

**Precedents on agreement to sell**

**Agreement to sell.-Breach of agreement.-Suit for recovery.-Amount claimed from both defendants.-Agreement to sell property entered through Defendant No. 2.-Breach of agreement.-Defendant No. 1 denying signatures on agreement, written statement as well as Vakalatnama.-Dismissal of suit on ground of absence of privity of contract after protracted trial.-Illegal.-Judgment of trial Court as well as High Court set aside.**

Where in a suit for recovery of amount alleged to be paid by plaintiff to the two defendants as a sale consideration of property, the plaintiff claimed that there was a document signed by Defendant No. 1 in favour of Defendant No. 2 authorising him to sell the property on his behalf and the Defendant No. 1 denied his signatures on the document and also on written statement and Vakalatnama, the trial court could have decreed the suit at the stage of examination of witnesses instead of going into protracted trial and then dismissing the suit on the ground of absence of privity of contract between Defendant No. 1 and plaintiff. Trial Court should have immediately probed into the matter. It should have recorded statement of the Counsel for the first defendant to find out if Vakalatnama in his favour and written statement were not signed by the first defendant whom he represented. It was apparent that the first defendant was trying to get out of the situation when confronted with his signatures on the Vakalatnama and the written statement and his having denied his signatures on the document in order to defeat the claim of the plaintiff. False of the claim of the first defendant was writ large on the face of it. Trial Court could have also compared the signatures of the first defendant as provided in Section 73 of the Evidence Act.

*K.S. Satyanarayana vs. V.R. Narayana Rao*, AIR 1999 SC 2544 : 1999(3) Land LR 404 : 1999(3) Pun LR 297 : 1999(3) Rec Civ R 621 : 1999(5) Andh LD 7 : 1999(6) SCC 104 : 1999(37) All LR 93

**Agreement to sell.-Disputed agreement.-Eviction petition dismissed on ground of purported agreement to sell by landlord in favour of third party.-Agreement already in dispute.-Relevant considerations (1) whether landlord is an employee of Central or State Government due to retire within one year, and (2) premises required for his own residence after retirement.**

There is a dispute about the agreement. Moreover, the relevant considerations are (1) whether the landlord is an employee of the Central Government or the State Government having a period of less than one year for his retirement, and (2) the premises let out by him are required for his own residence after his retirement such employee may, at any time, within one year before the date of his retirement, apply to the Rent controller for recovery of the immediate possession of such premises. There may be compelling circumstances in a given case which may force the landlord, in desperation, to enter into an agreement to sell. The actual circumstances in the present case were required to be examined. \* *Sita Ram vs. Vijay Kapoor*, AIR 1999 SC 2862 : 1999(1) Rent LR 166 : 1998(76) DLT 153

**Agreement to sell.-Effect of rule against Perpetuity.-Application on pre-emption.-Position of law as existed before and after enactment of Transfer of Property Act, 1882.**

In English law a contract for purchase of real property is regarded as creating an equitable interest, and if, in the absence of a time limit, it is possible that the option for repurchase might be exercised beyond the prescribed period fixed by the perpetuity rule, the covenant is regarded as altogether void. It has, therefore been held that a covenant for pre-emption unlimited in point of time is bad as being obnoxious to the rule against perpetuities.

In the case of an agreement for sale entered into prior to the passing of the Transfer of Property Act, it was the accepted doctrine in India that the agreement created an interest in the land itself in favour of the purchaser.

But there has been a change in the legal position in India since the passing of the Transfer of Property Act. Section 54 of the Act states that a contract for sale of immovable property does not, of itself, create any interest in or charge on such property.

*Ram Baran Prasad v. Ram Mohit Hazra and others*, AIR 1967 SC 744: 1967(1) SCWR 533: 1967(1) SCR 293

**Agreement to sell.-Existence of prior agreement.-Inquiry for.-Subsequent purchaser should make inquiry as to title or interest of person in actual possession on date sale transaction is made in his favour.-Subsequent purchaser's contention that he was already aware of nature of possession of**

**plaintiff over suit property as tenant and there was no need to make any inquiry.-He cannot be said to be bona fide purchaser in good faith for value without notice of original contract.**

With reference to subsequent purchaser, it is essential that he should make an inquiry as to title or interest of the person in actual possession as on the date when sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title, if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of property. In the case on hand defendants subsequent purchaser contended that they were already aware of the nature of possession of the plaintiff over the suit property as a tenant and as such there was no need to make any inquiry. In view of Section 19(b) of the Specific Relief Act and definition of 'notice' given in Section 3 of the Transfer of Property Act read with explanation II, the defendants subsequent purchasers are not bona fide purchasers in good faith for value without notice of the original contract. And that they were required to make inquiry as to the nature of possession or title or further interest if any, of the plaintiff over the suit property at the time when they entered into sale transaction notwithstanding they were already aware that the plaintiff was in possession of the property as tenant. What is material is the inquiry at the time when subsequent sale transaction was entered into. *R.K. Mohammed Ubaidullah and others vs. Hajee C. Abdul Wahab (dead) by LRs and others*, AIR 2001 SC 1658 : 2000(6) SCC 402 : 2000(8) JT 1

**Agreement to sell.-Parties to agreement under mistake of fact.-Mistake has to be mutual.-Parties to agreement to sell not ad-idem with respect to unit of measurement of land.-Seller intended to sell land in terms of 'Kanals', whereas purchaser intending to purchase in 'bighas'.-Mutual mistake with regard to area of land whereby price of land was to be calculated.-Agreement held void.**

In the northern part of the country, the land is measured in some States either in terms of "bighas" or in terms of "kanals". Both convey different impressions regarding area of the land. The finding of the Lower Appellate Court is to the effect that the parties were not ad-idem with respect to the unit of measurement. While

the defendant intended to sell in terms of “kanals” , the plaintiff intended to purchased it in terms of “bighas”. Therefore, the dispute was not with regard to the unit of measurement only. Since these units relate to the area of the land, it was really a dispute with regard to the area of the land which was the subject-matter of agreement for sale, or to put it differently, how much area of the land was agreed to be sold, was in dispute between the parties and it was with regard to the area of the land between the parties and it was with regard to the area of the land that the parties were suffering from a mutual mistake. The area of the land was as much essential to the agreement as the price which, incidentally, was to be calculated on the basis of the area. The contention of the learned counsel that the “mistake” with which the parties were suffering, did not relate to a matter essential to the agreement cannot be accepted. *Tarsem Singh vs. Sukhminder Singh*, AIR 1998 SC 1400 : 1998(2) BLJR 819 : 1998(2) Mad LW 303 : 1998(2) Raj LW 183 : 1998(3) SCC 471

**Agreement to sell.-Perfection of title .-Part perfection.- Subsequently .-Meaning of.- Expression means part perfection of title after the execution of contract and not after the execution of deed of conveyance.**

The actual right of the transferee under Section 43 and clause (a) of Section 18 is however expressed in different language. In cases where Section 43 operates, the transferee, at his option, can have the transfer operate on any interest which the transferor may acquire in the property at any time during which the contract for transfer subsists. The illustration to the section indicates that the transferee can require the transferor to deliver the property acquired to him. The purchaser or lessee on the other hand, acting under clause (a) of Section 18, can compel the seller of the lessor to make good the contract out of such interest. The difference between the two provisions is this that in the case of the operation of Section 43, no recourse to Court is necessary. The transfer operates on the property transferred and the transferee can call upon the transferor to deliver the property to him. The purchaser or the lessor having the right mentioned in clause (a) of Section 18 has to go to Court to compel the vendor or lessor to perform the contract out of the interest subsequently acquired by him. The purchaser or lessee goes to the Court to enforce the contract and the contract in clause (a) of Section 18 must refer to the contract to

sell or let and not to the contract of sale or lease, which, as indicated earlier, if voluntary, would have covered the entire property contracted to be sold or leased, and if enforced through Court no occasion for the operation of clause (a) of Section 18 would arise.

The use of the words 'vendor or lessor' in clause (a) is no definite pointer to the conclusion that the expression 'subsequently to the sale or lease' be given the meaning 'subsequently to the actual sale or lease'.

*Silla Chandra Sekharam v. Ramchandra Sahu*, AIR 1964 SC 1789: 1964(7) SCR 858

**Agreement to sell.-Performance of contract.-Time essence of contract.-No question of any presumption of presumed extension or presumed acceptance of renewed date where parties not adhering to original terms.-Court cannot fix a date for performance of contract.-Courts are not left with any other conclusion but a finding that the parties themselves by their conduct have given go-by to the original terms of the contract.**

In the event the time is the essence of the contract question of there being any presumption or presumed extension or presumed acceptance of a renewed date would not arise. The extension if there be any, should and ought to be categorical in nature rather than being vague or in the anvil of presumptions. In the event of the parties knowingly give a go-by to the stipulation as regards the time, the same may have two several effects : (a) parties name a future specific date for delivery and (b) parties may also agree to the abandonment of the contract. As regards (a) above, there must be a specific date within which delivery has to be effect and in the event there is no such specific date available in the course of conduct of the parties, then and in that event, the Courts are not left with any other conclusion but a finding that the parties themselves by their conduct have given a go-by to the original term of the contract as regards the time being the essence of the contract. Courts cannot possibly fix a date on its own for performance of the contract. *Arosan Enterprises Ltd. vs. Union of India and another*, AIR 1999 SC 3804 : 1999(8) DLT 825 : 1999(3) Arbi LR 310 : 2000(1) Cur CC 37

**Agreement to sell.-Re-conveyance of immovable property.-Time is the essence of contract relating to contract of re-conveyance.-Amount not paid within stipulated time.-Option in favour of plaintiff deemed to have lapsed.**

For renewal and options to repurchase where, in regard to immovable property, as a matter of law time becomes essence of the contract. Therefore in regard to contracts of reconveyance relating to immovable property, the principle laid down in *A.H. Mama vs. Flora Sassoon*, AIR 1928 PC 208, that time is not normally essence of the contract in contract relating to immovable property.-does not apply. It is fact, so observed in *Caltex (India) Ltd.* case (AIR 1969 SC 405). In view of the abovesaid decision of this Court relating to contract of reconveyance, and inasmuch as the amount was not paid within the stipulated time, the said option in favour of the plaintiff must be deemed to have “lapsed”. For the aforesaid reasons, the appeal fails and is dismissed. *Bismillah Begum (Smt.) (dead) by LRs vs. Rahmatullah Khan (dead) by LRs.*, AIR 1998 SC 970 : 1998(1) Andh LT 24 : 1998(1) Mad LW 825 : 1998(2) SCC 226

**Agreement to sell.-Repudiation of.-Vendee undertaking to obtain permission to purchase property in cantonment area.-Conditional permission granted by CEO that purchaser would give certificate not to represent against resumption.-Condition imposed could not prohibit purchaser to challenge resumption in future.-Nature of condition imposed cannot sustain.-Conditional permission granted cannot sustain.**

The Vendee was aware of the legal position with regard to resumption in respect of the property in the cantonment area. Knowing the legal position of the properties situated in the cantonment area, the Vendee had entered into an agreement to sell. It was the Vendee who had undertaken to obtain the permission for the purchase of the property from the MEO. In such circumstances the permission granted by CEO with condition that the purchaser gives a certificate to the effect that he has no intention to represent against the resumption proceedings when decided by the competent authority, cannot be said to be unusual having regard to the situation of the property in the cantonment area, entitling the purchaser-Vendee to repudiate and agreement and claim refund of earnest money paid. The condition could not be given a narrow and literal meaning so as to mean that the purchaser was prohibited from challenging any future resumption, even if the resumption proceedings were contrary to the provisions of the Cantonment Act and the rules regarding resumption. To construe the condition as above and hold that the permission was in

fact no permission at all, was improper. *Rameshwar Swarup (dead) by LRs vs. Saroj Tyagi (Smt.) and others*, AIR 1998 SC 3389 : 1998(4) Rec Civ R 384 : 1998(7) SCC 456 : 1998 All LJ 2579

**Agreement to sell.-Registered conveyance.-Necessity of.-Suit for specific performance without registered conveyance in the favour of plaintiff is not maintainable.**

*Hemraj v. Rustomji*, AIR 1953 SC 503

**Agreement to sell.-Registered conveyance.-Necessity of.-Permissibility.**

The contract being a contract to lease immovable property and unregistered, specific performance of it could not be sought, except under Section 27A of the Specific Relief Act. That section, however, applies only if the entire contract is made in writing, while, according to the plea put forward on behalf of the firm itself the entire contract was not in writing. The third reason why specific performance of the contract cannot be claimed by the firm under Section 27A of the Specific Relief Act is that such a claim under that provision of law is only available to a lessee, when the lessee, in part performance of the contract, has taken possession of the property, or, being already in possession, continues in possession in part performance of the contract. In the present case, the pleas put forward on behalf of the firm itself show that the firm never got possession of the entire property to which the contract related.

*Delhi Motor Co. and others v. U.A. Basrurkar*, AIR 1968 SC 794: 1968 (2) SCJ 614: 1968(2) SCR 720

**Agreement to sell. Specific performance.-“Ready and willing to perform part of agreement”.-Suit for specific performance of agreement to sell property.-Relief claimed not maintainable.-Original suit not withdrawn, but amended plaint was entirely on new cause of action.-Parties cannot be said to be ready and willing to perform their part of agreement.-Claim for specific performance cannot be enforced.** *Bishandayal and Sons vs. State of Orissa and others*, AIR 2001 SC 544 : 2001(1) SCC 555 : 2001(1) JT 58

**Agreement to sell.-Specific performance.-Alternative relief.-Suit for specific performance of contract.-Alternative relief of damages.-Not a ground to dilute main relief of specific performance.**

The plaintiff's claim was in accordance with the provisions of Section 21 of the Specific Relief Act, 1963. Merely, because the plaintiff claims damages in a suit for specific performance of contract as alternative relief, it cannot be said that he is not entitled to the main relief of specific performance of contract itself. *Motilal Jain vs. Ramdasi Devi (Smt.) and others*, AIR 2000 SC 2408 : 2000(3) mad LJ 202 : 2000(4) All Mah LR 285 : 2000(5) Andh LD 33 : 2000(6) SCC 420 : 2000(4) Civ LJ 524

**Agreement to sell.-Specific performance.-Compensation for non performance.-Claim in lieu of.-Amount of compensation fixed in agreement.-Can be claimed under the agreement.-Defaulting party cannot make lesser payment that provided in agreement without assigning any reason.**

The suit was for specific performance or in the alternative for a sum of Rs. 40,000/- as compensation. The sum of Rs. 40,000/- was claimed as the suit agreement *inter alia* provided as follows:

“Due to any reason, if I don't get Sale Deed executed then purchaser can get it done through Court of law or he can claim double the advance amount paid to me.”

No reasons have been given by the trial Court as to why this term of the suit agreement should not be given effect to. No reasons have been given as to why compensation of only Rs. 8,800/- was awarded when what was to be returned, if Appellant could not get Sale Deed executed, was double the amount. Trial Court has held that the 1st Respondent was ready and willing to perform the whole of the Agreement. Trial Court has noted that the Appellant could not perform the Agreement in its entirety inasmuch as she could not deliver possession. As 1st Respondent had elected not to accept performance in part the trial Court held that the Agreement could not be specifically enforced. However in such an event trial Court should have directed payment of Rupees 40,000/- as provided in the Agreement. We accordingly vary the decree granted by the trial Court to the extent that the Appellant shall repay Rs. 20,000/- with interest thereon at 12% p.a. from 30th June, 1981 till payment and also pay another sum of Rupees 20,000/- with interest thereon at 12% p.a. from date of decree till payment. *Surjit Kaur vs. Naurata Singh and another*, AIR 2000 SC 2927 : 2000(7) SCC 379 : 2000(6) Andh LD 78 : 2000(10) JT 520 : 2000(4) Cur CC 30 : 2000(41) All LR 310

**Agreement to sell.-Specific performance.-Comprehensive suit for specific**



**performance of contract and seeking directions to register the sale deed.-  
Specific performance of contract in terms of sale deed could be allowed.-  
Availability of statutory remedy of registration of sale deed no bar to suit for  
specific performance.**

Suit for specific performance of contract by way of registration of sale deed is maintainable notwithstanding alternative remedy under Section 77 of the Registration Act to obtain registration of executed document. The analysis of the provisions of Section 77 of the Registration Act would indicate that it would apply only if a matter is pertaining to registration of a document and not for a comprehensive suit as in the instant case where the relief prayed for is directing the defendant to register the sale deed in favour of the plaintiff in respect of the plaint schedule property and if he so fails to get a registration in favour of the plaintiff for permanent injunction or in the alternative for delivery of possession of the plaint schedule mentioned property. The document has not been presented by the respondent to the sub-Registrar at all for registration although the sale deed is stated to have been executed by the appellant as he refuses to co-operate with him in that regard. Therefore, various stages contemplated under Section 77 of the Act have not arisen at all. In such a case when the vendor declines to appear before the sub-Registrar, the situation contemplated under Section 77 of the Act would arise. Under Section 49 of the Act the sale deed could be received in evidence to prove the agreement between the parties though it may not itself constitute a contract to transfer the property. It was a comprehensive suit including a relief for specific performance of contract contained in sale deed executed, document, but not registered and, therefore, relief for specific performance could be granted.

*Kalavakurti Venkata Subbaiah vs. Bala Guravi Reddi*, AIR 1999 SC 2958 : 1999(2) Raj LW 295 : 1999(3) Rec Civ R 607 : 1999(7) SCC 114 : 1999(3) Mah LJ 158

**Agreement to sell.-Specific performance.-Concluded contract.-Suit for specific performance of contract.-Power of Court.-Contract found not concluded on basis of which relief claimed.-No relief can be claimed on another contract not proved to be a fresh or independent contract.**

Where in a suit for specific performance of contract, the contract on which relief was based was found to be not a concluded contract, the relief cannot be given on basis

of another contract alleged by plaintiff to be concluded contract when it was not proved that it was a fresh or independent contract. In such a case the grant of any general relief on the basis of an agreement of sale for second time even if proved will be doing violence to the language in the plaint to the effect that the parties concluded an agreement on previous occasion which was not found to be concluded contract. *Ganesh Shet vs. Dr. C.S.G.K. Setty and others*, AIR 1998 SC 2216 : 1998(2) Mad LW 749 : 1998(3) Mah LJ 412 : 1998(2) Cal HN 16 : 1998(5) SCC 381

**Agreement to sell.-Specific performance.-Conduct of party.-Plaintiff after execution of agreement to sell expressing inability or refusing to purchase house.-Finding arrived on consideration of evidence on record not perverse.-High Court dealt with issue in its proper perspective.-Question of interference under Article 136 does not arise.**

Turning to the contextual facts the main issue which fell for consideration before the High Court has been as to whether the plaintiffs after the execution of the agreement to sell expressed their inability to purchase the house and after the execution of the sale deed, refused to purchase the house for Rs. 4499/- plus expenses for registration and, therefore, the plaintiffs waived their right of pre-emption? Incidentally the finding of fact arrived at upon consideration of the evidence on record ought not to be interfered with unless there is a total perverse view of the matter in issue. On perusal of the records, we do not find any such perversity so as to attribute the judgment of the High Court, otherwise not sustainable. In our view the High Court has dealt with the issue in its proper perspective having due regard to the language used in the notification and as such question of any interference under Article 136 of the Constitution of India would not arise. *Mattoo Devi (Smt.) vs. Damodar Lal (dead) by LRs and others*, AIR 2001 SC 2611 : 2001(6) SCC 330 : 2001(S) JT 496

**Agreement to sell.-Specific performance.-Consideration for.-Decree for specific relief.-Discretionary.-Discretion not to be exercised arbitrarily.-Where under terms of contract, plaintiff gets unfair advantage Court may not exercise its discretion in favour of plaintiff.**

The jurisdiction to decree specific relief is discretionary and the Court can consider various circumstances to decide whether such relief is to be granted. Merely it is

lawful to grant specific relief, the Court need not grant the order for specific relief, but this discretion shall not be exercised in an arbitrary manner. Certain circumstances has been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the Court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in favour of the plaintiff. So also specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the Court would desist from granting a decree to the plaintiff. *A.C. Arulappan vs. Ahalya Naik (Smt.)*, AIR 2001 SC 2783 : 2001(6) SCC 600 : 2001(6) JT 394 : 2002(1) Civ CR 67

**Agreement to sell.-Specific performance.-Contract for sale.-Application for extension of time fixed by decree to deposit balance consideration amount.-Can be made before Executing Court.**

When the trial Court and the executing Court are same, executing Court can entertain the application for extension of time through the application is to be treated as one filed in the main suit. On the same analogy, the vendor judgment-holder can also seek rescission of the contract of sale or sale or take up this plea in defence to bar the execution of decree. *V.S. Palanichamy Chettiar Firm V.C. Alagappan and another*, AIR 1999 SC 918 : 1999(2) Mad LJ 33 : 1999(3) Land LR 238 : 1999(1) Civ CC 712 : 1999(1) All Mah LR 706 : 1999(4) SCC 702 : 1999(35) All LR 392

**Agreement to sell.-Specific performance.-Delay and laches.-Specific performance of contract.-Delay in filing suit.-Relevant aspects of delay.**

The following aspects of delay are relevant in a case of specific performance of contract for sale of immovable property: (i) Delay running beyond the period prescribed under the Limitation Act, (ii) delay in cases where though the suits are within the period of limitation yet: (a) due to delay the third parties have acquired rights in the subject matter of suit, (b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief. *Motilal Jain vs. Ramdasi Devi (Smt.) and others*, AIR 2000 SC 2408 : 2000(3) mad LJ 202 : 2000(4) All Mah LR 285 : 2000(5) Andh LD 33 : 2000(6)

SCC 420 : 2000(4) Civ LJ 524

**Agreement to sell.-Specific performance.-Delay and laches.-Specific performance of contract for sale of immovable property.-Delay in filing suit.-Sale deed required to be executed within five months.-Notice to seller issued about 14 months after expiry of period of five months stipulated in contract.-Suit filed nine months after issuing last notice.-Suit cannot be said to be belated.-Relief of specific performance cannot be denied.**

It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property : (i) Delay running beyond the period prescribed under the Limitation Act; (ii) Delay in cases where though the suit is within the period of limitation, yet; (a) due to delay the third parties have acquired rights in the subject-matter of suit; (b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief. Here none of the above mentioned aspects applies. That apart faculty also, the High Court proceeded on an incorrect assumption with regard to cause of action. Ext. 2 was executed on February 20, 1977 and under it the sale deed was to be executed on or before July 19, 1977. The last notice was issued on November 26, 1978 and from that date the suit was filed only after nine months and not after more than a year as noted by the High Court. Therefore, on the facts of this case the ground of delay cannot be invoked to deny relief to the plaintiff. *Motilal Jain vs. Ramdasi Devi (Smt.) and others*, AIR 2000 SC 2408 : 2000(3) Mad LJ 202 : 2000(4) All Mah LR 285 : 2000(5) Andh LD 33 : 2000(6) SCC 420 : 2000(4) Civ LJ 524

**Agreement to sell.-Specific performance.-Discretionary relief.-Court guided by principles of justice, equity and good conscience.-Suit decreed.-Respondent deposited balance consideration amount in Court.-Appellant's offer to pay money to respondent to cancel contract.-With a view to wriggle out of contract due to escalation of prices of real estate properties respondent directed to deposit another sum of Rs. 3,00,000/- with Supreme Court Registry to be paid to appellant on giving possession of suit property to respondent.**

In view of the clear finding of the High Court that the appellant tried to wriggle out of the contract between the parties because of escalation in prices of real estate

properties, we hold that the respondent is entitled to get a decree as he has not taken any undue or unfair advantage over the appellant. It will be inequitable and unjust at this point of time to deny the decree to the respondent after two Courts below have decided in favour of the respondent. While coming to the above conclusion we have also taken note of the fact the respondent deposited the balance of the consideration in the trial Court and also the amount in the High Court, as directed. On the other hand appellant as held by the High Court tried to wriggle out of the contract in view of the tremendous escalation of prices of real estate properties. However, to mitigate the hardship to the appellant we direct respondent to deposit a further sum of Rs. 3,00,000/- within 4 months from today with the registry of this Court and the amount shall be kept in Short Term Deposit in a nationalised bank. While giving the above direction we have taken note of the offer made to us on behalf of the respondent. This amount is to be paid to the appellant on giving his possession of the suit property to the respondent within 6 months from the date of the deposit of the above amount. The appellant shall also be entitled to withdraw the amount already deposited in the trial court and the amount of Rs. 1,00,000/- which has been kept in interest bearing fixed deposit in the registry of the High Court. *Gobind Ram vs. Gian Chand*, AIR 2000 SC 3106 : 2000(87) DLT 713 : 2000 HRR 722 : 2000(7) SCC 548 : 2000(4) Cur CC 85

**Agreement to sell.-Specific performance.-Discretionary relief.-Sale deed.-Finding of courts below that agreement was true and genuine document and purchaser paid advance amount.-Defendant committed breach of contract and failed to execute sale deed.-Execution of family settlement and subsequent suit for declaration of title proved to be collusive transaction.-Sale deed by children of vendor in favour of other persons executed to defeat interest of purchaser.-Vendor directed to deposit balance consideration amount and execute sale deed in favour of vendee.** *Tek Chand and others vs. Deep Chand and others*, AIR 2001 SC 1392 : 2001(4) SCC 488 : 2001(2) Civ CR 226

**Agreement to sell.-Specific performance.-Doctrine of undue enrichment.-First defendant negotiated for sale of property on strength of authority of second defendant.-Sale consideration amount paid by plaintiff to both defendants.-Suit for recovery of amount.-First defendant denying privity of contract**

**between him and plaintiff.-Sale consideration paid to defendants not gratuitous amount.-Doctrine of undue enrichment squarely applicable.-Plaintiff entitled to restitution.**

After the first defendant admitted having received Rupees one lakh from the plaintiff he could not retain that money on the spacious plea that there was no privity of contract between him and the plaintiff. Amount of Rupees one lakh had been given to him by the plaintiff as he wanted to purchase ground floor of his property. The agreement to sell for the purpose was entered into through the second defendant whom the first defendant had authorised to enter into any such agreement on his behalf. The plaintiff could not have paid to the first defendant Rupees one lakh but for the agreement to sell in respect of ground floor of his property. It is only on the basis of this agreement which is entered into by the second defendant on the strength of Ext. P-1 that the plaintiff paid Rupees one lakh each to the first and second defendants. If we accept the pleadings of the first defendant then the amount of Rupees one lakh had been given by the plaintiff under some mistake. In any case, it was not a payment gratuitously made. Doctrine of undue enrichment would squarely apply in the present case and the plaintiff would be entitled to restitution.

*K.S. Satyanarayana vs. V.R. Narayana Rao*, AIR 1999 SC 2544 : 1999(3) Land LR 404 : 1999(3) Pun LR 297 : 1999(3) Rec Civ R 621 : 1999(5) Andh LD 7 : 1999(6) SCC 104 : 1999(37) All LR 93

**Agreement to sell.-Specific performance.-Option in agreement.-Every agreement of sale whereby original owner agrees to buy back property neither a privilege nor a concession.-Mere option to repurchase or an ordinary agreement for sale would depend on interpretation of terms of agreement.**

It is not the general principle of law that every agreement of sale by which the original owner agrees to buy back the property is a privilege or concession granted to such owner. Whether such an agreement is an option to purchase or an "ordinary" agreement would depend on the interpretation of its provisions. The mere fact that an agreement for sale is described as a re-conveyance does not by itself mean that it is an option to repurchase nor does it in any way alter the substance of the deed. It merely records a historical fact that the property which is to be sold was being purchased by the person who used to be the owner. No logical distinction can be

drawn between an agreement to repurchase and an ordinary agreement of purchase just because the vendor happens to be the original vendor. The agreement remains an agreement and must be governed by the same provisions of law. *V. Pechimuthu vs. Gowrammal*, AIR 2001 SC 2446 : 2002(1) Civ CR 9 : 2001(7) SCC 617 : 2001(6) JT 162

**Agreement to sell.-Specific performance.-Part performance.-Acceptance thereof at any stage of litigation.-Once party elects not to accept part performance, cannot do so at later stage.**

It is true that a party can elect to accept part performance of the contract/agreement at any stage of the litigation. Mere filing of a suit for specific performance of the agreement and not averring that the party was willing to accept performance in part does not preclude a party from subsequently electing to accept performance in part. But once the party elected him, on finding that he could not get the specific performance of the whole, to claim part performance at a later date.

*Surjit Kaur vs. Naurata Singh and another*, AIR 2000 SC 2927 : 2000(7) SCC 379 : 2000(6) Andh LD 78 : 2000(10) JT 520 : 2000(4) Cur CC 30 : 2000(41) All LR 310

**Agreement to sell.-Specific performance.-Readiness and willingness.-Can be inferred from evidence led by parties.-Defendants in written statement pleaded his readiness and willingness but not entering into witness box.-Plaintiff's evidence shows that he was ready and willing to purchase land within stipulated time and was in a position to pay sale consideration, not controverted in cross-examination.-Nothing on record to show that defendants were ready and willing to perform their part of contract or called upon plaintiff to get sale deed executed or to do needful.-No interference in High Court order called for.**

In the plaint, plaintiff has averred that he was ready and willing to perform his part of the contract and to abide by its terms. In the written statement filed by the defendant No. 1 it has been stated that he was always ready and willing to execute the sale deed in favour of the plaintiff to the extent of his share in the suit land but plaintiff was avoiding because he was pursuing other defendants who were not ready to execute the sale deed for their shares. Defendant No. 1 has also stated that plaintiff had no ready money with him and, therefore, also he avoided execution of

the document. It is to be stated that after filing his written statement, defendant No. 1 has not stepped into the witnesses box. Still, however, from the written statement of the defendant No. 1, it is clear that the sale deed could not be executed only because defendants No. 2 and 3 were not prepared to execute the sale deed. Hence, it cannot be stated that there was any delay on the part of the plaintiff which would disentitle him to get the equitable relief. Further, plaintiff has deposed that he was ready and willing to perform his part of the contract. Notice dated 23rd November, 1972 was also served on Mohd. Yousuf for execution of the sale deed. He has also denied the suggestion that he was not ready to purchase the suit land within stipulated time. He also deposed that he was in a position to pay the sale consideration of Rs. 70,000/-, which was not challenged in the cross-examination. There is nothing on record to suggest that defendants have shown readiness and willingness to perform their part of the contract or that they have called upon the plaintiff to get the sale deed executed in his favour or to do the needful. Therefore, it cannot be said that the High Court erred in giving finding in favour of the plaintiff that he was ready and willing to perform his part of the contract. *Manzoor Ahmed Magray vs. Gulam Hassan Aram and others*, AIR 2000 SC 191 :1999(10) SRJ 113 : 1999(7) SCC 703 : 2000(2) Mad LW 207 : 2000(1) Land LR 102

**Agreement to sell.-Specific performance.-Readiness and willingness.-Failure to aver 'readiness and willingness' to perform his part of agreement.-Open to defendant to contend and establish that mandatory requirement of Section 16(c) has not been complied with.-Plea available to vendor and subsequent purchaser including his legal representative.**

The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of Clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the Court to determine whether it has or has not been complied with and, depending upon its conclusion,



decree or decline to decree the suit. In the circumstances, it becomes necessary to remand the suit to the trial Court to consider whether or not it has been established that the original plaintiff Bachna and her legal representatives had proved that they had performed or were always ready and willing to perform the terms of the agreement for sale in Bachna's favour. *Ram Awadh (dead) by LRs and others vs. Achhaibar Dubey and another*, AIR 2000 SC 860 : 2000(2) Mad LJ 42 : 2000(2) Guj LH 600 : 2000(1) Cur CC 213 : 2000(3) Cal LT 63 : 2000(2) SCC 428 : 2000(2) Orissa LR 104 : 2000(1) Cal HN 109 : 2000 All LJ 503

**Agreement to sell.-Specific performance.-Readiness and willingness.-Specific performance of contract.-Plea of "readiness and willingness".-Cannot be averred in specific words.**

An averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfill his part of the obligations under the contract which is subject matter of suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale.

*Motilal Jain vs. Ramdasi Devi (Smt.) and others*, AIR 2000 SC 2408 : 2000(3) mad LJ 202 : 2000(4) All Mah LR 285 : 2000(5) Andh LD 33 : 2000(6) SCC 420 : 2000(4) Civ LJ 524

**Agreement to sell.-Specific performance.-Readiness and willingness.-Allotment of plot to father of appellant.-Agreement between deceased and respondent, whereby respondent agreed to pay to Government on behalf of allottee cost of blocks, interest and arrears of rent.-Deceased was to transfer one block to respondent.-Allottee was to transfer second block for failure to repay loan.-Allottee stopped paying amount due to Government.-Cannot be said to be ready and willing to perform his part of contract.-Could not be directed to transfer second block for failure to make repayment of loan.** *Ajjaib Singh vs.*

*Tulsi Devi (Smt.)*, AIR 2000 SC 2493 : 2000(3) Mad LJ 159 : 2000(3) Land LR 261 : 2000(6) SCC 566 : 2000(86) DLT 715 : 2000(3) Cur CC 340 : 2000(4) Civ LJ 596

**Agreement to sell.-Specific performance.-Readiness and willingness.-Substantial question of law or fact.-Suit for specific performance of agreement**

**to sell.-Issue framed by trial Court “whether the plaintiff was ready and willing to perform his part of contract” was issue of fact held in favour of plaintiff by concurrent finding.-High Court cannot take a different view in second appeal by reappreciation of evidence treating the issue as substantial question of law.** *Veerayee Ammal vs. Seenii Ammal*, AIR 2001 SC 2920 : 2001(9) JT 145 : 2002(1) Civ CR 295

**Agreement to sell.-Specific performance.-Reconveyance.-Time is essence of contract.-Vendor given option to repurchase property within a particular period.-Principle that contract of sale of immovable property not applicable to contract of reconveyance.** This Court recently held in *Bismillah Begum vs. Rahmatullah Khan*, 1998(2) SCC 226 that time is the essence of contract in a contract of reconveyance. If a vendor, who agrees to sell his immovable property under an agreement of sale or who executes a sale-deed, is given the option to repurchase the property within a particular period, then such an option must be exercised strictly within the said period. The principle stated under Section 55 of the Contract Act that in regard to contracts of sales of immovable property time is not the essence of contract as stated by the Privy Council in *A.H. Mama vs. Flora Sassoon*, AIR 1928 PC 208 does not apply to contracts of reconveyance. *Babu Ram alias Durga Prasad vs. Indra Pal Singh (dead) by LRs*, AIR 1998 SC 3021 : 1998(2) Guj LH 686 : 1998(3) Cur CC 145 : 1998(6) SCC 358 : 1998(5) Andh LT 13

**Agreement to sell.-Specific performance.-Relinquishment of relief.-Contract for sale.-Extension of time fixed by decree to deposit balance consideration amount.-Agreement to sell entered into about 19 years ago.-Extension of time to deposit balance amount sought 5 years after passing of decree.-No explanation as to why decree-holder did not pay balance amount as per decree.-Extension of time not to be granted.**

The agreement of sale was entered into as far back on February 16, 1980, about 19 years ago. No explanation is forthcoming as to why the balance amount of consideration could not be deposited within time granted by the Court and why no application was made under Section 28 of the Act seeking extension of time of this period. Under Article 54 of the Limitation Act, 3 years period is prescribed for filing the suit for specific performance of contract of sale from the date of the agreement or

when the cause of action arises. Merely because a suit is filed within the prescribed period of limitation does not absolve the vendee-plaintiff from showing as to whether he was ready and willing to perform his part of agreement and if there was non-performance was that on account of any obstacle put by the vendor or otherwise. Provisions to grant specific performance of an agreement are quite stringent. Equitable considerations come into play. Court has to see all the attendant circumstances including if the vendee has conducted himself in a reasonable manner under the contract of sale. That being the position of law for filing the suit the specific performance, can the Court as a matter of course allow extension of time for making payment of balance amount of consideration in terms of a decree after 5 years of passing of the decree by the trial Court and 3 years of its confirmation by the appellate Court? It is not the case of the respondent-decree holder that on account of any fault on the part of the vendor-judgment-debtor, the amount could not be deposited as per the decree. That being the position, if now time is granted, that would be going beyond the period of limitation prescribed for filing of the suit for specific performance of the agreement though this provision may not be strictly applicable. It is nevertheless an important circumstance to be considered by the Court. That apart, no explanation whatsoever is coming from the decree-holder-respondents as to why they did not pay the balance amount of consideration as per the decree except what the High Court itself thought fit to comment which is certainly not borne out from the record. Equity demands that discretion be not exercised in favour of the decree holder-respondents and no extension of time be granted to them to comply with the decree. *V.S. Palanichamy Chettiar Firm V.C. Alagappan and another*, AIR 1999 SC 918 : 1999(2) Mad LJ 33 : 1999(3) Land LR 238 : 1999(1) Civ CC 712 : 1999(1) All Mah LR 706 : 1999(4) SCC 702 : 1999(35) All LR 392

**Agreement to sell.-Specific performance.-Suit for specific performance of agreement to repurchase property.-Concurrent finding that appellant was ready and willing to buy back.-Purchaser merely claiming credit for certain amount does not mean that he was seeking variation in sale consideration.**

The appellant has proved the agreement made and the parties were not at issue as to its existence. The appellant had expressed his readiness and willingness to

perform the agreement by paying the consideration fixed not once but repeatedly in several paragraphs of the plaint. The High Court erred in overlooking the fact that the appellant had never said that the consideration for reconveyance under the agreement was less than what was stated. Conceding that the appellant had merely claimed credit for certain amounts, this could not mean that he was seeking a variation in the agreement itself. *V. Pechimuthu vs. Gowrammal*, AIR 2001 SC 2446 : 2002(1) Civ CR 9 : 2001(7) SCC 617 : 2001(6) JT 162

**Agreement to sell.-Specific performance.-Time essence of contract.-If not, reasonable time has to be ascertained from all facts and circumstances of the case.**

When concededly, the time was not the essence of the contract, the appellant-plaintiff was required to approach the Court of law within a reasonable time. A Constitution Bench of this Hon'ble Court in *Chand Rani (Smt.) vs. Kamal Rani*, [(1993) 1 SCC 519] held that in case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances, for example, the object of making the contract. For the purposes of granting relief, the reasonable time has to be ascertained from all the facts and circumstances of the case.

*Veerayee Ammal vs. Seeni Ammal*, AIR 2001 SC 2920 : 2001(9) JT 145 : 2002(1) Civ CR 295

**Agreement to sell.-Specific performance.-Time is essence of contract.-Cannot be made by mere fixing period of delivery of goods or time in regard thereto.-Agreement has to be read as a whole.**

Mere fixation of a period of delivery or a time in regard thereto does not by itself make the time as the essence of the contract, but the agreement shall have to be considered in its entirety and on proper appreciation of the intent and purport of the clauses incorporated therein. The state of facts and the relevant terms of the agreement ought to be noticed in its proper perspective so as to assess the intent of the parties. The Agreement must be read as a whole with corresponding obligations of the parties so as to ascertain the true intent of the parties. In the instant case, the

Port of Discharge has not named neither the Surveyor is appointed.-Without whose certificate, question of any payment would not arise.-Therefore it could not be said that time was the essence of the contract. *Arosan Enterprises Ltd. vs. Union of India and another*, AIR 1999 SC 3804 : 1999(8) DLT 825 : 1999(3) Arbi LR 310 : 2000(1) Cur CC 37

**Agreement to sell.-Specific performance.-Vendor entered into another agreement.-Agreement to sell property between plaintiff and Defendant No. 1.- Subsequent agreement to sell for same property with Defendant No. 2.- Evidence on record shows that Defendant No. 2 was not aware of earlier agreement, whereas Defendant No. 2 was bona fide purchaser through his guardian for valuable consideration.-Agreement to sell cannot be enforced against Defendant No. 2.** *Jagan Nath vs. Jagdish Rai and others*, AIR 1998 SC 2028 : 1998(5) SCC 537 : 1998(2) BLJR 1078 : 1998(2) Land LR 539 : 1998(3) Scale 275

**Agreement to sell.-Specific performance.-Alternative relief.-Time not essence of contract.-Vendee found to be willing and ready to perform their part of contract.- Vendees are entitled to specific performance which if not permissible, they shall be entitled to relief of damages.**

Under that document it was for the defendant-vendor to make the necessary application for the permission to the Chief Commissioner. She had as a matter of fact made such an application but for reasons for her own decided to withdraw the same. On the findings that the plaintiffs have always been ready and willing to perform their part of the contract, and that it was the defendant who wilfully refused to perform her part of the contract, and that time was not of the essence of the contract, the Court has got to enforce the terms of the contract and to enjoin upon the defendant- appellant to make the necessary application to the Chief Commissioner. It will be for the Chief Commissioner to decide whether or not to grant the necessary sanction.

*Mrs. Chandnee Widya Vati Madden v. Dr. C.L. Katial and others*, AIR 1964 SC 978: 66 Pun LR 138: 1964(2) SCJ 824: 1964(2) SCR 495

**Agreement to sell.-Specific performance.-Bona fides of transaction.-Agreement to sell executed as a collateral security to promissory note.-The predominant**

**object of the vendee was recovery of dues with interest which he claimed as an alternative relief in the suit.-Relief of specific performance is a discretionary relief.-Decree for specific performance modified by granting alternate relief sought by the plaintiff.**

*S. Rangaraju Naidu v. S. Thiruvarakkarasu*, AIR 1995 SC 1769: 1995(2) Scale 504: 1995(2) CCC 232

**Agreement to sell.-Specific performance.-Bona fide transaction .- necessity of.- Agreement entered into to protect the unpaid interest on the loan.-Undue delay in seeking relief of specific performance.- Payment of consideration under agreement doubtful.-Relief of specific performance denied.- Decree of amount of consideration without any interest, granted.**

*Tejram v. Patirambhau*, AIR 1997 SC 2702: 1997(9) SCC 634: 1997(4) JT 677

**Agreement to sell.-Specific performance.-Considerations for.-The agreement to sell the land subject to obtaining the permission about the use of land prior to execution of sale deed.-The contract is not contingent but was specifically enforceable.-The suit filed within three years from the date of permission.-The suit is not barred by limitation.**

*Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai (dead by LRs.) and another*, AIR 1986 SC 1912: 1986(3) SCC 300: 1986(2) SCR 447: 1986(1) Scale 566

**Agreement to sell.-Specific performance.-Alternative relief.-Time not essence of contract.-Vendee found to be willing and ready to perform their part of contract.- Vendees are entitled to specific performance which if not permissible, they shall be entitled to relief of damages.**

*Mrs. Chandnee Widya Vati Madden v. Dr. C.L. Katial and others*, AIR 1964 SC 978: 66 Pun LR 138: 1964(2) SCJ 824: 1964(2) SCR 495

**Agreement to sell.-Specific performance.-Alternative relief.- Right to seek.- Effect of omission.**

A plaintiff suing for specific performance of the contract can alternatively sue for the rescission of the contract but the converse is not provided. It is therefore not open to a plaintiff to sue for rescission of the agreement and in the alternative sue for specific performance. Section 35 of the Specific Relief Act, 1877 states the principles upon which the rescission of a contract may be adjudged. But there is no provision

in this section or any other section of the Act that a plaintiff suing for rescission of the agreement may sue in the alternative for specific performance. In our opinion, the omission is deliberate and the intention of the Act is that no such alternative prayer is open to the plaintiff.

*Prem Raj v. The D.L.F. Housing and Construction (Private) Ltd. and another*, AIR 1968 SC 1355: 1968 (2) SCWR 482: 1968(3) SCR 648

**Agreement to sell.-Specific performance.-Assignment of interest in property.-Effect of.- Right of assignee of vendee.-Act of third party akin to champertous i.e. traffic in litigation.-Specific performance may be refused.**

*S.V.R. Mudaliar (dead) by LRs. and others v. Mrs. Rajabu F. Buhari (Dead) by LRs. and others*, AIR 1995 SC 1607: 1995(4) SCC 15: 1995(2) Scale 720: 1995(3) JT 614

**Agreement to sell.-Specific performance.-Considerations for.- Agreement for sale of property.-The property sold twice to different persons.-The subsequent purchase is void.-The relief in such case would be to compensate the subsequent purchaser by payment of balance purchase money due from the earlier purchaser.**

Section 91 of the Trusts Act does not make the subsequent purchaser with notice a trustee properly so called but saddles him with an obligation in the nature of a trust (because of Section 80) and directs that he must hold the property for the benefit of the prior contractor, if we may so describe the plaintiff, to the extent necessary to give effect to the contract. Section 3 illustration (g) of the Specific Relief Act makes him a trustee for the plaintiff but only for the purposes of that Act. Section 40 of the Transfer of Property Act enacts that this obligation can be enforced against a subsequent transferee with notice but not against one who holds for consideration and without notice. Section 27 of the Specific Relief Act does not carry the matter any further. All it says is that specific performance may be enforced against

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract".

None of this helps because none of these provisions directly relate to the form of the decree. It will, therefore, be necessary to analyse each form in the light of other

provisions of law.

In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff.

We do not think it would be right to lay down that in every case the balance of the purchase money should be paid to the subsequent transferee up to the extent of the consideration paid by him. There may be equities between the vendor and the subsequent transferee which would make that improper, so unless they fight the question out as between themselves and it is decided as an issue in the case, the normal rule should be to require that the money be paid to the vendors. But the circumstances here are peculiar.

*Durga Prasad and another v. Deep Chand and others*, AIR 1954 SC 75: 1954 All LJ 73: 1954 SCJ 23: 1954 SCR 360: 67 Mad LW

**Agreement to sell.-Specific performance.-Considerations for.-Agreement to sell.-Stipulation for damages in case of breach of contract.-The object of such stipulation is to secure performance of contract and not give an option of paying money in lieu of specific performance.**

*Prakash Chandra v. Angadlal and others*, AIR 1979 SC 1241: 1979(4) SCC 393: 1980(3) Mah LR 12

**Agreement to sell.-Specific performance.-Considerations for.- Agreement to sell.-Conduct of parties.-No likely hardship on account of specific performance.- Decree of specific performance affirmed.**

The ordinary rule is that specific performance should be granted. It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate relief. In the present case, the conduct of the appellant has not been such as to disentitle him to the relief of specific performance.

Nor is there anything to prove that the performance of the contract would involve the respondents in some hardship which they did not foresee. In our opinion, there is no reason why the appellant should not be granted the relief of specific performance.



*Prakash Chandra v. Angadlal and others*, AIR 1979 SC 1241: 1979(4) SCC 393: 1980(3) Mah LR 12

**Agreement to sell.-Specific performance.-Compensation for non-performance.- Amendment in plaint .-Consideration for.- Amendment sought to incorporate relief of compensation in lieu of specific performance without abandoning the original relief of specific performance, is permissible.**

*Jagdish Singh v. Natthu Singh*, AIR 1992 SC 1604: 192(1) SCC 647: 1991(2) Scale 1363: 1991(5) JT 400: 1992(1) BLJR 178

**Agreement to sell.-Specific performance.-Compensation for non-performance.- Impossibility of performance.-No fault of plaintiff.-The plaintiff is entitled to compensation in lieu and substitution of specific performance.**

*Jagdish Singh v. Natthu Singh*, AIR 1992 SC 1604: 192(1) SCC 647: 1991(2) Scale 1363: 1991(5) JT 400: 1992(1) BLJR 178

**Agreement to sell.-Specific performance.-Compensation for non performance.- Determination of.- Agreement to sell land sub-sequently acquired by Government.-The compensation can be ascertained with reference to market value in acquisition proceedings.**

The quantum of the compensation is ascertainable with reference to the determination of the market value in the land acquisition proceedings. The compensation awarded may safely be taken to be the measure of damages subject, of course, to the deduction therefrom of money value of the services, time and energy expended by the appellant in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating the award.

In substitution of the decree for specific performance, we make a decree for compensation, equivalent to the amount of the land acquisition compensation awarded for the suit lands together with solatium and accrued interest, less a sum of Rs. 1,50,000/- (one lakh fifty thousand only) which, by a rough and ready estimate, we quantify as the amount to be paid to the appellant in respect of his services, time and money expended in pursuing the legal claims for compensation.

*Jagdish Singh v. Natthu Singh*, AIR 1992 SC 1604: 192(1) SCC 647: 1991(2) Scale 1363: 1991(5) JT 400: 1992(1) BLJR 178

**Agreement to sell.-Specific performance.-Conduct of party.- Effect on relief.-**

**Relief in the nature of specific performance is discretionary and a party who pleads a false case is not entitled to such equitable relief.**

Under Section 20 of the Specific Relief Act, 1963 (for short, 'the Act') the decree for specific performance is in the discretion of the Court but the discretion should not be refused arbitrarily. The discretion should be exercised on sound principles of law capable of correction by an appellate Court.

The party who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands. In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.

*Lourdu Mari David and others v. Louis Chinnaya Arogiaswamy and others*, AIR 1996 SC 2814: 1996(5) SCC 589: 1996(6) Scale 184: 1996(7) JT 499: 1997(1) APLJ 28

**Agreement to sell.-Specific performance.-Contract for employment.-Relief of reinstatement.- Such contract is not enforceable.**

A contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages.

The grant of specific performance is purely discretionary and must be refused when not warranted by the ends of justice. Such relief can be granted only on sound legal principles. In the absence of any statutory requirement, Courts do not ordinarily force an employer to recruit or retain in service an employee not required by the employer. There are, of course, certain exceptions to this rule, such as in the case of a public servant dismissed from service in contravention of Article 311 of the Constitution; reinstatement of a dismissed worker under the Industrial Law; a statutory body acting in breach of statutory obligations, and the like.

*Nandganj Sihori Sugar Co. Ltd., Rae Bareilly and another v. Badri Nath Dixit and others*, AIR 1991 SC 1525: 1991 (3) SCC 54: 1991(2) SCR 468: 1991(1) Scale 794: 1991(2) JT 338: 1991 All. LJ 213

**Agreement to sell.-Specific performance.-Delay and laches.-Effect of denial of due to delay.-consideration for.-Absence of prejudice to other parties due to delay.-Specific performance of contract cannot be denied.**

The doctrine of laches in courts of equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy either because the party has

by his conduct done that which might fairly be regarded as an equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material.

The institution of the suit after two years does not appear to have caused any disadvantage to Brij Mohan Mehra. There is no such allegation in his written statement nor is there any evidence to that effect. Brij Mohan Mehra has admitted in his cross-examination that the prices of properties started depreciating in or about October 1962 when there was Chinese aggression on India. The suit was instituted after the Chinese aggression. So it cannot be said that the specific performance of the agreement was likely to cause any prejudice to Brij Mohan Mehra on the date of the institution of the suit. The suit cannot accordingly be dismissed on account of delay.

*Dr. Jiwan Lal and others v. Brij Mohan Mehra and another*, AIR 1973 SC 559: 1972(2) SCC 757: 1973(2) SCR 230

**Agreement to sell.-Specific performance.-Discretionary relief.-The Court not bound to grant such relief merely because it is lawful to do so.-Court should exercise its discretion on the basis of judicial principles of law which is capable of correction by the higher court.**

*Surya Narain Upadhyaya v. Ram Roop Pandey and others*, AIR 1994 SC 105: 1995 Supp (4) SCC 542: 1993 All LJ 1363: 1994(1) APLJ 17

**Agreement to sell.-Specific performance.-Sale contrary to law.-Prohibition on transfer of property under Administration of Evacuee Property Act, 1950 .- Vendor becoming evacuee after transferring property but without executing deed of conveyance.- Failure to obtain permission of Additional custodian to effect transfer.-Execution of decree for specific performance by execution of sale deed, is not permissible.**

*Hargovind v. Aziz Ahmad Khan and another*, AIR 1970 SC 413: 1970 (1) SCJ 324: 1970 (1) SCR 796: 1969(2) SCC 524

**Agreement to sell.-Specific performance.-Locus standi of third party.**

The purchaser's contract to pay off a mortgage debt could not be enforced by the

mortgagee who was not a party to the contract. It must therefore be taken as well settled that except in the case of a beneficiary under a trust created by a contract or in the case of a family arrangement, no right may be enforced by a person who is not a party to the contract.

*M.C. Chacko v. The State Bank of Travancore*, AIR 1970 SC 504: 1970 Ker LR 175: 1970 (1) SCJ 347: 1970 (1) SCR 658: 1969(2) SCC 343

**Agreement to sell.-Specific performance.-Delay in litigation.-33 years spent in disposal of the case.-It cannot be a ground for denial of the discretionary relief of specific performance of contract.**

*S.V.R. Mudaliar (dead) by LRs. and others v. Mrs. Rajabu F. Buhari (Dead) by LRs. and others*, AIR 1995 SC 1607: 1995(4) SCC 15: 1995(2) Scale 720: 1995(3) JT 614

**Agreement to sell.-Specific performance.-Effect of delay.-Suit filed within the period of limitation.-Denial of relief of specific performance on the ground of delay alone is not called for.**

Relief of specific performance is discretionary but not arbitrary; discretion must be exercised in accordance with sound and reasonable judicial principles. The cases providing for a guide to Courts to exercise discretion one way or other are only illustrative; they are not intended to be exhaustive. As Art. 113 of the Limitation Act prescribes a period of 3 years from the date fixed thereunder for specific performance of a contract, it follows that mere delay without more extending upto the said period cannot possibly be a reason for a Court to exercise its discretion against giving a relief of specific performance. Nor can the scope of the discretion after excluding the cases mentioned in Section 22 of the Specific Relief Act, be confined to waiver, abandonment or estoppel. If one of these three circumstances is established, no question of discretion arises, for either there will be no subsisting right or there will be a bar against its assertion. So, there must be some discretionary field unoccupied by the three cases, otherwise the substantive section becomes otiose. It is really difficult to define that field. Diverse situations may arise which may induce a Court not to exercise the discretion in favour of the plaintiff. It may better be left undefined except to state what the section says, namely, discretion of the Court is not arbitrary, but sound and reasonable guided by judicial principles and capable of correction by a Court of appeal.

In India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.

*Mademstetty Satyanarayana v. G. Yelloji Rao and others*, AIR 1965 SC 1405: 1966(1) Andh LT 55: 1965(2) MadLJ (SC) 145: 1965(2) SCR 221

**Agreement to sell.-Specific performance.-Equitable considerations .-Doctrine of part performance .- Application of.-Introduction of such provision in Transfer of Property Act, 1882 vide Section 53-A.-Equity of part performance is an enforceable equity under the law after introduction of said Section 53-A in Transfer of Property Act, 1882.- Grant of relief of specific performance by applying the doctrine of part performance, affirmed.**

In cases of lease the legislature has recognized that the equity of part performance is an active equity as in English law and is sufficient to support an independent action by the plaintiff. (*Vide* Section 27-A, Specific Relief Act). This section however applies to contracts executed after 1st April 1930 and has no application in the present case; but there can be no manner of doubt that the defence under Section 53-A is available to a person who has an agreement of lease in his favour though no lease has been executed and registered.

*Maneklal Mansukhbhai v. Hormusji Jamshedji Ginwalla & Sons*, AIR 1950 SC 1: 1950 ALJ 396: 52 Bom. LR 521: 1950(2) MLJ 344: 1950 SCJ 317: 1950 SCR 75

**Agreement to sell.-Specific performance.-Equitable considerations .-Exercise of discretion in favour of party not found to be at fault.-Decision of court below, affirmed.**

*Kamala Ranjan Roy v. Baijnath Bajoria*, AIR 1951 SC 1: 64 MLW 31: 1951 SCJ 13: 1950 SCR 840

**Agreement to sell.-Specific performance.-Exercise of discretion.- Readiness and willingness of Vendee in respect of Agreement to sell.- Transfer of Property by Vendor to a third party.-The proper procedure is to grant relief of specific performance by directing the subsequent Transferee to join in the deed of conveyance.**

This relief is discretionary but not arbitrary and discretion must be exercised in

accordance with the sound and reasonable judicial principles. We are unable to hold that the conduct of the appellants, which is always an important element for consideration, was such that it precluded them from obtaining a decree for specific performance.

Readiness and willingness cannot be treated as a strait-jacket formula. These have to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. In our judgment there was nothing to indicate that the appellants at any stage were not ready and willing to perform their part of the contract.

The proper form of the decree would be to direct specific performance of the contract between the vendor and plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff.

*Ramesh Chandra Chandiok and another v. Chunni Lal Sabharwal*, AIR 1971 SC 1238; 1970 (2) SCC 140; 1971(2) SCR 573

**Agreement to sell.-Specific performance.-Exercise of discretion.-Considerations for.-The discretion should be exercised on sound judicial principles.-Agreement to sell not binding on co-owner who was not party to the agreement.-Partial specific performance in respect of the share of property under the occupation of other co-owner, granted.**

*Sardar Singh v. Smt. Krishna Devi and another*, AIR 1995 SC 491; 1994(3) JT 465

**Agreement to sell.-Specific performance.-Exercise of discretion.- Consideration of equity.-Necessity of.-The court must exercise its discretion in favour of a person doing the equity.**

It is perfectly open to the court in control of a suit for specific performance to extend the time for deposit, and this court may do so even now to enable the plaintiff to get the advantage of the agreement to sell in her favour.

Specific performance is an equitable relief and he who seeks equity can be put on terms to ensure that equity is done to the opposite party even while granting the relief. The final end of law is justice, and so the means to it too should be informed by equity. That is why he who seeks equity shall do equity. Here, the assignment of

the mortgage is not a guileless discharge of the vendor's debt as implied in the agreement to sell but a disingenuous disguise to arm herself with a mortgage decree to swallow up the property in case the specific performance litigation misfires. To sterilise this decree is necessary equity to which the appellant must submit herself before she can enjoy the fruits of specific performance.

*K. Kalpana Saraswathi v. P.S.S. Somasundaram Chettiar*, AIR 1980 SC 512: 1980(1) SCC 630: 1980(2) SCR 273

**Agreement to sell.-Specific performance.-Frustration of Contract .-Condition imposed by the contract that in case the premises is requisitioned, the contract would come to an end.-Power of promisee to waive such stipulation and seek specific performance of contract.-The stipulation for exclusive benefit for one party can be waived unilaterally.**

*Dr. Jiwan Lal and others v. Brij Mohan Mehra and another*, AIR 1973 SC 559: 1972(2) SCC 757: 1973(2) SCR 230

**Agreement to sell.-Specific performance.-Omission to seek relief .-Possession or partition of property not sought.-Provision put fetters on the powers of Court to grant such relief without being specifically asked in the plaint.**

*Babulal v. Raj Kumar and others*, AIR 1996 SC 2050: 1996(3) SCC 154: 1996(2) Scale 438: 1996(2) JT 716: 1996(2) Raj, LW 23

**Agreement to sell.-Specific performance.-Readiness and willing- ness.- Agreement to sell.-Purchaser is not required to produce money or to vouch a concluded scheme for financing the transaction, to prove his readiness and willingness to perform the contract.**

*Nathulal v. Phoolchand*, AIR 1970 SC 546: 1970 All LJ 742: 1970 Mah LJ 674: 1970 MPLJ 612: 1970(2) SCR 854: 1969(3) SCC 120

**Agreement to sell.-Specific performance.-Readiness and willing- ness.- Determination of.-The plaintiff handing over the draft of documents to be executed, to the other party and also depositing money in the treasury for purchasing the stamps.-The plaintiff rightly held to be ready and willing to perform his part of contract.**

*Haji Sharafat Hussain (dead) and others v. Badri Bishal Dhandhania*, AIR 1976 SC 2325: 1976(2) SCC 783

**Agreement to sell.-Specific performance.-Readiness and willingness.-Finding in second appeal .-Reversal of decree of Court below on a plea raised for the first time in second appeal.-Decree of specific performance reversed on the ground that the plaintiff was not willing to perform his part of contract as no such averment was made in the plaint by him.-Reversal of decree in second appeal held to be improper.**

*Smt. Kaulashwari Devi and another v. Nawal Kishore and another*, AIR 1994 SC 1200: 1995 Supp. (1) 41: 1994(2) Land LR 310

**Agreement to sell.-Specific performance.-Readiness and willingness.-Determination of.-Pleading of.-Procedure is the handmaid to substantive rights of parties.- Averments made substantially in accordance with the forms prescribed by the Court.-Financial capacity to pay the sale consideration also proved by evidence.-Decree of specific performance, upheld.**

Law is not in doubt and it is not a condition that the respondents should have ready cash with them. the fact that they attended the Sub-Registrar's office to have the sale deed executed and waited for the petitioners to attend the office of the Sub-Registrar is a positive fact to prove that they had necessary funds to pass on consideration and had with them the needed money with them for payment at the time of registration. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till date of the decree. It would, therefore, be clear that the courts below have appropriately exercised their discretion for granting the relief of specific performance to the respondents on sound principles of law.

*Sukhbir Singh and others v. Brij Pal Singh and others*, AIR 1996 SC 2510: 1997(2) SCC 200: 1996(5) Scale 342: 1996(6) JT 389: 1996(2) LJR 351

**Agreement to sell.-Specific performance.-Readiness and willingness.-Absence of pleading.-The plaintiff failing to aver his readiness and willingness in the plaint is not entitled to equitable relief of specific performance.**

*Abdul Khader Rowther v. P.K. Sara Bai and others*, AIR 1990 SC 682: 1989(4) SCC 313: 1989(2) Scale 1464: 1989(3) JT 527: 1989(39) DLT 382

**Agreement to sell.-Specific performance.-Readiness and willingness.-**



**Cancellation of contract.-Provision in the agreement that in case of non-payment of balance amount by the vendee after issuance of notice by vendor, the vendor shall have a right to refund the amount.-Contract stood cancelled.**

*Manicklal Mukherjee (Kali Durga Estate), Calcutta v. Commissioner of Sanchaita Investments, Calcutta*, AIR 1993 SC 1571: 1993(1) SCC 505: 1992 Supp (1) SCR 967: 1992 Supp. JT 573: 1992(2) Scale 812: 1992(2) Bank CLR 600

**Agreement to sell.-Specific performance.-Readiness and willingness.-Contract for sale of immovable property.-Stipulation that balance payment shall be paid within 10 days only from the date of agreement to sell.-Failure to make payment inspite of notice.-No evidence to prove readiness and willingness.-Specific performance, rightly refused.**

On 10-9-1971 the plaintiff would say through the registered notice that ready money was available for purchase of the property which was followed up by a telegram. The stand is taken by the defendant that within 10 days from 26-8-1971, the sum of Rs. 98,000/- was not paid; hence, the sum of Rs. 30,000/- stood forfeited. The redemption of the mortgage would be done and the income-tax clearance also would be obtained after the purchase of stamp paper. Where, therefore, the plaintiff was put on notice as to the stand of the defendant with regard to payment of Rs. 98,000/- which again was reiterated in the notice dated 16-9-1973, nothing would have been easier for the plaintiff than to pay the said sum.

Therefore, even as late as 24-9-1971 the plaintiff was never willing to make the payment of Rs. 98,000/-. In this connection, we have already seen the oral evidence. It shows there was no readiness and willingness.

*Smt. Chand Rani (dead) by LRs. v. Smt. Kamal Rani (dead) by LRs.*, AIR 1993 SC 1742: 1993(1) SCC 519: 1992(3) Scale 544: 1993(1) JT 74: 1993(49) DLT 257

**Agreement to sell.-Specific performance.-Readiness and willingness.-Failure to perform the contract.-Time essence of contract .-Relief of specific performance denied.**

*M/s. P.R. Deb and Associates v. Sunanda Roy*, AIR 1996 SC 1504: 1996(4) SCC 423: 1996(2) Scale 551: 1996(2) JT 654: 1996(2) Raj LW 67

**Agreement to sell.-Specific performance.-Readiness and willingness.-Pleading of.-Such plea is available only to original vendor.- Subsequent purchasers can**

**defend only in their capacity of bona fide purchasers without notice.**

The subsequent purchases have got only the right to defend their purchase on the premise that they have no prior knowledge of the agreement of sale with the plaintiff. They are *bona fide* purchasers for valuable consideration. Though they are necessary parties to the suit, since any decree obtained by the plaintiff would be binding on the subsequent purchasers, the plea that the plaintiff must always be ready and willing to perform his part of the contract must be available only to the vendor or his legal representatives, but not to the subsequent purchasers.

*Jugraj Singh and another v. Labh Singh and others*, AIR 1995 SC 945: 1995(2) SCC 31: 1994(5) Scale 286: 1995(1) Rent LR 368

**Agreement to sell.-Specific performance.-Readiness and willingness.-Purchaser depositing the consideration within the time allowed.-Non-payment of sufficient court fee on the date of presenting of suit of specific performance is irrelevant consideration to deny the relief of specific performance.**

*Surya Narain Upadhyaya v. Ram Roop Pandey and others*, AIR 1994 SC 105: 1995 Supp (4) SCC 542: 1993 All LJ 1363: 1994(1) APLJ 17

**Agreement to sell.-Specific performance.-Readiness and willingness.-Readiness and willingness to perform.-Determination of.- Documentary proof of funds to make payment of consideration not produced by vendee.-Vendor in dire need of money on account of marriage of his daughter.-Time essence of contract.-Specific performance of contract to sell the property rightly refused.**

*His Holiness Acharya Swami Ganesh Dassji v. Shri Sita Ram Thapar*, AIR 1996 SC 2095: 1996(4) SCC 526: 1996(4) Scale 476: 1996(5) JT 460: 1997(1) Mah. LR 151

**Agreement to sell.-Specific performance.-Readiness and willingness.-Valid and enforceable contract.-Necessity of.-Allottee of Government accommodation claiming agreement to sell with the Government.-No document constituting contract between parties produced.-Decree of specific performance cannot be granted.**

Admittedly, no contract whatsoever has been entered into between the plaintiff and the Union of India in respect of the house in question. No formal contract is proved to have been executed in accordance with Art. 299 of the Constitution between the Union of India and the plaintiff for sale of the house in question. In the absence of

any such contract, we fail to see how the plaintiff is entitled to a decree for specific performance against the Union of India. Furthermore, in the absence of any contract between the appellant and the second respondent.-the plaintiff.-in second respondent.-the plaintiff.-in respect of the house, no decree could have been passed in favour of the plaintiff for specific performance against the appellant.

In the absence of any enforceable contract, the High Court was clearly wrong in passing a decree for specific performance against the Union of India.

*Sohan Lal (dead) by LRs. v. Union of India and another*, AIR 1991 SC 955: 1991(1) SCC 438: 1990(2) Scale 1260: 1991(5) JT 102

**Agreement to sell.-Specific performance.-Relief of possession .-Considerations for grant of.- Transfer of property.-Pendente lite .-The court may in an appropriate case grant relief of possession also alongwith relief of specific performance of contract.**

Section 22 enacts a rule of pleading. The legislature thought it will be useful to introduce a rule that in order to avoid multiplicity of proceedings the plaintiff may claim a decree for possession in a suit for specific performance, even though strictly speaking, the right to possession accrues only when suit for specific performance is decreed. The Legislature has now made a statutory provision in the suit for specific performance and empowering the Court to provide in the decree itself that upon payment by the plaintiff of the consideration money within the given time, the defendant should execute the deed and put the plaintiff in possession.

A person in a suit for specific performance of a contract for the transfer of immovable property, may ask for appropriate reliefs, namely, he may ask for possession, or for partition or for separate possession including the relief for specific performance. These reliefs he can claim, notwithstanding anything contained in the Code of Civil Procedure 1908, to the contrary. Sub-sec. (2) of this section, however, specifically provides that these reliefs cannot be granted by the Court, unless they have been expressly claimed by the plaintiff in the suit. Sub-sec. (2) of the section recognised in clear terms the well-established rule of procedure that the Court should not entertain a claim of the plaintiff unless it has been specifically pleaded by the plaintiff and proved by him to be legally entitled to.

In a case where exclusive possession is with the contracting party, a decree for

specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely he is bound not only to execute the sale-deed but is also to put the property in possession of the decree-holder. This is in consonance with the provisions of Section 55 (1) of the T. P. Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits.

*Babu Lal v. M/s. Hazari Lal Kishori Lal and others*, AIR 1982 SC 818: 1982(1) SCC 525: 1982(3) SCR 94: 1982(1) Scale 79

**Agreement to sell.-Specific performance.-Relinquishment of relief .- Permissibility.-The party seeking specific performance can relinquish the claim to further performance at any stage of the trial.**

*Kalyanpur Lime Works Ltd. v. State of Bihar and another*, AIR 1954 SC 165: 1954 SCJ 99: 1954 SCR 958: 1954(1) Mad LJ

**Agreement to sell.-Specific performance.-Rescission of contract.- Default by vendee.-Decree of specific performance granted.- Balance consideration deposited after expiry of period granted by court.-Application for rescission of contract moved before Appellate court is maintainable as appeal is continuation of suit.**

An appeal is a continuation of the suit. Therefore, where a decree for specific performance has been dismissed by the trial court, but decreed by the appellate court, it should be construed to be in the same suit. When the decree specifies the time for performance of the conditions of the decree, on its failure to deposit the money, Section. 28(1) itself gives power to the court to extend the time on such terms as the court may allow to pay the purchase money or other sum which the court has ordered him to pay.

An application for extension of time for payment of balance consideration may be filed even in the court of first instance or in the appellate court in the same suit as the decree of the trial Court stands merged with that of the appellate court which decree is under execution. It is to be seen that the procedure is the handmaid for justice; and unless the procedure touches upon jurisdictional issue, it should be moulded to subserve substantial justice. Therefore, technicalities would not stand in

the way to aubserve substantive justice.

The question then emerges is whether it should be on the original side or execution side. Section indicates that it should be in the same suit. It would obviously mean in the suit itself and not in the execution proceedings. It is equally settled law that after passing the decree for specific performance, the Court does not cease to have any jurisdiction. The court retains control over the decree even after the decree has been passed. It was open to the court to exercise the power under Section 28(1) of the Act either for extension of time or for rescinding the contract as claimed for. Since the execution application has been filed in the same court in which the original suit was filed, namely, the court of first instance, instead of treating the application on the execution side, it should have as well been numbered as an interlocutory application on the original side and disposed of according to law.

*Ramankutty Guptan v. Avara*, AIR 1994 SC 1699: 1994(2) SCC 642: 1994(1) Scale 390: 1994(1) JT 342: 1994(1) Guj LH 416: 1994 Rajdhani LR 148

**Agreement to sell.-Specific per- formance.-Rescission of contract.- Delay in deposit.-Balance consideration and draft sale deed deposited after seeking extension of time allowed at the risk of plaintiff.-Petition seeking rescission of contract rightly rejected.**

*Md. Alimuddin v. Waizuddin and another*, AIR 1997 SC 1995: 1997(2) Scale 277: 1997(3) JT 62: 1997(2) Land LR 165

**Agreement to sell.-Specific per- formance.-Subsequent events.- Structures already built on the land in question by the Vendor.-Specific performance likely to result in special hardship.-The relief of specific performance substituted with the relief of damages.**

*Damacherla Anjaneyulu and another v. Damacherla Venkata Seshaiiah and another*, AIR 1987 SC 1641: 1987 Supp. SCC 75: 1987(1) J.T. 748: 1987(2) Guj LH 182

**Agreement to sell.-Specific performance.-The Court is not bound to grant specific performance merely because it is lawful to do so.-Care should be taken that the judicial verdict is not used as instrument of oppression for an unfair advantage.**

*Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son and others*, AIR 1987 SC 2328: 1987 Supp. SCC 340: 1987(2) Scale 588: 1987(3) J.T. 643:

1987(13) All. L.R. 676

**Agreement to sell.-Specific performance.-Third party interest.- Transfer of property to third party who found to be a bona fide purchaser for value without notice .-Discretionary relief of specific performance rightly refused.**

*Lourdu Mari David and others v. Louis Chinnaya Arogiaswamy and others*, AIR 1996 SC 2814: 1996(5) SCC 589: 1996(6) Scale 184: 1996(7) JT 499: 1997(1) APLJ 28

**Agreement to sell.-Specific performance.-Third party interest.- Agreement to sell the property.- Induction of third party in the property after institution of suit not bona fide.-Possession of third party, is no impediment to grant specific performance.**

*Pirithi alias Sansi etc. v. Jati Ram and others*, AIR 1997 SC 1598: 1996(5) SCC 457: 1996(5) Scale 804: 1996(9) JT 11: 1996(3) Land. LR 567

**Agreement to sell.-Specific performance.-Vendor entered into another agreement to sell.- Subsequent Vendee in knowledge of earlier agreement to sell.-Suit of earlier vendee seeking specific performance, rightly decreed by the court below.**

*Dr. Govinddas and another v. Smt. Shantibai and others*, AIR 1972 SC 1520: 74 Pun LR 227: 1973(3) SCC 418

**Agreement to sell.-Specific performance.-Violation of ceiling law .-Purchaser likely to be in possession of land in excess of ceiling limit.-Specific performance of agreement to sell cannot be refused.**

*Jambu Rao Satappa Kocheri v. Neminath Appayya Hanamannayar*, AIR 1968 SC 1358: 1969(1) SCJ 279: 1968(3) SCR 706

**Agreement to sell.-Specific Relief.-Limitation.-Contract of reconveyance.- Option to repurchase property within five years not specified in agreement.- Second part of third column of Article 54 applicable.-Time to file suit for specific performance would start when defendant refused to execute deed of reconveyance.-Suit filed within three years of date of refusal within limitation.**

Under Article 54 of the Limitation Act, 1963, it is stated in the third column that the suit for specific performance had to be filed within 3 years from the date of refusal to perform the contract. In the present case, even though a period of 5 years is fixed for exercising the option to repurchase, it is not specified in the agreement that the

vendee shall execute the deed of repurchase within a particular period from the date of exercise of option. Hence the first part of the third column of Article 54 does not apply. The second part applies. Time therefore starts to run only from 22-7-1968, the date when the defendant refused to execute the deed of reconveyance. The suit was filed on 6-10-1969 within 3 years from 22-7-1968 is in time as held by the trial Court. *Babu Ram alias Durga Prasad vs. Indra Pal Singh (dead) by LRs*, AIR 1998 SC 3021 : 1998(2) Guj LH 686 : 1998(3) Cur CC 145 : 1998(6) SCC 358 : 1998(5) Andh LT 13

**Agreement to sell.-Suit for specific performance.-Limitation.-Compromise containing agreement to sell dated 8-3-1977 sought to be enforced.-Notice issued on 17-6-1977.-Suit is to be filed within three years from date of notice.-Suit filed on 13-7-1981.-Suit barred by limitation.** *Shakuntala vs. Narayan Gundoji Chavan and others*, AIR 2000 SC 3621 : 1999(8) SCC 587 : 2000(3) Raj LW 416 : 2000(1) Orissa LR 220 : 2000(2) Cir LJ 1

**Agreement to sell.-Suit for specific performance.-Agreement resisted on the ground that it was only as security for loan given to defendant.-No evidence regarding the above fact produced before trial Court.-Prayer for grant of permission to adduce evidence and adjournment declined to defendant.-In appeal High Court also declined.-Order of High Court is not sustainable.-Burden to prove that agreement was not for security but for real sale is on the defendant.-Opportunity to lead evidence must have been given.** *Parmanand vs. Bajrang and others*, AIR 2001 SC 3606 : 2001(7) SCC 705 : 2001(6) Scale 361 : 2001(8) JT 8