substantiate the case of the plaintiff, one Sri C.P.Raghu the power of attorney of the plaintiff entered the witness box as PW.1. To prove the sale agreement, four witnesses by name Ramakrishnagowda, C. Nagaraju, Ananthapadmanabhaiah and S.V.Ananad were examined in the shape of PWs. 2 to 5. On behalf of the plaintiff, Ex.P1 to P9 with respect to signatures on Ex.P1(a) P1(k) were marked.

7. To rebut the evidence of the plaintiff, the first defendant entered the witness box as DW.1 and got marked Ex.D1 to D11 and closed defendants' evidence. The witnesses so examined are thoroughly crossexamined.

8. The learned trial Court, on hearing the arguments and on evaluation of the oral and documentary evidence adduced by both the side, answered issue nos. 1 2 & 5 in the affirmative and issue nos. 3 and 4 and ultimately decreed the suit as stated above.

9. This is how the appellants are before this Court challenging the impugned judgment and decree passed against them by preferring this appeal.

10. The appeal papers reveal that the appeal filed by appellant no.2 was dismissed by this Court as per the orders dated 04.02.2014 on the ground that *vakalath* on behalf of appellant no.2 is not filed. Till date, no attempt has been made by appellant no.2 to set aside the said order.

11. The learned counsel for the appellants in addition to narrating the facts of the case, submits that, learned trial Court assuming that there were admissions regarding the payment of the money in time, has wrongly decreed the suit. In a case of present nature, according to him, the time was the essence of the contract. Though all the documents were very much available to execute the sale deed, but, plaintiff went on postponing to complete the transaction on one or the other pretext expressing her financial difficulties. Therefore, the conclusions arrived at by the trial Court in decreeing the suit is based on assumptions and wrong presumptions. Plaintiff personally has not entered the witness box. Her power of attorney was quite ignorant about the transaction. This fact is not properly appreciated by the trial Court. The trial Court has failed to consider oral and documentary evidence produced by both the side and wrongly and incorrectly assumed that the defendants were not ready to execute the sale deed in time. It is his further submission that, the conclusions arrived at by the trial Court is absolutely based on wrong assumptions and presumptions which is opposed to the law thereby, it has caused injustice to the defendants. Though there was a demand made by the defendants to pay the money and get execute the sale deed but, plaintiff expressed her financial difficulties and postponed the execution of the sale deed for herself. At that point of time, defendants had financial difficulties and were in dire need of money. It is further contended that, to meet the financial difficulties the defendants have to manage the same from other sources.

12. The learned counsel for the appellants further submits that though the revenue documents are ready for execution of the sale deed, but, plaintiff has not come forward to pay the balance consideration and get the sale deed executed. Thus, the plaintiff was never ever ready and willing to perform her part of contract and thereby, suit of the plaintiff is bad for want of compliance of provisions of Section 16(c) of Specific Relief Act, 1963 (in short 'the Act'). This fact is not properly considered

and appreciated by the trial Court. The trial Court has not discussed about the readiness and willingness on the part of the plaintiff to perform her part of the contract. The trial Court has failed to follow the well established principle of law that plaintiff cannot take the advantage of weakness of the defendants and plaintiff has to stand on her own legs.

13. In addition to these grounds, it is submitted by Sri Shankar Reddy, Advocate for the appellants that the schedule property is the only property available to the defendants/appellants and if now the judgment and decree is confirmed, these appellants/defendants would be put to greater hardship and loss and they would be deprived of their property and would be on the street itself. Learned counsel for the appellants further submits that the appellants are ready to pay some amount to the defendants by way of damages so as to satisfy them and they intend to retain the property. He further submits that, the agreement of sale is dated 02.08.2007 and almost more than 16 years, 10 months have lapsed. He further submits that because of this passing of more than one half of decade, the prices of the immovable properties have considerably increased. Therefore, with a meager amount of Rs.17 lakhs the defendants are unable to purchase the property of their own. It is his submission that the question of hardship be considered while passing the judgment in this appeal. He submits that in view of the grounds urged in the appeal memo and also the facts and circumstances brought on record by defendants- appellants, he prays to allow the appeal and set aside the impugned judgment and decree passed against them.

14. As against this submission, the learned counsel for respondent-plaintiff with all force submits that the trial Court after proper assessment of the evidence, has rightly come to the conclusion that plaintiff is entitled for a judgment and decree. He submits that when agreement of sale is admitted, so also the payment of Rs.50,000/- on the date of agreement of sale and subsequent payment of Rs.50,000/- as demanded by the defendants is admitted, then, it was conduct of the defendants who had not performed their part of the contract by receiving the balance consideration amount. It is his submission that plaintiff was ever ready and willing to perform her part of the contract. But, it was defendants who

did not get their names changed in the revenue records and because of that, at their instance, delay was caused. Plaintiff wants to have a property of her own and because of that, as requested by the defendant, she agreed to purchase the schedule property at the prevailing market price then. Now, the defendants cannot contend that presently the value of the property is increased to a considerable extent.

15. It is submitted by the learned counsel for the respondents that, considering all these aspects and also the conduct of the defendants in making delay in executing the sale deed, the trial Court by exercising its discretion has granted a decree in favour of the plaintiff which requires no interference by this Court. It is his submission that as the appellants have not approached the Court with clean hands by preferring this appeal, the appeal is liable to be dismissed.

16. We have given our anxious consideration to the argument of both the side and perused the records meticulously.

17. In view of rival submissions of both the side, the following points arise for consideration:

1) Whether the trial Court has committed any error or illegality in appreciating the evidence with regard to ready and willingness to perform the part of contract by the plaintiff by granting a decree for specific performance of the contract?

2) If so, whether the judgment and decree of the trial Court require interference by this Court?

Point nos.1 and 2 are discussed together.

18. It is well settled that, in a suit for specific performance of an agreement of sale, it is for the plaintiff to prove his or her readiness and willingness to perform his/her obligations under the agreement. Where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the plaintiff to show that he was

in a position to pay the balance money. The plaintiff has to prove that he has the money or has alternatively, made necessary arrangements to get the money. In this case, the defendants-appellants all along contended that it was plaintiff who went on postponing to complete the sale transaction expressing her financial difficulties. The plaintiff neither offered to pay nor was in a position to pay the balance consideration of Rs.16 lakhs.

19. In this case, the most of the factual features are admitted by the defendants. They are, the plaintiff agreed to purchase the suit schedule property as offered by the defendants for a consideration of Rs.17,00,000/-. To that effect, there was an agreement of sale dated 02.08.2007. On that date, by receiving the advance amount of Rs.50,000/- the sale agreement was executed by the defendants. Subsequently, as per the demand of the defendants, plaintiff paid Rs.50,000/- to meet the financial difficulties on 10.09.2007 which was acknowledged by them. The six months' time was stipulated in the agreement of sale to complete the sale transaction. This six months' time was fixed to get change the revenue records. These are all the admitted facts which need not be proved.

20. In a case of present nature, when plaintiff is seeking the relief of specific performance of a contract, the primary question for determination is, whether respondent-plaintiff has proved her readiness and willingness to perform her part of contract or not?

21. Section 16 of the Act as it stood at the material time (prior to amendment with effect from 1.10.2018),
inter alia, provides:-

16. Personal bars to relief.—

Specific performance of a contract cannot be enforced in favour of a person—

- (a) *who would not be entitled to recover compensation for its breach; or*

- (b) *who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or*
- (c) *who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.*

Explanation.—

For the purposes of clause (c),—

- (i) *where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;*
- (ii) *the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.*

22. On reading the aforesaid provision under the Act, Section 16 (c) of the specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person who fails to aver and prove his or her readiness and willingness to perform his part of contract. In view of explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in Court except when so directed by the Court to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.

23. To aver and prove readiness and willingness to perform an obligation to pay money in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge her obligation under the Contract. If the plaintiff does not have sufficient funds with her to discharge her obligations in terms of a contract which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to her. To give an example of this: the plaintiff may aver and prove by adducing evidence, an arrangement with a financier for disbursement or adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.
24. In ***Man Kaur vs. Harthar Singh Sangha (2010) 10 SCC 512***, the Hon'ble Apex Court at para.40 held that:

40. "A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him other than the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a a bar to specific performance in his favour."

25. Therefore, the assumption of the respondent that readiness and willingness on the part of plaintiff is something which need not be proved if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach is not correct. Let us give an example. Take a case where there is a contract for sale of consideration of Rs.10 lakhs and earnest money of Rs.1 lakh was paid and the vendor wrongly refused to execute the sale deed unless the purchaser is ready to pay Rs.15 lakhs. In such a case, there is clear breach by the defendant. But, in that case, if the plaintiff have been

balance of Rs.9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money when the contract had to be performed plaintiff will not be entitled to specific performance. Even if he proves breach by the defendants, as he was not "ready and willing" to perform his obligations.

26. It is well settled that, in a suit for specific performance, the plaintiff should allege that he/she is ready and willing to perform his/her part of the contract...". If the fact is traversed, he/she is required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing to perform the contract on his or her part. In the absence of an averment on the part of the plaintiff in the plaint that he was ready and willing to perform his part of the contract, the Hon'ble Apex Court in catena of judgments have held that the plaintiff had no cause of action so far as the relief for specific performance is concerned.

27. In this case, of course, there is an averment in the plaint that the respondent-plaintiff was all along ready and willing to perform her obligations under the Contract. The question is, whether the respondent-plaintiff had proved her readiness and willingness to perform her obligations under the contract as envisaged under Section 16(c) of the Specific Relief Act, 1963 which mandates that plaintiff must plead and prove that he/she had performed or has always been ready and willing to perform the essential terms of the contract which were to be performed by her other than those terms, the performance of which has been prevented or waived by the defendant.

28. PW.1 is the power of attorney of the plaintiff being her son. He reiterated the averments made in the plaint in his examination in chief. Throughout the examination-in-chief there is no evidence spoken to by him that what was the arrangement made by the plaintiff to pay the balance consideration amount. He examined PWs. 2 to 4 the witnesses who were witnesses to the Ex.P1 the so called agreement of sale. So far as, agreement of sale Ex.P1 is concerned, defendants admit. When the defendants admit about contents of Ex.P1 and also receipt of Rs.50,000/- on the date of agreement of sale and subsequently

acknowledging Rs.50,000/- as per their demand paid by the plaintiff, the evidence of these PWs. 2 to 4 pale into insignificance.

29. This PW.1 has been thoroughly and intensively cross-examined by the counsel for the defendants. It is elicited in the cross-examination that within six months from the date of agreement, his mother made arrangements to pay the balance consideration and she was preparing for the same. To that effect, no document is produced. He further deposes that there was a site in the name of his mother and it was sold for Rs.28 lakhs. By utilizing the said sale proceeds, they decided to purchase the suit schedule property. The said amount was kept at State Bank of India, Channarayapatna Branch. To that effect, documents are produced. But, except the document stated supra, no other documents are produced by the plaintiff. That means, when the agreement of sale was effected on 2.8.2007, the plaintiff was not ready with entire sale consideration. It is recited in the Ex.P1 the agreement of sale that the time stipulated is, six months. Within that time, the defendants have to get effected their names in the concerned revenue records and execute the sale deed. It has come in the evidence of PW.1 that there was a persistent demand made by the plaintiff to execute the sale deed. There is no evidence that the plaintiff was possessing the balance consideration amount. After six months i.e. on 4.2.2008, the notice came to be issued to the defendants as per Ex.P7. According to the plaintiff, those notices were refused by the defendants and postal cover with notice are produced in this case. Refusal of these notices is not denied by the defendants.

30. Ex.P9 is the property tax extract bearing date as 16.08 perhaps it must be in the year 2007. Whereas, DW.1 being defendant no.1, though admits about contents of Ex.P1 and subsequent receipt of Rs.50,000/-, she is consistent in her evidence that the plaintiff was never ready and willing to perform her part of the contract by paying the balance consideration. It is her evidence that when defendants demanded to pay the balance consideration amount and get the sale deed executed, it was plaintiff who went on postponing the payment of balance consideration amount expressing her financial difficulties. This

evidence is not properly denied by the plaintiff throughout the cross-examination.

31. It has come in the evidence of DW.1 that when the said Ex.P1 the sale agreement was executed by her, the revenue records were standing in her name. This evidence is not properly by the plaintiff. She admits in the cross-examination that as on the date of agreement of sale, her name was not appearing in the revenue records with regard to 2 and half acres of land and according to her, on 17.8.2007, the revenue officers conducted the local inspection and thereafter, effected her name in respect of said landed property. The agreement of sale is dated 2.8.2007 and within one month of so called agreement of sale, the name of the defendants came to be effected in the revenue records. To that effect, the defendants have produced Ex.D1 to D11 which are not been disputed by the plaintiff. Even after a half month, what efforts were made by the plaintiff to pay the balance consideration and get the sale deed executed is not stated either in the plaint or in the evidence. When it is suggested to DW.1 in the cross-examination that, on 17.8.2007, the revenue authorities conducted the local inspection and effected the names of the defendants in the revenue records, this conducting of local inspection by the revenue authorities was within the knowledge of plaintiff. But, no steps were taken.

32. Further, when the case was posted for arguments before the trial Court, the plaintiff filed I.A.No.XI on 11.9.2012 seeking permission of the Court to deposit the balance sale consideration of Rs.16 lakhs as per the agreement of sale dated 2.8.2007 in the interest of justice and equity. Accordingly, the Court has permitted as no objections were filed by the defendants to this IA.XI. This I.A.XI is accompanied with affidavit of PW.1. Throughout the affidavit, there is no recital or mentioning that the amount so deposited being the sale proceeds of the site by the plaintiff with State Bank of India, Channarayaptna Branch was withdrawn and the said amount is sought to be deposited is stated by the plaintiff. It is just stated that plaintiff has all along shown that she has been ready to pay the balance sale consideration of Rs.16 lakhs. The said deposit was made only after the arguments of the plaintiff was canvassed when the Court pointed out about the deposit or payment of the balance sale

consideration. As stated above, though PW.1 states about production of documents with regard to deposit of Rs.28 lakhs being sale proceeds of site with the aforesaid Bank but, no single paper is produced to prove the same. Therefore, as could be seen from the conduct of the plaintiff, a doubt arises about plaintiff's readiness and willingness to perform her part of the contract.

33. There is a distinction between readiness and willingness to perform the contract and in a case of present nature, as both ingredients are necessary for the relief of specific performance. In ***His Holiness Acharya Swamy Ganeshdasji vs. Seetharam Apar***, reported in ***(1996) 4 SCC 526***, the Hon'ble Apex Court said that,

*" there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff." The similar view was taken by the Hon'ble Apex Court in ***Kalavathi vs. Rakesh Kumar reported in (2018) 3 SCC 658***.*

34. This being the first appellate Court is bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract. Because it is a settled position of law that an appeal is a continuation of the proceedings of the original Court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. It is settled principle of law that the first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial Court are open for re-consideration. Therefore, the first appellate Court is required to address itself to all the issues and decide the case by giving reasons.

35. It is settled in ***Santhosh Hajari vs. Pursushotham Tiwari reported in (2001) 3 SCC 179*** that

"the Court of first appeal must record its findings only after dealing with all issues of law as well as fact and with evidence, oral as well as documentary lead by the parties. It is also laid down that, the judgment of the first appellate Court must display conscious

application of mind and record findings supported by reasons on all issues and contentions".

36. In view of the aforesaid legal position if applied to the present facts of the case, this Court being the first appellate Court has to apply the aforesaid position of law. In the judgment of **Cort vs. Ambergate and Railway Company reported in (1851) 117 ER 1229**, the Lord Campbell observed that, "in common sense, the meaning of such an averments of readiness and willingness must be that, the non-completion of a contract was not the fault of the plaintiff."

37. In this case, we cannot overlook the fact that the suit property is located in Channarayapatna Village, Kasba Hobli which is a town located in Hassan District. Even the Court is obliged to take judicial notice of the phenomenal rise in the price of real estate. The reality is, constant and continuous rise in the values of Urban properties - fuelled by large scale migration of people from rural areas to the cities like Channarayapatna and by inflation.

38. In **Saradamani Kandappan vs. S.Rajalakshmi (2011) 12 SCC 18**, it is held by the Hon'ble Apex Court in para.37 as under:

"37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and "non-readiness". The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping

increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals there from routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and receiving rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees."

39. If the aforesaid observations are applied to the present facts of the case, as the plaintiff has utterly failed to prove her readiness and willingness to perform her part of the contract, as recited in the aforesaid judgment, in a suit of present nature, discretion to grant a decree cannot be exercised. Because, while exercising discretion in suit for specific performance, the Courts should bear in mind that when the parties prescribed a time for taking certain steps or for completion of the transaction that must have some significance and therefore, time/period prescribed cannot be ignored. The Courts will apply greater scrutiny and strictness when considering whether purchaser was ready and willing to perform his part of the contract and every such suit for specific performance need not be decreed merely because it is filed within the period of limitation, by ignoring time limits stipulated in the agreement.

40. Here in this case, because of financial difficulties, defendants wanted to sell the property. In spite of their persistent demand to pay the balance consideration amount, as per the evidence brought on record, the plaintiff has expressed her financial difficulties. Therefore, it cannot be stated that plaintiff was ever ready and willing to perform her part of contract. The fact that limitation is for three years to file such suits does not mean that a purchaser can wait for one or two years or to wait after completion of time stipulated and file a suit and obtain a decree for specific performance. It is said that this three year period is intended to purchase in special cases, for Eg. as, "where the major part of the

consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser. In this case, out of Rs.17 lakhs, just Rs.1 lakh was paid and the balance was Rs.16 lakhs."

41. More so, undisputedly, in this case, the power of attorney of the plaintiff by name Sri C.P.Raghu was examined before the trial Court. Though he deposed before the trial Court that he was present when the transaction took place, but, with regard to the other aspect, it was the plaintiff who was competent to depose. In a recent judgment of Hon'ble Supreme Court reported in **2024 SCC Online 981** in the case of **Rajesh Kumar Vs. Anand Kumar and others**, wherein judgment in **Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd.** is referred and at Paragraphs-15,17 and 18 it is stated as under:

"15. Apart from what has been stated, this Court in the case of Vidhyadhar V. Manikrao [(1999) 3 SCC 573] observed at SCC pp. 58384, para 17 that:

17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.....

17. On the question of power of attorney, the High Courts have divergent views. In the case of Shambhu Dutt Shastri v. State of Rajasthan [(1986) 2 WLN 713 (Raj)] it was held that a general power-of-attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in the witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power-of-attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

18. The aforesaid judgment was quoted with approval in the case of Ram Prasad v. Hari Narain [AIR 1998 Raj 185 : (1998) 3 Cur CC 183]. It was held that the word "acts" used in Rule 2 of Order 3 CPC does not include the act of power-of-

attorney holder to appear as a witness on behalf of a party. Power-of-attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of CPC".

42. By applying the said observation and ratio laid down in the said judgment, as the plaintiff herself has not entered the witness box to prove her readiness and willingness so pleaded by her cannot be stated to be proved by the plaintiff in accordance with law.
43. Thus, in that view of the matter, we are of the view that, respondent-plaintiff has failed to discharge her duty to prove her readiness as well as willingness to perform her part of the contract by adducing cogent evidence. Acceptable evidence has not been placed on record to prove her readiness and willingness. By depositing the amount after advancing the argument without producing any document about availability of the funds itself makes it clear that the plaintiff did not have sufficient funds to discharge her part of the contract. Making subsequent deposit of balance consideration amount after a lapse of more than 6 to 7 years from the date of contract would not establish that the respondent - plaintiff's readiness and willingness to discharge her part of contract. This conduct of the plaintiff would not attract her readiness and willingness within the meaning of Sec.16(c) of the Specific Relief Act.
44. It is, therefore patently clear that the respondent-plaintiff has failed to prove her readiness to perform her part of contract from the date of execution of agreement till date of decree, which is a condition precedent for grant of relief of specific performance. This Court finds that the respondent-plaintiff is not entitled to the relief of specific performance.
45. However, as plaintiff has deposited Rs.16 lakhs on 11.09.2012 as per the trial Court order and has paid the advance consideration of Rs.50,000/- on the date of agreement i.e. 02.08.2007 and subsequently on 10.09.2007 paid Rs.50,000/-, on that amount, the plaintiff is entitled

for interest at the rate of 12% p.a. from the date of payment/deposit till its realization. If the amount so deposited before the Court, is deposited by the trial Court in any Nationalized or Scheduled Bank, definitely the said amount would have earned interest. In addition to the interest accrued on the deposit in the Bank, the balance percentage of interest is to be paid by the defendants within two months from today to the plaintiff.

46. Accordingly, the appeal filed by the appellantdefendants succeeds and suit of the plaintiff is decreed in part granting a decree for refund of Earnest Money of Rs.50,000/- on 2.8.2007 and subsequent payment of Rs.50,000/- on 10.09.2007 with interest at the rate of 12% p.a. from the date of payment till realization. Respondent-plaintiff is at liberty to withdraw Rs.16,00,000/- with accrued interest thereon and the balance interest out of the said amount, if any, is to be made good by the defendants. If not, appellants/defendants to pay the similar interest on Rs.16,00,000/- from the date of deposit till its realization.

Resultantly, we pass the following:

ORDER

- i) This Appeal is allowed with no order as to costs.
- ii) The impugned Judgment and Decree dated 20th October 2012 in OS No.4/2008 passed by Senior Civil Judge, Channarayapatna, is set aside.
- iii) However, the plaintiff is held entitled to the refund of Earnest Money of Rs.50,000/- (Rupees Fifty thousand only) paid on 2.8.2007 and subsequent payment of Rs.50,000/- (Rupees Fifty thousand only) on 10.09.2007 with interest on both the sums at the rate of 12% p.a. from the date of payment till realization.
- iv) Respondent-plaintiff is at liberty to withdraw Rs.16,00,000/- (Rupees Sixteen lakhs only) with accrued interest

if any thereon and the balance interest out of the said amount is to be made good by the defendants. If the said deposit of Rs.16,00,000/- (Rupees Sixteen lakhs only) has not earned any interest, Appellantdefendants are directed to pay the similar rate of interest on the said sum from the date of deposit, till its realization.

v) There shall be a decree in the above terms.

vi) Send back the trial Court records along with a copy of this judgment forthwith.

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