

P. Ravindranath vs Sasikala on 15 July, 2024

Author: Vikram Nath

Bench: Prashant Kumar Mishra, Vikram Nath

2024 INSC 533

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. OF 2024
(Arising out of SLP (C) No.2246 of 2017)

P. RAVINDRANATH & ANR. ...APPELLANT(S)

VERSUS

SASIKALA & ORS. ...RESPONDENT(S)

JUDGMENT

VIKRAM NATH, J.

1. Leave granted.

2. This appeal, by the defendant, assails the correctness of the judgment and order dated 17.12.2015 of the High Court of Karnataka in RFA No.362 of 2003, whereby the appeal of the appellant was dismissed and the judgment and decree of the Trial Court dated 22.10.2002 passed in O.S. No.2188 of 1983, decreeing the suit for specific performance was confirmed.

SONIA BHASIN

Date: 2024.07.18

16:54:00 IST

Reason:

Brief facts:

3. Smt. Sasikala and K. Satyanarayana (original vendees) entered into an agreement to sell dated 24.05.1981 with Muni Venkata Reddy and his four sons (original vendors) for sale of Survey No.129, New No.220/01, Site No.14 situated at Kodihali Village, HAL, S.B. Area, Bangalore-17 measuring East to West 132 feet and North to South 40 feet total 5280 sq. feet (hereinafter referred to as the “property in dispute”). The total sale consideration was stated to be Rs.29,000/-, out of which, an

advance of Rs.12,000/- was paid at the time of agreement to sell dated 24.05.1981. The balance amount was to be paid at the time of registration of the sale deed. The necessity for sale had arisen because of want of funds by the vendors. The stipulated period was fixed as three months, but as there were restrictions of registration of sale deeds with respect to similar revenue sites and survey numbers, as such, the sale deed would be executed immediately after the cancellation of the said Government Order. The agreement to sell also mentioned that possession of the site would be given that very day.

4. After expiry of three months from the date of agreement, when the plaintiffs did not come forward to get the sale deed executed, the defendant no.1 sent communication dated 23.09.1981 to the plaintiff stating that he has not come forward to solve the problem as the decision to sell was only because of his financial problems. The defendant extended the period of three months' time by another week from that day and if he did not get any information from their side, he would give the site to some other party. Thereafter, after waiting for two more months, legal notice was given through Advocate to the plaintiffs on 18.11.1981 stating that, as he had failed to get the sale deed executed within three months after payment of balance amount of Rs.17,000/-, defendant no.1 has forfeited his earnest money; the agreement dated 24.05.1981 has come to an end, and; as such, he had lost all interest and right over the said property and had also lost the earnest money because of its forfeiture. It was also stated that he was not in a position to pay the balance amount of the sale price.

5. A reply was given by the plaintiffs through their Advocate on 02.12.1981 stating that the plaintiffs had not only given Rs.12,000/- as advance money but had further given additional Rs.2,000/-, for which no receipt was issued. Thus, the total advance amount was Rs.14,000/-. It was also stated that as per the agreement, although the period mentioned was three months, but there was a further stipulation that as there was restriction for registering the sale deeds pertaining to similar revenue sites, as such, it was only after cancelling of such restrictions by the Government that the sale deed was to be registered. As such, the agreement would be alive till the Government lifts the ban on registering the sale deeds pertaining to similar revenue sites. It further mentioned that as soon as registration of documents is opened, they would get the sale deed registered. It was also stated that forfeiture of the amount was without any right and the agreement could not be treated as cancelled. It was also denied that plaintiffs did not have money to pay the balance sale price.

6. In response to the above reply, defendant no.1, through his counsel, again replied on 11.12.1981 denying the payment of additional amount of Rs.2,000/-. It further stated that the contract had been entered because of urgent need of money by the defendants and the price for sale had been lowered to Rs.29,000/- because of urgency, even though the property was then valued at more than Rs.50,000/-. The balance amount was to be paid, in any case, within three months, which plaintiffs had failed to do, as such, the forfeiture had been rightly done. It was also stated that plaintiffs had been deliberately delaying and that they were never ready from the very beginning with the funds. Plaintiffs did not give any reply to the communication dated 11.12.1981.

7. After above correspondence, the defendants executed two sale deeds on 22nd April, 1983 and on 22nd June, 1983 in favour of defendant nos.6 and 7 of part of the land agreed to be sold to the

plaintiffs. There is also a reference of a third sale deed in favour of one C. Nagaraju with respect to the remaining area covered under the agreement to sell. Thus, the total area under the agreement to sell dated 24.05.1981 had been sold by the defendants 1 to 5 in favour of defendant nos.6, 7 and C. Nagaraju.

8. It was after the execution of the two sale deeds mentioned above, the plaintiffs instituted suit for specific performance and permanent injunction in the Court of Civil Judge, Bangalore on 29.07.1983 registered as O.S. No.2188 of 1983. The defendants filed written statements and prayed for dismissal of the suit on various grounds. Both parties led evidence. The Trial Court vide judgment dated 22.10.2002 decreed the suit for specific performance and directed the defendants 1 to 7 to execute the sale deed in favour of the plaintiffs after accepting the balance consideration within three months from the date of the order. However, it denied the relief of permanent injunction on the finding that the plaintiffs were not in possession of the suit land. The present appellant alone preferred appeal before the High Court, which was registered as RFA No.362 of 2003. The High Court, by the impugned judgment dated 17.12.2015, has dismissed the appeal giving rise to the present appeal.

9. The pleadings as reflected from reading of the plaint are as follows:

(a) Parties had entered into an agreement to sell dated 24.05.1981. The defendants 1 to 5 were to transfer the property in dispute in favour of the plaintiffs for total sale consideration of Rs.29,000/-, out of which Rs.12,000/- was paid as advance and a further amount of Rs.2000/- was paid on 22.07.1981, thus, totalling the advance amount to Rs.14,000/-.

The transaction was to be completed within three months from the time when the Government would remove the restriction for registration of the sale deed of lands similar to the property in dispute and that the expenses were to be borne by the plaintiffs.

(b) In paragraph-4, it was stated that the plaintiffs were always ready and willing to perform their part of obligation and that they are ready even now to perform their part, however, it was the defendants 1 to 5 who had been dragging their feet and had been taking time for performing the remaining part of the agreement. They also became elusive and non-committal. The reason for the same was that the price of the property had shown an upward trend and, as a result of which, defendants were backing out. The plaintiffs also tendered the money and the draft sale deed requesting the defendants to execute the sale deed but they denied the execution as period of three months had expired.

(c) A reference was also mentioned in the plaint with regard to the notice given through an Advocate on 19.11.1981. A reference to the restrictions on registration by the Government was also mentioned and it was stated that the period of three months would run from the time, the restriction was lifted.

(d) It was also mentioned that the plaintiffs sought intervention of well-wishers to settle the matter amicably but the same did not bear any fruit.

(e) It further mentioned that the defendants 1 to 5 have proceeded to sell two portions of the property in dispute in favour of defendant nos.6 and 7, who were fully aware of the earlier agreement to sell in favour of the plaintiffs, but despite the same they got the sale deed executed in their favour; that the defendants 1 to 5 were attempting to sell the remaining portion of the scheduled property.

(f) Accordingly, after stating the cause of action, the valuation of the suit and the payable court fees, relief claimed was for a direction to the defendants to transfer the property in dispute in favour of the plaintiffs by way of absolute sale and to get the sale deed executed and registered in accordance with law in terms of the agreement dated 24.05.1981. Further, relief of granting permanent injunction was also claimed restraining the defendants 1 to 5 from alienating or otherwise dealing with any portion of the plaint scheduled property and from interfering in their possession.

10. Defendants 1 to 5 filed a common written statement which briefly raised the following issues and objections:

a) A plea was taken that the contents of the agreement to sell disclosed only the name of defendant no.1 and not of his four sons defendants 2 to 5. As such, the agreement was only by defendant no.1 and not by defendants 2 to 5 and, as such, not binding upon them.

b) It was next stated that the advance amount paid was only Rs.12,000/- at the time of execution of the agreement to sell. No further amount of Rs.2,000/- was paid as alleged.

c) It was next stated that the plaintiffs were never ready and willing to perform their part of contract at any point of time, which was agreed to be three months, or even thereafter. The defendant had also given repeated notices but despite the same, the plaintiffs never came forward to clear the balance amount as the defendants were in need of money, they were left with no option but to execute the sale deeds.

d) It was also stated that even after the restrictions for registration had been removed by the Government of Karnataka, the plaintiffs did not come forward to pay the balance amount and get the sale deed executed. This fact was clearly mentioned in their notice dated 11.12.1981 but no reply to the same was given by the plaintiffs.

e) It also stated that plaintiffs were middlemen and not genuine purchasers. They never had any funds to fulfil the contract.

f) It was specifically pleaded that time was essence of the contract. It was clearly denied that the plaintiffs ever came forward to tender the balance amount to get the sale deed executed. It was also denied that any Panchayat was convened to resolve the issue.

g) Lastly, it was stated that the entire property had been sold and given in possession of the subsequent defendants 6, 7 and C. Nagaraju.

h) It was denied that the plaintiffs were ever put into possession.

11. Defendant no.6 also filed a written statement denying the plaint allegations and stating that he was in possession from the date of the sale deed in June, 1983.

12. On behalf of the plaintiffs, four (4) witnesses were examined. Plaintiff no.1 was examined as PW-1 and three (3) other witnesses were examined as P.W.-2 to 4, two of whom were marginal witnesses to the agreement to sell. Nine (9) documents were filed and marked as Exts. PW-1 to PW-9 on behalf of the plaintiffs. On behalf of the defendants, one of the sons of defendant no.1 was examined as DW-1 and, further, one of the sons of defendant no.6 was examined as DW-2. On behalf of the defendants, fourteen (14) documents were filed and exhibited as Ext. DW- 1 to DW-14.

13. The Trial Court framed as many as 12 issues which are reproduced hereunder: -

- “1. Whether defendants 2 to 5 agreed to sell the suit property to the plaintiffs?
2. What are the amounts advanced by plaintiffs to defendants 1 to 5?
3. Whether the plaintiffs paid a further sum of Rs.2000/- on 22.07.1981 as further advance to defendants 1 to 5?
4. Whether the time is the essence of the contract for sale and as the plaintiffs failed to perform their part of the obligation within the period of three months, the plaintiffs cannot specifically enforce the contract?
5. Whether the suit agreement is not enforceable for all or any of the reasons stated by the defendants 1 to 5?
6. Whether the defendants nos.6 and 7 are not the bona fide transferee for value of two portions of the plaint schedule properties without notice to the alleged contract for sale?
7. Whether the defendant 6 had no knowledge of the suit agreement for sale between the plaintiffs and defendants 1 to 5 and she is a bona fide purchaser for value?
8. Whether the plaintiffs have lost their right even to claim refund of the amounts paid by them to defendants 1 to 5 ?
9. Whether the defendants 1 to 5 have committed breach of the terms of the agreement of sale by their stand taken not to execute the sale deed after expiry of three months and also by selling two portions of the schedule property in favour of the defendants 6 and 7?

10. Whether the plaintiffs are entitled to the relief of specific performance in respect of the suit property?

11. Whether the plaintiff is entitled to the relief of permanent injunction?

12. To what relief is the plaintiff entitled?"

14. The findings of the Trial Court on the above issues are given in paragraph 16 of the judgment which is reproduced hereunder:

"1. In the affirmative

2. Rs.12,000/-

3. In the negative

4. In the negative

5. In the negative

6. In the affirmative

7. In the negative

8. In the negative

9. In the affirmative

10. In the affirmative

11. In the negative

12. As per the final order."

15. As already noted above, vide judgment dated 22.10.2002, the Trial Court decreed the suit for specific performance only and declined the relief for permanent injunction. The High Court, after hearing the counsel for the parties, framed six points for consideration, which are reproduced hereunder:

"1. Whether plaintiffs have proved that agreement of sale dated 24.05.1981 has been duly executed by defendants 1 to 5?

2. Whether parties to the agreement dated 24.05.1981 had agreed that time is the essence of said contract?

3. Whether agreement of sale dated 24.05.1981 is hit by any of the provisions of Contract Act, 1872?

4. Whether defendant no.6 proves that he is a bona fide purchaser of portion of suit schedule property without notice of earlier agreement of sale dated 24.05.1981?

5. Whether defendant no.7 i.e. Respondent no.9 herein is entitled for an opportunity to file written statement and as such, matter requires to be remanded back to the trial court by setting aside judgment and decree under challenge?

6. Whether judgment and decree passed by the trial court decreeing the suit O.S. No.2188/1983 for specific performance suffers from any patent illegality on account of either non-appreciation of available evidence or erroneous appreciation of evidence calling for exercise of appellate jurisdiction by setting aside the same? And what order?"

16. On point No.1, the High Court held that agreement to sell was executed by all the defendants i.e. 1 to 5. On point no.2, the High Court held that time was not the essence of contract. On point no.3, it held that the contract was not opposed to public policy nor hit by Section 23 of The Indian Contract Act, 1872. On point no.4, it was held that defendants 6 to 7 had failed to discharge the burden that they were bona fide purchasers for value without notice. On point no.5, it was held that defendant no.7 had lost the opportunity to contest and on point no.6, the High Court held that the judgment of the Trial Court did not suffer from any infirmity on any count and, accordingly, proceeded to dismiss the appeal while confirming the judgment of the Trial Court.

17. We have heard Sri Arvind Verma, learned Senior Counsel appearing for the appellants and Sri Sanjay Parikh, learned Senior Counsel, appearing for the respondents and have perused the material on record.

18. The submissions of Mr. Verma on behalf of the appellant are briefly summarized hereunder:

a) No evidence was produced by the plaintiffs regarding the alleged ban on registration of revenue sites/survey numbers similar to the land in suit.

b) Only bald and vague averments have been made to show that the plaintiffs were ready and willing to perform their part. No specific details were mentioned, as such, the suit was hit by Section 16(c) of the Specific Relief Act, 1963.

In short, "the Act, 1963 "

c) The appellant was a bona fide purchaser for value without notice. He had exercised due diligence before purchasing the part of the land in suit. As the agreement to sell dated 24.05.1981 was an unregistered document, even the Sub-Registrar's Office could not have provided any information regarding the said agreement to sell.

d) The High Court failed to consider the effect of the provisions contained in Section 53(A) of the Transfer of Property Act, 1882 which extended full protection to the appellant.

e) The possession of the land in dispute was never with the plaintiffs and has throughout remained with the appellant and other subsequent purchasers.

f) The High Court committed serious error in not relying upon the correspondence between the defendant no.1 and the plaintiffs relating to the request of the defendant no.1 regarding payment of balance consideration and for getting the sale deed executed as registered.

In short, "the Act, 1882"

g) It would be highly inequitable to grant the specific performance after 43 years in order to disturb the settled proprietary possession of not only the appellant but also the other subsequent purchasers.

h) The High Court ought to have denied specific performance, however, any other relief could have been considered and moulded in favour of the plaintiffs.

i) The plaintiffs did not seek decree for declaration of the sale deeds in favour of the appellant as null and void or for its cancellation. Further no relief for possession was sought as such the suit would be barred.

19. Shri Verma, learned counsel appearing for the appellants relied upon the following judgments in support of his submissions:

(1) Aniglase Yohannan Vs. Ramlatha and others³;

(2) Umabai and another Vs. Neelkanth Dhondiba Chavan (dead) by Lrs and another⁴;

(2005)7 SCC 534 (2005) 6 SCC 243 (3) Rajeshwari Vs. Puran Indoria⁵;

(4) Malapali Munaswamy Naidu Vs. P. Sumathi⁶; and (5) Azhar Sultana Vs. B. Rajamani and others⁷;

20. On the other hand, Sri Sanjay Parikh, learned Senior Counsel appearing for the contesting respondents made the following submissions, which are summarized hereunder:

a) The appeal is concluded by concurrent findings of fact recorded by both the Courts below.

b) There is no perversity in the judgment of the High Court warranting interference under Article 136.

c) The appellant No.2/defendant no.7 has no right to challenge the impugned judgment as he failed to file written statement or adduce any evidence before the Trial Court.

d) The application filed by defendant no.7/appellant no.2 under Order 41 Rule 33 of CPC before the High Court had been rejected.

(005) 7 SCC 7 (2004) 13 SCC 364 (2009) 17 SCC 27 He could, thus, make submissions only on the rejection of his application under Order 41 Rule 33 CPC and not on merits.

e) The original vendors, defendant nos.1 to 5, did not challenge the judgment and decree of the Trial Court.

f) Defendant no.6 had died during the pendency of the proceedings and was succeeded by six legal representatives, out of whom, only one i.e. the appellant no.1 has challenged the judgment.

g) No benefit can be granted to the appellant or the subsequent purchasers under Section 19(b) of the Specific Relief Act as they had due notice and knowledge of the agreement to sell and, therefore, their contract of sale was not bona fide.

h) The plaintiffs have fully established and proved their readiness and willingness both in their pleadings as also through their evidence.

i) Time was not the essence of the agreement as it was contingent upon the lifting of the ban imposed by the State Government on registration.

j) The agreement to sell did not compulsorily require registration to bring a suit for specific performance as the same is permitted under the proviso of Section 49 of the Registration Act, 1908.

k) Relief of possession is inherent in a suit for specific performance and separate relief for possession is not required to be claimed.

21. Shri Parikh, learned Senior Counsel has placed reliance upon the following judgments in support of his submissions: -

1. Parminder Singh Vs. Gurpreet Singh⁹;
2. Universal Sompo General Insurance Co. Ltd. Vs. Suresh Chand Jain and another¹⁰
3. R.K. Mohd. Ubaidullah Vs. Hajee C. Abdul Wahab¹¹;
4. Himatlal Motilal and others Vs. Vasudev Ganesh Mhaskar @ Ganpati Boa and others¹²;

In short, “the Act, 1908” (2018) 13 SCC 352 (2023) SCC Online SC 877 (2000) 6 SCC 402 ILR (1912) 36 Bom.446

5. Bhup Narain Singh Vs. Gokhul Chand Mahton¹³
6. Gadde Sitayya (dead) and another Vs. Gadde Kotayya and others¹⁴;
7. Ram Baran Prasad Vs. Ram Mohit Hazra and others¹⁵;
8. Sughar Singh Vs. Hari Singh¹⁶;
9. Gaddipati Divija and another Vs. Pathuri Samrajyam and others¹⁷;
10. S. Kaladevi Vs. V.R. Somasundaram¹⁸;
11. R. Hemalatha Vs. Kashthuri¹⁹
12. Suraj Lamp and Industries (P) Ltd. (2) Vs. State of Haryana²⁰;
13. Ram Kishan and another Vs. Bijender Mann alias Vijender Mann and others²¹; and
14. Manickam alias Thandapani and AIR 1934 PC 68 AIR 1932 Mad.71 AIR 1967 SC 744 (2021) 17 SCC 705 (2023) SCC Online SC 442 (2010) 5 SCC 401 (2023) 10 SCC 725 (2012) 1 SCC 656 (2013) 1 PLR 195 another Vs. Vasantha²²;

22. Having considered the submissions, our analysis is as follows:

(i) Relief of specific performance of contract is a discretionary relief. As such, the Courts while exercising power to grant specific performance of contract, need to be extra careful and cautious in dealing with the pleadings and the evidence in particular led by the plaintiffs. The plaintiffs have to stand on their own legs to establish that they have made out case for grant of relief of specific performance of contract. The Act, 1963 provides certain checks and balances which must be fulfilled and established by the plaintiffs before they can become entitled for such a relief. The pleadings in a suit for specific performance have to be very direct, specific and

accurate. A suit for specific performance based on bald and vague pleadings must necessarily be rejected.

Section 16(C) of the 1963 Act requires (2022) SCC Online SC 2096 readiness and willingness to be pleaded and proved by the plaintiff in a suit for specific performance of contract. The said provision has been widely interpreted and held to be mandatory. A few of authorities on the point are referred hereunder:

a) In the case of *Man Kaur v. Hartar Singh Sangha*²³, this Court held in paragraph 40 which is reproduced hereunder:

“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 bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish (2010) 10 SCC 512 that the defendant refused to execute the sale deed and thereby committed breach, is not correct.....”

b) In the case of *U.N. Krishnamurthy (Since Deceased) Thr. Lrs. v. A.M. Krishnamurthy* ²⁴, following was held in paragraph 46:

“46. It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform the part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

c) In the case of *His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar*²⁵, it was held under paragraph 2:

“2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform (2022) SCC Online SC 840 (1996) 4 SCC 526, his part of the contract, the conduct has to be properly scrutinised. There is no documentary proof that the plaintiff had ever funds to pay the balance of

consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27-2-1975. The draft sale deed was not returned after being duly approved by the petitioner. The factum of readiness and willingness to perform plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances.

The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time which disentitles him as time is of the essence of the contract."

(ii) In the present case, we find from a perusal of the plaint that, at the first instance, the plaintiffs failed to plead specifically with details about the restriction said to have been imposed by the State on registration of sale deeds relating to similar survey numbers and revenue sites. No details of the Government Order are mentioned. Neither the Government Order is placed on record as evidence to connect that such restriction was actually applicable to the land in question.

(iii) Defendant nos. 1 to 5 executed sale deeds in April and June, 1983 in favour of the appellant as also other purchasers. It is recorded by the Trial Court as also the High Court, that these sale deeds were executed by the defendants 1 to 5 after depositing some betterment charges, getting the land converted and then effecting the transfer. The plaintiffs do not seem to have ever approached the defendants to get this kind of a status change and, thereafter, get the sale deeds executed. It has not come either in pleadings or in evidence of the plaintiffs that the alleged ban imposed by the State Government had been lifted but still the sale deeds were executed in favour of the appellants and other purchasers in 1983.

(iv) If the plaintiffs were actually keen, ready and willing to get the land transferred or get the agreement to sell enforced, they should have made an effort in that regard. Neither any specific date has been mentioned in the pleadings or in the evidence, on which date the plaintiffs tendered the balance amount with a request to the defendants 1 to 5 to get the land status changed and execute the sale deed, or otherwise also, request the defendants 1 to 5 to execute the sale deed with the same status of the land in suit.

(v) Even before filing a suit, there is no evidence forthcoming on behalf of the plaintiffs to show that they tendered the balance consideration or a draft sale deed to the defendants 1 to 5 and requested for execution and registration of the sale deed.

(vi) The Courts below have proceeded to hold that there was readiness and willingness primarily relying upon the restriction imposed by the State. According to them, as the restriction had not been lifted, there was no obligation on the part of the plaintiffs to have expressed any readiness or willingness. However, the Courts below failed to take into consideration that there was no evidence

regarding the said ban. Further the Courts below also failed to take into consideration that a keen and a willing buyer would have found out a way for execution of the sale deed just as defendants 6 & 7 and C. Nagaraju.

(vii) The Courts below also fell into error in recording a finding that the defendants 1 to 5 had committed breach of contract and had dishonestly proceeded to get the status of the land changed and, thereafter, execute the sale deed in favour of the appellant and other purchasers.

(viii) It is clear from the record that the defendant no.1 had given a written notice in September, 1981, then legal notice in November, 1981 and also another communication in December, 1981 requesting for payment of balance sale consideration and, thereafter communicating that advance amount had been forfeited and the agreement to sell had come to an end as the plaintiffs failed to get the sale deed executed within three months. After December, 1981, the plaintiffs kept silent. They neither responded to the last communication of the defendant no.1 of December, 1981, nor did they take any steps to file the suit for specific performance of contract for more than one and a half years after the defendant no.1 had communicated forfeiture of the earnest money and the cancellation of the agreement to sell. There is no communication from the plaintiffs after December, 1981 till July, 1983 when they filed the suit. There is not even a notice by the plaintiffs before filing the suit of showing their readiness and willingness by tendering the amount of balance sale consideration and sending a draft sale deed for approval and fixing a date for execution and registration of the sale deed.

(xi) We are thus unable to agree with the findings of the courts below that the plaintiffs were always ready and willing to get the sale deed executed and registered. As a matter of fact, the conduct of the plaintiffs throughout gives credence and strength to the contention of the defendant nos.1 to 5 that the plaintiffs never had the funds available with them to clear the balance sale consideration and that they were middlemen only interested in blocking the property and, thereafter, selling it on a higher price to third parties and make profit thereof. The plaintiffs were never the real purchasers interested in buying the land in suit for themselves.

(x) Under such facts and circumstances as discussed above, we are of the confirmed view that the decree of specific performance was not warranted in the present case and ought to have been denied and the suit was liable to be dismissed.

(xi) In view of the finding on the issue of readiness and willingness being decided against the plaintiffs in the facts of the present case, we are not inclined to enter into other arguments raised by the learned Senior Counsel for the parties.

(xii). However, in order to adjust equities between the parties, as the plaintiffs made a payment of Rs.12,000/- as advance money on 24.05.1981 or before, that being an admitted position, they need to be suitably compensated for the same. About 43 years have passed since the date of the agreement to sell. According to the appellant as stated in the written brief, the value of the property is about four crores. The respondents have not given any such figure of the approximate value of the property in question. Considering the facts and circumstances, we direct that the appellant

compensate the plaintiffs by paying an amount of Rs.24 lakhs in lieu of the advance and further Rs.6 lakhs as cost of litigation. Total amount of Rs.30 lakhs to be paid within a period of three months from today and file proof of such payment before this Court within the next four months. In the event, such proof is not filed, the Registry will list the matter before the Court immediately after expiry of the aforesaid period for further orders.

23. The Appeal is, accordingly, allowed. The impugned order is set aside. The suit is dismissed, however, with the direction as contained above regarding payment of Rs.30 lakhs by the appellants to the plaintiffs- respondents within the time stipulated above.

24. Pending application/s, if any, is/are disposed of.

.....J. (VIKRAM NATH)J. (PRASHANT KUMAR
MISHRA) NEW DELHI JULY 15, 2024