Karnataka High Court H.M. Krishna Reddy vs H.C. Narayana Reddy on 9 April, 2001 Equivalent citations: AIR 2001 Kant 442, ILR 2001 KAR 3870 Bench: H Rangavittalachar JUDGMENT The Court 1. This is a defendant's second appeal. The respondent to this appeal is the plaintiff. 2. Parties will be referred to with reference to the rank in the Trial Court. 3. The plaintiff filed the suit for 'specific performance' of an agreement of sale dated 31-10-1975 by directing the defendant to execute the sale deed in his favour. He contended in the suit that the defendant is the owner of the land measuring 30 guntas in Survey No. 63/7 situated at Halanayakana Halli, Varthur Hobli, Bangalore South Taluk. By an agreement dated 31-10-1975, he 'Agreed to sell', the said land for a sale consideration of Rs. 4,000/-. After receiving the sale consideration the defendant parted with the land, and agreed to execute the "sale deed", as and when the ban for selling the land, under the 'Karnataka Prevention of Fragmentation and Consolidation of Holdings Act', 1966 (hereinafter referred to as 'an Act') was repealed. On 28-10-1993, after the Act was repealed plaintiff by a written notice called upon the defendant to execute the sale deed. Since, he refused to do so, he filed the suit. 4. The suit was contested by the defendant. While admitting that he was the owner of the suit property, he denied of having executed the "Agreement of sale" and parting with the possession. He contended that the deed of "Agreement of sale" referred to by plaintiff was a spurious and concocted document; prayed for dismissal of the suit. 5. The Trial Judge framed the following issues on the basis of the pleadings.- "1. Whether the plaintiff proves that the defendant had executed an agreement to sell on 31-10-1975 agreeing to sell the extent of land fallen to his share under partition and delivered the possession and undertook to execute the regular sale deed as soon as the ban on registering the fragmented land is lifted as stated in para 2 of the plaint? 2. Whether the plaintiff proves that he is ready and willing to comply with the terms of the agreement? 3. Whether the plaintiff proves that he is in possession and enjoyment of the suit schedule property from 31-10-1975 to the knowledge of the defendant continuously without interruption and perfected his title and interest over the property by means of adverse possession as stated in para 3 of the plaint? 4. Whether the defendant proves that the plaintiff has forged the document and also tried to tamper with the revenue records as stated in para 8 of the written statement? 5. Whether the defendant proves that the suit is barred by limitation? 6. What order or decree?" 6. Since, the defendant disputed the execution of the "Agreement of sale", the plaintiff during trial examined one H.T. Krishna Reddy, attestor, to prove the "Agreement of sale" besides examining himself. Similarly, the defendant also led evidence by examining himself and others in support of his plea. 7. The learned Trial Judge has held, that the evidence of the parties discloses that the defendant did execute the "Agreement of sale" and parted with possession. Repelling one of the contentions of the defendant viz., that the very execution of agreement was improbable since "the stamp papers over which the agreement was executed shows that it was issued at Mangalore on 31-10-1975 and the agreement being executed at Bangalore on the same date i.e., 31-10-1975", the learned Trial Judge has held that during the relevant time there was scarcity

of stamp papers at Bangalore and it was not uncommon that the stamp papers issued at Mangalore being sold at Bangalore and therefore no significance can be attached to such a contention. He decreed the suit. 8. Aggrieved by the said judgment and decree the defendant appealed. The learned Appellate Judge, after re-appraising the evidence, has concurred with the findings of the learned Munsiff and dismissed the appeal. These two judgments and decrees are under challenge. 9. Heard Sri M.V. Vedachala, the learned Counsel appearing for the appellant and Sri C.B. Srinivasan, the learned Counsel appearing for the respondent. 10. The appeal was admitted to consider the following substantial questions of law.- "1. Whether the suit is barred by limitation? 2. Whether the lower Appellate Court is justified in upholding the judgment and decree of the Trial Court having come to the conclusion that the execution of Ex. P. 1 is doubtful? 3. Whether the judgment and decree of the lower Appellate Court are contrary to Order 41, Rule 31 of the Civil Procedure Code as a result of misreading of evidence and non-consideration of the material evidence on record? 4. Whether the Courts below are justified in decreeing the suit when there is absolutely no averment and evidence on record to show that the plaintiff was ever ready and willing to perform his part of the contract as per Ex. P. 1". 11. Insofar as the substantial question of law framed at Sl. No. 1 is concerned, it has to be said that the defendant never took up such a plea before the Trial Court or the Appellate Court. However, the said question being the question of law and having been already formulated by this Court as a substantial question of law arising for consideration, appellant is permitted to address arguments. Accordingly, Sri M.V. Vedachala, the learned Counsel, submitted that by reading Article 54 of the Limitation Act, 1963 and the relevant clause in "Agreement of sale", Ex. P. 1, stipulation regarding limitation which reads ''I hereby undertake to execute the necessary sale deed on the requisite stamp paper after repealing the ban on registration by the Government and to this effect I have executed this sale agreement" and stating that the ban imposed by the 'Act' being repealed by the validating clause Karnataka Act No. 19 of 1983 which came into force on 15-9-1983, that the suit filed on 2-11-1993 was hopelessly barred by time. 12. Though, the argument at the first sight is attractive, but on a careful analysis, the same is liable to be rejected, for the reasons to be found herein below. 13. The "Agreement of sale" which is marked Ex. P. 1 is executed on 31-10-1975. No definite date is stated under the "Agreement" for performance of the contract. But, it states that the "Agreement", has to he performed after repealing the ban on registration, by the Government. No mention is made in the agreement as to what the parties really meant when they used the expressions "After repealing the ban on registration by the Government". Nonetheless by reading the plaint, it may be construed that the parties had in mind the repeal of the Karnataka Prevention of Fragmentation and Consolidation of Holdings Act, 1966. The said Act which was in force during the time when the agreement was executed, prohibited the sale of any 'fragment', except with the permission of the Tahsildar or the owner of the contiguous land of the same survey number. But there was no total prohibition. Relevant sections of the Act being Sections 5 and 6 which read as under.- "5. Sale, lease, etc.–(1) (a)

No person shall sell any fragment in respect of which a notice has been given under sub-section (2) of Section 4, except in accordance with the provisions of clause (b). (b) Subject to the provisions of Sections 39 and 80 of the Karnataka Land Reforms Act, 1961 (Karnataka Act 10 of 1962), whenever a fragment is proposed to be sold, the owner thereof shall sell it to the owner of a contiguous survey number or recognised sub-division of a survey number (hereinafter referred to as the contiguous owner). If the fragment cannot be sold to the contiguous owner for any reason, the owner of the fragment shall intimate in the prescribed form, the reasons therefor along with an affidavit in support thereof to the Tahsildar and also send copies of such intimation and affidavit to the Sub-Registrar, in the prescribed manner and may thereafter sell such fragment to any other person. (2) Notwithstanding anything contained in any law for the time being in force or in any instrument or agreement, no such fragment shall be leased to any person other than a person cultivating any land, which is contiguous to the fragment. (3) No such fragment shall be sub-divided or partitioned. 6. Fragmentation prohibited.–No land in any area shall be transferred or partitioned or sub-divided so as to create a fragment". 14. The Act was amended by introducing a validation clause in the form of Section 4, which reads as under.- "4. Entry in the Record of Right.–(1) As soon as may be after the commencement of this Act all fragments in the village shall be entered as such in the Record of Rights, or where there is no Record of Rights, in such village record as the State Government may prescribe. (2) Notice of every entry made under sub-section (1) shall be given in the manner prescribed for the giving of notice under Chapter XI of the Karnataka Land Revenue Act, 1964 (Karnataka Act 12 of 1964), of an entry in Register of Mutations. Notwithstanding anything contained in any law or in any judgment, decree or order of any Court or other authority, any transaction, including transfer, partition or sub-division of any land, entered into or effected and any action or thing taken or done in relation to land before the commencement of this Act and in contravention of the provisions of the principal Act, shall, notwithstanding anything contained in the principal Act, be not deemed to be void merely on the ground of such contravention". The transactions which took place earlier were validated. 15. Later, on 28-2-1983, the entire Act was repealed. 16. The question that requires to be considered is when the time begins to run or the starting point of limitation of contract for performance under Article 54 of the Limitation Act. In this case, whether time begins to run when the Validation Act in the year 1983 was passed or that the Act was repealed or when the plaintiff issued notice to the defendant in 1993 and the defendant refused the performance. Before answering this question, it is necessary to state the true purport and meaning of expression found in Article 54 of the Act. Article 54 of the Limitation Act, 1963 reads as under.- "Description of suit Period of Limitation Time from which period begins to run For specific performance of a contract Three years The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused" 17. From a close reading of the above, the time of three years to file the suit would run if a date is fixed for performance in the contract from the said date. It is the contention of Sri M.V. Vedachala that

the first part of the Article 54 stated under the heading "Time from when the period begins to run" has no application to the facts. But, the phrase "date fixed for performance" has reference to not merely the calendar date, but also to any other date with reference to an "event" that may happen in future, which event was in contemplation in the mind of parties while making the "Agreement of sale". Ex. P. 1, agreement of sale provided the happening of the event viz., "after repealing the Ban of Registration" for performance. The ban on registration was removed on 28-2-1983 which should be held as the "date of event" contemplated under Ex. P. 1, "Agreement of sale". Limitation begins to run from 28-2-1983 and the period of 3 years has to be reckoned from the said date. If so reckoned, the suit filed in 1993 is hopelessly barred by time. 18. Article 54 of the Limitation Act, 1963, provides that a suit for enforcement of a contract of sale has to be filed within 3 years. How this period of 3 years has to be computed is also provided in the Article 1 when the "Agreement" itself states the date for performance, 3 years from the said date or if no such date is fixed, within 3 years from the said date when plaintiff comes to know of the refusal to perform from the defendant. The question for consideration is "Whether the earlier or latter part of the above clause" applies to the facts. 19. No doubt in the phrase "The date fixed for performance" occurring in the first clause is not merely referable to the "calendar date" but also to any "other date" referable to an event that may happen in future with certainty. 20. The parties at the time of entering into the "Agreement of sale" must contemplate a future event, which must be certain to happen. In other words, when they want to "Fix the date of performance" in the "Agreement of sale" without reference to a "Calendar date", the agreement must mention the nature and description of future event, which according to the knowledge of the parties or "Common Knowledge" is "Certain to Happen". If the 'Event' stated in the agreement, according to the knowledge of parties, or according to 'Common Knowledge' is of such a nature, it "May" or "May not" happen, then it cannot be said the parties contemplated a "date" with reference to a "future event" from which event the performance becomes due (As limitation being a Rule of Technicality which has the effect of barring a Remedy) in the mind of the parties, "fixing the date" for performance of contract. Mere mentioning of any 'Event', which was never contemplated "Certain to happen" cannot have the effect of "fixing a date" for performance. 21. For the above reasoning sustenance can be drawn from the decision of the Madras High Court in the case of R. Muniswami Goundar (dead) and Another v B.M. Shamanna Gounda and Others, for the proposition that the words "date fixed" occurring in Article 54, has reference to not merely "Calendar dates" but also "dates with reference to an event certain to happen". That was a case, where the Court was interpreting a clause in an "Agreement of Sale" which did not fix the "date of performance" pertaining to limitation. The relevant clause of the limitation in the agreement of sale which the Court was interpreting read as follows.- "As regards the balance of Rs. 2,400/-, since a suit has been pending concerning the same property, I shall receive it before the Sub-Registrar upon executing a sale deed the moment the suit is disposed of. (emphasis supplied) 22. The defence to the agreement of sale in the said case was that the suit

was barred by time. Rejecting the defence Subba Rao, J., as he then was, has held interpreting Article 113 of the Limitation Act of 1908 which corresponds to the present Article 54 as:"The principle underlying this article is apparent. When the date is fixed under the first part of Column 3, limitation begins to run forthwith, as the date is certain. But where no such time is fixed and where the party against whom the limitation runs is not in a position to know of the occurrence of the contingency contemplated by the contract, time beings to run only when he has notice of the refusal of the performance. The question is, what is the meaning to be attached to the words "date fixed" in the first part of Column 3. Do they mean the date by calendar or are they comprehensive enough to include a date, which can be ascertained with reference to an event certain to happen? The principle applicable is the doctrine of "Id certum est quod certum reddi potest". This doctrine is stated in Broom's Legal Maxims". 23. Distinguishing the earlier Division Bench judgment of the Madras High Court on the said point in Kruttiventi Mallikharjuna Rao v Vemuri Pardhasaradhirao, the Court has further held that"The event in contemplation must be certain to happen". This is how it is stated.-"Mr. Subramania Pillai relied upon a decision of a Division Bench of this Court in Mallikharjuna's case, supra. Under the terms of the contract in that case, the vendor promised to execute the sale deed when both of his brothers or one of them returned to the village for the next vacation, "May-June 1935". The learned Judge held that the agreement was too indefinite to be regarded as fixing a date for the performance of the contract. It will be seen that there was no definite evidence in that case in regard to contingency contemplated in that case was not an event certain to happen. It might be that neither of those brothers might return in May or June and obviously the aforesaid doctrine could not be applied". 24. This decision of the Madras High Court has been referred to with approval by the Supreme Court in Ramzan v Smt. Hussaini. 25. Thus, from the above discussion, it is held that.-"The period of limitation for filing a suit to enforce an "Agreement of sale" is 3 years under Article 54 of the Limitation Act, 1963, if the agreement of sale provides or fixes a 'date', for performance of the contract. Time begins to run from the said date'. The date need not necessarily be the 'calendar date'. It also includes a 'date' referable to "happening of certain future event'. But, if the happening of the 'event', on which depends the performing of the contract is 'uncertain' then it cannot be said to be a 'date fixed' within the meaning of the first clause of Article 54 of the Limitation Act. In which event, it is the latter part of Article 54 which applies i.e., limitation of three years begins to run from the date when the plaintiff has notice of the defendant refusing to perform the contract". 26. Reverting to the facts of this case, in the agreement of sale the clause regarding limitation, defendant should execute a sale deed "After repealing ban on registration by Government". What the parties meant by this clause, no extrinsic or intrinsic evidence is available on record. But the argument is that it should be construed as repealing of the Fragmentation Act, which was in force during the period the 'Agreement of sale was executed'. This Fragmentation Act was not a transitory piece of legislation; nor there was anything to indicate that this Act was executed as purely a temporary measure. Therefore, the repealing of such

a statute which was passed in 1966, cannot be said to be an 'event certain to happen', for purposes of fixing the starting date of limitation. Besides, it is also necessary to note, the Fragmentation Act did not totally prohibit 'sales'. It was permissible to purchase, with the permission of the designated authorities under the Act. Therefore, I am of the view that the agreement of sale, did not fix a date for performance of the contract, nor mentioned an event, 'certain to happen' on the happening of which specific performance became due. Therefore, in this case, the later part of Article 54 applies i.e., time begins to run only when the plaintiff had knowledge of the defendant's refusal to perform. 27. According to the plaintiff, he came to know of the refusal to perform by the defendant only when his notice dated 28-10-1993 was not responded favourably and the suit is filed within three years from the said date. This factual situation is not in dispute. 28. Therefore, the substantial question of law framed at Sl. No. 1 is answered holding that the suit is well-within the time. 29. Insofar as the substantial question of law framed at Sl. No. 2 is concerned, under Order 41 of the Code of Civil Procedure, the Appellate Court is a Court of appeal on facts also. It has the power or jurisdiction to reappraise the evidence and come to its own conclusion on the basis of materials. Therefore, substantial question of law framed at SI. No. 2 is answered holding that the Appellate Court was justified in concurring with the findings of the learned Munsiff by giving its own reasons. 30. Insofar as the substantial question of law framed at Sl. No. 3 is concerned, it was contended by the learned Counsel appearing for the appellant that an important fact viz., that the stamp paper which bears the date "31-10-1975" is said to have been issued from Mangalore. But, the evidence discloses that the agreement is executed on the said stamp paper at Bangalore, which on the face of it is improbable. The said fact has not been taken into consideration. This contention overlooks the findings of the Court below. The Trial Court at paras 25 and 27 of its judgment has referred to this contention and has held that "on account of scarcity, the stamp papers issued at Mangalore were also sold at Bangalore". Therefore, there is no merit in this contention. 31. The learned Counsel nextly argued that while the agreement of sale referred to one acre but the plaintiff has restricted the relief only for 30 guntas. Such a circumstance betrays the case of the plaintiff. I do not understand how the said contention can be considered as the substantial question of law. 32. Learned Counsel for the appellant is unable to show how the Courts below misread evidence. Hence, the answer to the substantial question of law framed at Sl. No. 3, is that the Courts below have not misread or not considered any material evidence. 33. Insofar as the substantial question of law framed at Sl. No. 4 is concerned, the records disclose that the plaintiff has pleaded that "he was ready and willing to perform". Therefore, the said question does not arise for consideration. 34. Learned Counsel for the appellant however did not submit arguments on other questions of law. 35. For the reasons stated above, I do not find any merit in this appeal. Appeal dismissed. 36. The learned Counsel appearing for the respondent fairly submitted that he does not press for the costs. Accordingly, appeal is dismissed without costs.