NEUTRAL CITATION NO. 2026:MPHC-IND:28601

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANDEEP N. BHATT

FIRST APPEAL NO. 287 of 2002

CHANDERLAL NAVLANI (DEAD) THROUGH HIS LRS.

Versus

MADHUSUDAN (DEAD) THROUGH HIS LRS.

***Appearance*:-**

Shri Aniket Naik, advocate for the appellant.

Shri Ravindra Singh Chhabra senior advocate with Shri Rizwan Khan Advocate for the respondent.

(Reserved on : 30.09.2026)

(Delivered on: 09.10.2026)

Whether Reportable or not? Yes/No

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JUDGEMENT

The Present first appeal is preferred under Section 96 of the Code of Civil Procedure against the impugned judgment and decree passed by learned 14th Additional District Judge Indore in R.C.S. No. 21-A/1991 whereby the civil suit filed by appellant/plaintiff for specific performance of contract, damages and permanent injunction was dismissed on 22.3.2002 for agricultural land at survey No. 150/2/2 admeasuring 0.85 hectare situated at village Rau Tehsil and District Indore.

2. Brief facts of the case as stated in the plaint are that the plaintiff has purchased above mentioned land by agreement between plaintiff and

defendant on 5.2.1980 for total consideration of Rs. 28,501/- and out of that, Rs. 5001/- has already paid towards earnest money to defendant Manohar Chunekar. It also transpires that pursuant to that transaction which is recorded by way of receipt the defendant Manohar Chunekar has handed over the possession of land in question to plaintiff. It also transpires that thereafter plaintiff has published the notice in newspaper on 6.3.1980 regarding agreement entered into by plaintiff for land in question. It also transpires that plaintiff has paid Rs. 10 with Indore Development Authority on 15.5.1980 for getting necessary documents/permission from the authority. It also transpires that as per agreement the plaintiff is ready and willing to pay remaining sum of Rs. 23,500/- and since the defendant has not executed the said agreement, the plaintiff has sent notice to the defendant on 5.1.1981. It also transpires that thereafter also the defendant has given some evasive reply to said notice and has not executed the sale deed and the sign board put up by the plaintiff on the land in question is also removed by defendant. It also transpires that the original defendant Manohar has expired and defendant Madhusudan who is contesting party has sold the land to defendant No.2 Shakuntala Devi, though the plaintiff was ready and willing to perform his part of contract and therefore, the suit is filed by plaintiff for the prayers prayed in the suit.

3. The defendant has appeared in the suit proceedings after service of summons and has filed written statement. From the averments it transpires that defendant has accepted the ownership of plaintiff as well as also accepted the possession of plaintiff. Thereafter trial court has framed 14 issues by order dated 16.8.1984 and thereafter additional issue is also framed on 14.12.1990 which reads as under:-

वाद विषय:-

1.क्या प्रतिवादी ने वादग्रस्त भूमि वादी को रूपये 28,501 में विक्रय करने का अनुबंध किया था?

2. क्या वादी ने रू. 5001 प्रतिवादी को सौदा पेटे दिया था?

3. क्या उक्त सौदे को वादी ने दिनांक 6.3.80 को विश्वभ्रमण में विज्ञापित किया था?

4. क्या वादी ने अनुबंध से संबंधित भरना रू. 10/- इंदौर विकास प्राधिकरण में जमा किया था?

5.क्या दिनांक 5.2.80 को प्रतिवादी बीमार था और बिस्तर से उठने में असमर्थ था?

6 क्या प्रतिवादी को उल्टा सीधा समझाकर उक्त सौदा कराया गया था?

7. क्या वादग्रस्त भूमि की वास्तविक कीमत 70,000 रूपये है?

8. सौदा की पूर्ति कब होनी थी?

9. अनापत्ति प्रमाण पत्र किस पक्षकार को लेना था?

10. क्या सौदा पत्र में वाद में सुधार किया गया है?

11. क्या वादी ने समय पर सौदे की पूर्ति नहीं की?

12. क्या वादी सौदे की पूर्ति करने के लिए हमेशा तत्पर था?

13. क्या प्रतिवादी ने वादग्रस्त भूमि से वादी का बोर्ड कीमती रू. 200 हटाया है?

14. सहायता एवं व्यय?

अतिरिक्त वाद विषय:-

1. क्या प्रतिवादी क्रमांक 3 श्रीमती शकुंतलाबाई ने वादग्रस्त अनुबंध एवं वाद की जानकारी होते हुए वादग्रस्त भूमि दिनांक 18/8/89 को क्रय की है?

Thereafter the court has given positive finding and decreed the suit by recording that defendant has contended that there is interpolation in said receipt by plaintiff and also plaintiff is suppose to take all necessary NOC regarding land in question which plaintiff has not done and by way of interpolation, he has shifted the liability over the defendant. It is also contended that since the land is already sold to the third party, the suit cannot be decreed in favour of plaintiff. The Court has also considered the relevant material by leading evidence more particularly evidence of Chandanlal as

well as witness Ramesh Agrawal who has supported the case of plaintiff and Court has come to the conclusion that most of the issues framed by the Court for consideration are required to be decided in favour of plaintiff and defence raised by defendant is not believable. Thereafter the court has passed the judgment and decree dated 14.2.1995. Pursuant to said decree, the execution proceeding filed by present plaintiff is proceeded further and by order dated 5.7.1995 the said decree was sent for registration and accordingly the said decree is executed. It also transpires that thereafter by way of Misc. appeal No. 213/1997 appeal was preferred against the judgment and decree passed in civil suit No. 21A/1991. The Court has come to the conclusion in appeal that decree dated 14.2.1995 passed in civil suit No. 21A/1991 required to be set aside by considering provisions of Order 9 Rule 13 CPC as it can be considered as exparte decree and therefore, matter is remanded back. That order is passed by Hon'ble High court on 2.2.2000. Thereafter the suit is proceeding further and trial Court has further proceeded on merits of the suit and again decided the suit by impugned judgment and decree passed by learned trial Court whereby by judgment dated 22.3.2002 the learned trial Court has dismissed the suit filed by present appellant and therefore, the present appeal is preferred.

4. Learned counsel for appellant submits that the matter is admitted and interim relief is granted at the relevant point of time by this Hon'ble Court. The appeal is filed mainly on the ground that appellant was always ready and willing to perform his part of obligation and he is ready to pay remaining amount of Rs. 23500/- and has repeatedly asked the respondent/original defendant to execute the sale deed which was not done and therefore, initially he has issued notice in the newspaper and thereafter issued notice by registered AD to respondents by showing his readiness and willingness and

defendant has refused to perform his part of obligation and therefore, the impugned judgment and decree is erroneous. He also submits that time is not essence of contract and therefore, there is no registered agreement which stipulates any terms and condition. Only Sauda chithi (receipt) is executed between the parties which is not disputed. He has submitted that defendant has admitted the ownership and possession of plaintiff over the suit land in written statement and thereafter by filing separate application that averments are required to be withdrawn by seeking amendment in the written statement which was rejected by trial Court and therefore, in view of Order 12 such admissions are required to be considered as admission against the present respondents and learned trial court has not considered this aspect. He has further submitted that though in pursuance to the earlier judgment and decree passed by learned trial Court in 1995 and thereafter executing Court has also granted execution of decree in question and accordingly the sale deed is also executed in favour of present plaintiff. Such fact is not properly considered by learned trial Court. He has further submitted that the trial Court has proceeded on the basis of opinion of handwriting expert who has given opinion on the basis of photographs of long signature taken of the concerned person wherever there is correction there is small initials put by the writer of said document and when specific questions were asked to the handwriting expert regarding the same, learned trial Court has not properly considered this aspect in appropriate manner and therefore, he has submitted that the impugned judgment lacks credibility on the basis of material available on record. He has submitted that when the defendant has not disputed receipt of advance sum of consideration while replying to para 2 of plaint, not only that he has submitted that in special averment the defendant no. 1 has admitted transaction and receipt of advance sum of Rs. 5001/- and stated that the

responsibility to execute the transaction including NOC was to be done by plaintiff and broker before 10.4.1981. He has submitted that it is alleged by defendant that plaintiff interpolated and changed the date 10.4.1980 to 10.4.1981 and he has further submitted that defendant in his written statement averred that the plaintiff has breached the contract. He has drawn attention of this Court towards the documentary evidence which includes receipts, certificate, acknowledgment, paper publication, notice, acknowledgment of notice and NOC issued by IDA, letter issued by Town and Country Planning Department and police report whereby he has submitted that the defendant's documents are replied to the notice expert's opinion and photographs submitted by expert. He has submitted that the witness is examined by the plaintiff. Chandarlal (PW-1)/plaintiff himself, Ramesh Agrawal (PW-2), defendant has examined Madhusudan the son of original defendant No. 1 and H.S. Tuteja (DW-2)expert. He has submitted that objections were filed against the report of handwriting expert on 10.9.2001 by plaintiff. He has further submitted that after considering this, the trial Court by giving the finding on issues no. 1 and 2 answered that receipt was executed with undertaking to execute sale deed and receipt of advance amounting to Rs. 5001/- is executed. He has submitted that the trial court has observed while discussing about the expert opinion in para 17 to 21 of the judgment that about year 1980, year 1981 was mentioned which is discussed in para 24 to 28 of the judgment. The factum about readiness and willingness is discussed in para 29 and para 31 of the judgment. The newspaper publication is discussed in para 36. He has submitted that issue No. 6 which was answered that agreement was valid, however there is interpolation in Ex.P-1, though it is relevant to note that suit was not filed for specific performance of Ex.P-1 as it merely recorded receipt of advance

amount. He has further submitted that issue no. 8 answered by the trial court that the contract was to be performed by 10.4.1980 which was recorded in para 41 of the judgment and he has submitted that issue No. 7 valuation of land was found proper as per Ex.P-1 and therefore, pointing all these things, he has submitted that the impugned judgment is perverse, illegal and bad in eye of law. In support of his submission, he has relied on judgment of Hon'ble Apex court in case of **Ramesh Chandra Agrawal Vs. Regency Hospital Limited reported in (2009) 9 SCC 709** (paras 15 & 18). He has also relied on judgment in case of **C.Kamalakkannan Vs.State of Tamil Nadu (2025) 4 SCC 487**. He has also submitted that the issue whether time was essence of contract is required to be considered by observing that learned trial Court has held that the agreement was to be performed upto 10.4.1980 as issue No. 8. But no adjudication about time was essence of the contract and no express condition in Ex.P-1 about time was essence for contract was stipulated and relying on judgment in case of **Chand Rani (Smt) (Dead) by LRs Vs. Kamal Rani (Smt) (Dead) by LRS reported in (1993) 1 SCC 519** (paras 19 and 25), he has submitted that mere mention of date for performance of agreement cannot be considered as time was of the essence for contract. He has placed reliance on the judgment of Hon'ble Apex court in case of **Gomathinayagam Pillai Vs. Palaniswami Nadar reported in AIR 1967 SC 868**(paras 4 and 16). He has submitted that the notice dated 5.1.1981 is required to be considered and obtaining of NOC was responsibility of agent and suit is filed within limitation. He has submitted that intention/willingness to pay the balance amount is also not disputed by the defendants. He has relied on judgment in case of **J.P. Builders and another Vs. A. Ramadas Rao reported in (2011) 1 SCC 429** (paras 20 to 27). He has submitted that the plaintiff is entitled for grant of decree for

specific performance and such relief is discretionary and not arbitrary. Such exercise of discretion must be judicious subsequent rise in price would not be treated as hardship for refusing the decree of specific performance. He has relied on judgment in case of **K. Prakash Vs. B.R. Sampath Kumar reported in (2015) 1 SCC 597** (paras 13 to 16 and 18). Therefore, he has submitted that the present appeal is required to be allowed by considering the provisions of Section 14 read with Section 20 of Specific Relief Act and also by referring to Sections 2, 3, 7 , 8 and 10 of Contract Act. He has submitted that in view of provisions of Civil Procedure Code, more particularly Order 21 read with Section 144 of CPC, the order passed by learned lower appellate court while remanding back the matter when the decree is already passed and decree is also executed in favour of appellant is also required to be considered. For this aspect, he has submitted that effect of execution of sale deed in compliance with the decree after decree was set aside subsequently in appeal. By referring to Section 144 of CPC he has relied on judgment in case of **Vijay Singh Vs. Shanti Devi reported in (2017) 8 SCC 837** (paras 19 to 22). He has submitted that from bare reading of provisions and the judgment it is clear that any party entitled to any benefit could have preferred an application under Section 144 of CPC read with Section 151 of CPC before the learned trial Court/executing court after the decision of setting aside of ex-parte decree in Misc. appeal arising out of proceeding under Order 9 Rule 13 CPC by this Hon'ble court or after dismissal of the suit by the trial Court vide the impugned judgment and decree. He has submitted that it was clarified by Hon'ble Supreme Court that the limitation for the purpose of filing of an application under Section 144 CPC is governed by Article 136 of the Limitation Act, 1963 which prescribes the limitation period to be twelve years from the date when the decree



becomes enforceable. He has referred to judgment passed by Hon'ble Apex court in case of Vijay Singh (supra) and also referred to judgment of Hon'ble Apex court in case of **Mahijibhai Mohanbhai Barot Vs. Patel Manibhai Gokalbhai reported in AIR 1965 SC 1477** (para 29) and therefore, has submitted that in the peculiar facts of the case, original private defendant has not placed on record any such document bearing the shape of application under Section 144 CPC for restoration/restitution of situation as existing on passing of ex parte decree within a period of limitation, as a result the same deed executed in favour of the appellant is likely to be a valid and effective document.

5. I have considered the submissions made by the respondent also. The first submission which is required to be recorded for continuation of the recording is regarding effect of Section 144 of CPC. He submits that Section 144 provides that the act of restitution may be made on an application by any party. He has relied on judgment of Hon'ble Supreme Court in case of **Bhikchand Vs. Shamabai Dhanraj Gugale reported in 2024 SCC Online Sc 929** (in para 11, 12 and 13). He has also submitted that the court can order restitution as an inherent power under Section 151 of CPC. He has submitted that the preposition where the execution of decree is sought by the decree holder himself for purchase of sale deed from the judgment debtor, the Hon'ble Supreme Court in case of Bhikchand(supra) in para 15 has also observed many-things. He has also submitted that the above mentioned judgment is also relied upon by Hon'ble Delhi High Court in case of Delhi Development Authority Vs. M/s Ashok Kumar and Co. by judgment dated 5.8.2019. He has submitted that the question if the appeal would become infructuous if the execution of the decree is done, the said question has been decided recently by the Hon'ble High court of Himachal Pradesh in case of

Mahesh Chand Vs. Jaswant Singh reported in 2026 SCC Online HP 5222 in para 21, 22 the Court has decided this issue. He has further submitted that the Hon'ble High court of Karnataka similarly in a recent decision in case of Shirinakhatar and others Vs. Chandrapal reported in 2026 SCC Online Kar 13388 has held that if a decree for specific performance has been executed by execution of a sale deed and the execution proceedings subsequently stand closed, the appellate court under Section 96 (2) CPC, can examine the consequence of such a sale deed/conveyance in light of Section 144 CPC. He has submitted that there is no substance in the contention raised by present appellant which is required to be rejected. He has submitted that the impugned judgment and decree is based on factual circumstances of the case and law applicable and thus there is no infirmity or illegality committed by learned court below. He has submitted that present appellant has filed an IA for taking documents on record (IA No. 9889/2014) in which by placing reliance on some criminal case lodged against a Defence Witness, has sought to assail the legality of correctness of the witness testimony or the fact that the Appellant/Plaintiff had not illegally changed the citations/content of the agreement to sale (Ex.P-1) by changing the date of performance from 10.4.1980 to 10.4.1981. He has submitted that the same documents merit no consideration of this Hon'ble Court, as it has been ably proved by the Defendant No. 1 not just from the witness testimony of Mr. Harbans Singh Tuteja but also ancillary evidence, documents and the surrounding circumstances under which the document has been presented before the learned court below that the contents of the Agreement to Sale were subsequently illegally changed without consent of the Defendant No. 1 and to suit the case of the Appellant/Plaintiff's suit for specific performance of contract. He has submitted that it can also be seen from a bare perusal of the



document exhibited that certain corrections have been made at a later date from its execution. He has submitted that the factum of the subsequent change in the agreement to sale (Exhibit P/1) from '10.04.1980 to 10.04.1981' for performance of contract and adding a citation which stipulated that possession has been handed over to the Plaintiff, so that the Plaintiff can make the above the basis for its suit for specific performance, can be seen from the following:

i. The Paper Publication of public notice dated 06.03.1980 by the Plaintiff (Exhibit P/4) for an agreement to be allegedly executed on 10.04.1981', almost more than a year later does not make logical sense.

ii. The Legal Notice sent by the Plaintiff to the Defendant No. 1 dated 08.01.1981 (Exhibit P/5) is illogical and inconsistent, as:

a. If the date till which the sale deed could have been executed was indeed 10.04.1981, then why the Plaintiff was constrained to send a legal notice about 3 months prior to last date on which the agreement would have expired (finding in Para 31 of the impugned judgment).

b. The Legal Notice dated 08.01.1981 also contains the clause that the Defendant No. 1 'within 7 days of receipt of this notice receive the remaining sale consideration and execute the sale deed for the suit property in favour of the Plaintiff. This ultimatum of 7 days is unconscionable if the date till which the sale deed could have been executed i.e. 10.04.1981' was provided in the Agreement to Sale itself (finding in Para 31 of the impugned judgment).

iii.The date of 10.04.1981 or 10.04.1980 not being mentioned anywhere in the Plaint nor the legal notice (Exhibit P/5) has also had no reasonable explanation from the Plaintiff (see Para 26 of statement of PW/1).

iv The disputed subsequent addition of the fact of possession being given to the Plaintiff in the Agreement to Sale not being mentioned in the Plaint and neither in the public notice (Exhibit P/4) nor the legal notice (Exhibit P/5) has also not been explained by the Plaintiff.

v. The factum of the Agreement to Sale being continuously and uninterruptedly in the possession of the Plaintiff till its presentation in the learned court below and no copy of the same being given to the Defendant No. 1, has not been controverted, in fact it is admitted (see Para 20 of



statement of PW/I) i.e. the opportunity to make illegal changes in the Agreement to Sale were present.

vi. It is the Plaintiff's own case that the Agreement to Sale dated 05.02.1980 was written by Ramesh Chandra Agrawal, a friend of the Plaintiff and one of the two witnesses to the Agreement to Sale. Chanderlal in his statement also states that the crossing out done in the Agreement to Sale was also done by Ramesh Chandra Agrawal.

vii. The motive for changing the last date of paying the remaining sale consideration from 10.04.1980' to '10.04.1981' is also established considering the factum of no effort made whatsoever by the Plaintiff to pay the remaining sale consideration by 10.04.1980, post which, in order to mislead the court and still have a basis for filing the suit for specific performance, the date was changed.

He has submitted that thus, the finding of the learned court below to hold that certain forgery and correction has been made on the Agreement to Sale dated 05.02.1980 after its making and solely to change its contents without the consent of the Defendant No. 1 is a reasonable finding based on a myriad of factual circumstances, documentary and oral evidence led by the parties and has not been specifically controverted by the Plaintiff to justify the obvious changes in the agreement to Sale, before the court below. He has submitted that even if the testimony of Mr. Harbans Tuteja is considered to be tainted in any manner the said finding of the learned court below of the correction by forgery in the Agreement to Sale is not negated as it finds force by other important evidence. Thus, the Appellant/Plaintiff has sorely failed to prove the contents of the Agreement to Sale and have failed to discharge the said burden as provided in Section 102 of the Indian Evidence Act. 1872 and thus cannot take any aid of the alleged agreement to sale dated 05.02.1980. He has submitted that it is also trite to submit that fraud vitiates and unravels every transaction, as a party cannot be allowed to take benefit of said fraud by playing deception on the Hon'ble courts. He has placed reliance on the decisions of the Hon'ble Supreme Court in cases of **Meghmala & Ors. G.**



Narasimha Reddy & Ors. (2010) 8 SCC 383 and State of A.P. & Ant. v. T. Suryachandra Rao (2006) 6 SCC 149, wherein the Hon'ble Supreme Court has relied upon its earlier decision in **Ram Chandra Singh v. Savitri Devi. (2003) 8 SCC 319**, in which the Hon'ble Supreme Court had held as under

> 23. An act of fraud on court is always viewed seriously. A collusion o conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous."

He has submitted that when the date of performance of contract was stipulated as 10.04.1980 and the Plaintiff has sorely failed to produce any oral or documentary evidence proving that any effort or the factum of readiness and willingness to pay the remaining sale consideration and get the sale deed executed, time being the essence of the present contract, the learned court below has correctly dismissed the suit of the Plaintiffs for specific performance. He has referred to Section 16 (b) and (c) of the Specific Relief Act, 1963 (unamended original) and Section 55 of the Indian Contract Act, 1872. He has submitted that the most pertinent factor of the 'readiness' and 'willingness' of performing the contract by the time stipulated in the agreement to sale has not been averred by the Plaintiff in the suit, much less proven by any cogent oral or documentary evidence. In support of his contention, he has placed reliance on the decision rendered by the Constitutional Bench of the Hon'ble Supreme Court in **Chand Rani v. Kamal Rani (1993) 1 SCC 519**. Additionally, the conduct of the parties and other surrounding circumstances have to be taken into account while adjudicating a suit for specific relief, as has been held by the recent decision of the Hon'ble Supreme Court in V**.N.A.S. Chandran v. S. Venila 2026 SCC Online SC 1462** wherein earlier decisions of the Hon'ble Supreme Court in **Nanjappan v. Ramasamy (2015) 14 SCC 341** and **Sardar Singh v. Smt.**



Krishna Devi (1994) 4 SCC 18 have been referred and relied upon.

6. I have considered the rival arguments made by the parties. I have also considered the relevant material available on record by way of the proceedings of the suit as well as the pleadings of the parties and evidence recorded by trial Court. Considering the fact that the contention raised by this Court while exercising power under Section 96 of CPC read with provisions of Order 41 Rule 1 CPC, the court has to reappreciate the entire material by exercising power of appellate jurisdiction with a view to analyze the findings given by the learned trial Court while passing or rejecting the judgment and decree as prayed in the plaint by plaintiff/appellant. Order XLI Rule 1 of CPC and Section 96 of Code are reproduced hereunder below:-

> **Order XLI 1. Form of appeal. What to accompany memorandum**.
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> **(1)** Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the Judgment.
>
> **Provided** that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.
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> 96. **Appeal from original decree .-(1)**Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.
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> (2) An appeal may lie from an original decree passed ex parte.
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> (3)No appeal shall lie from a decree passed by the Court with the consent of parties.
>
> (4)No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees.]

7. The points for determination, in the present first appeal, are as under:

(i) Whether the judgment and decree passed by learned trial Court is not in consonance with the provisions of law by misappreciating of the averments made in the pleadings of the parties and by also



misappreciating the evidence produced and adduced by parties on record?

(ii) Whether the learned trial Court has committed error in accepting the evidence of the expert Harbans Singh Tuteja who has given evidence as DW-2 by ignoring material contradictions or omissions in said evidence?

(iii) Whether considering the fact that the issue of interpolation made in receipt which is executed by original defendant Manohar in favour of plaintiff Chandarmal and such document can be considered as valid contract between the parties and whether the time is essence of contract?

(iv) Whether the learned Court has erred in not granting prayers made in the plaint though the Court in earlier point of time in year 1995 has decreed the suit, the execution proceeding is also filed and pursuant to that execution proceeding, the Court Commissioner has executed sale deed in favour of present appellant and in absence of any declaration regarding sale deed whether the Court can dismiss the suit by subsequent judgment in view of the fact that pursuant to that order of appellate Court, the matter is remanded back by giving opportunity to defendant to participate in the suit proceedings?

8. Considering the above points of determination, now, I would like to refer to the relevant provisions of law which requires to be reproduced as under:-

(I) Section 3 & 5 of Transfer of Property Act:

3. Interpretation clause.—In this Act, unless there is something repugnant in the subject or context,—

“immoveable property” does not include standing timber, growing crops or grass;

"instrument” means a non-testamentary instrument;

“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;

“registered” means registered in any part of the territories to which this Act extends under the law for the time being in force regulating the registration of documents;

“attached to the earth” means—

(a)rooted in the earth, as in the case of trees and shrubs;

(b)imbedded in the earth, as in the case of walls or buildings; or

(c)attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:Provided that—(1)the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,(2)the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and(3)the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

5. "Transfer of property" defined.—

In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and "to transfer property" is to perform such act.In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

(II) Sections, 2, 3,4,5,6, 7, 9 and 10 of The Indian Contract Act reproduced as under:

2. Interpretation clause.—

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

(a)When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a "proposal";

(b)When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a "promise";

(c)The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";

(d)When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

(e)Every promise and every set of promises, forming the consideration for each other, is an agreement;

(f)Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;

(g)An agreement not enforceable by law is said to be void;

(h)An agreement enforceable by law is a contract;

(i)An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

(j)A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

3. Communication, acceptance and revocation of proposals.—

The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

4. Communication when complete.—

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the



person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.Illustrations(a)A proposes, by letter, to sell a house to at a certain price. The communication of the proposal is complete when receives the letter.(b)accepts A's proposal by a letter sent by post.The communication of the acceptance is complete,as against A when the letter is posted;as against B, when the letter is received by A.(c)A revokes his proposal by telegram.The revocation is complete as against A when the telegram is despatched.It is complete as against B when B receives it.B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

5. Revocation of Proposals and acceptance.—

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.IllustrationsA proposes, by a letter sent by post, to sell his house to B.B accepts the proposal by a letter sent by post.A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

6. Revocation how made.-A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

7. Acceptance must be absolute.—

In order to convert a proposal into a promise the acceptance must—

(1)be absolute and unqualified;

(2)be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

9. Promises, express and implied.—

In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in



words, the promise is said to be implied.

10. What agreements are contracts.—

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

(iii) It is relevant to refer to Sections 14, 16 and Section 20 of Specific Relief Act as under:

14. Contracts not specifically enforceable.—

(1)The following contracts cannot be specifically enforced, namely:—

(a)a contract for the non-performance of which compensation in money is an adequate relief;

(b)a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c)a contract which is in its nature determinable;

(d)a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2)Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3)Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—

(a)where the suit is for the enforcement of a contract,—

(i)to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once:

Provided that where only a part of the loan has been advanced the lendor is willing to advance the remaining part of the loan in terms of the contract; or

(ii)to take up and pay for any debentures of a company;

(b)where the suit is for,—

(i)the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii)the purchase of a share of a partner in a firm;

(c)where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:—

(i)the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii)the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii)the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

16. Personal bars to relief.—

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

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

(b)who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c)who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i)where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii)the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

20. Discretion as to decreeing specific performance.—

(1)The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2)The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a)where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b)where the performance of the contract would involve some hardship on the

defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c)where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3)The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4)The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

(iv) Section 39 & 72 of Bharatiya Sakshya Adhiniyam provides as under:

Section 39. Opinions of experts.

(1)When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.

Illustrations.(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

(2)When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in section 79A of the Information Technology Act, 2000,(21 of 2000) is a relevant fact.Explanation. - For the purposes of this sub-section, an Examiner of Electronic Evidence shall be an expert.

72. Comparison of signature, writing or seal with others admitted or proved.

(1)In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2)The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(3)This section applies also, with any necessary modifications, to finger impressions.

9. POINT FOR DETERMINATION NO. (i) to (iv) - REASONS FOR CONCLUSION

The reasons and conclusion for all the points for determination are inter- connected, therefore, they are evaluated together.

10. From the chronology of events it transpires that on 5.2.1980 the agreement is entered by appellant with respondents as respondents have executed the receipt dated 5.2.1980. Thereafter on 6.3.1980, the notice is published in newspaper by appellant and respondent. It seems from the record that on 5.1.1981, the appellant/plaintiff has sent notice to respondent/original defendant by showing his readiness and willingness and considering the contents of reply of notice, a grievance is made by defendant that terms of agreement is changed by making interpolation without knowledge of the defendant and therefore, that agreement is not binding on the parties and since the defendant is trying to dispose off the property though the agreement is executed in favour of plaintiff it transpires that suit is filed by plaintiff whereby pursuant to earlier judgment and decree, the suit is filed against original defendant/Madhusudan Chunekar and thereafter his legal representatives were brought on record by allowing application under Order 22 Rule 3 CPC. It also transpires that the court has decided the proceedings by granting decree in year 1995 in favour of plaintiff which was challenged by way of filing an application under order 9 Rule 13 CPC which



was rejected and was challenged in appeal and the Court has remanded back the matter by giving opportunity to the defendant to contest the proceeding. In the meantime, it also transpires that the Court has executed earlier decree passed in 1995 by executing the sale deed in favour of plaintiff by appointing Court commissioner in execution proceedings and considering the tenor of present judgment and decree which is under challenge which is passed after remand of the matter on 22.3.2002 but there is no specific direction regarding such execution of decree and pursuant to that sale deed is also executed in favour of present plaintiff by the Court. It is also relevant to note that in the written statement filed by defendant herein, in para 1, defendant has stated that:

> (1) वाद चरण १ स्वीकार है। वाद चरण १ में वर्णित जगह वादी के मालकी को होना स्वीकार है। उक्तजमीन वादी के कब्जेमें भी है।

11. The defendant has accepted that plaintiff is in possession of land in question and is owner of the property in question. It seems that the averments are sought to be withdrawn by filing application whereby the application for amendment in written statement is filed whereby by order dated 20.1.1989 the Court has accepted the application in part by granting the prayers for other paragraphs but for paragraph 1 in written statement, the amendment is rejected by the Court. Order 12 of Civil Procedure Code is required to be reproduced hereunder below:

> **ORDER XII ADMISSIONS**
>
> **1. Notice of admission of case-**Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.
>
> **2. Notice to admit documents**
>
> Either party may call upon the other party[to admit, within [seven] days from the date of service of the notice any document,] saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document



> shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

12. Moreover, considering the fact that trial court has given finding on various issues by not considering two relevant aspects one is that appellant by way of execution the decree is executed and sale deed is already executed in favour of plaintiff by the Court and second aspect is that when there is specific admission in written statement on the part of defendant that land in question is ownership of plaintiff and land is also in possession of plaintiff then in that case whether other issues are required to be considered any further, more particularly considering the provisions of Order 12 of CPC. Therefore, on that count, I am of the opinion that the trial Court has committed error.

13. Now considering the evidence which is discussed by learned trial Court in its impugned judgment dated 22.3.2002, the trial court has relied heavily on the evidence given by H.S. Tuteja (DW-2) who has opined that there is change in 1980 to 1981 and there is also evidence of said witness in cross-examination that he has taken photographs of the documents which is matched with long signature of defendant and other person who has signed the document and signature which is put in document after correction in the document is initial and he has not taken any sample to match the said initial with admitted signature. It is relevant to note that by application and IA filed in the present matter appellant sought permission to produce certain documents on record which is related to some criminal complaint/FIR made against said expert to show that he is not reliable witness.. The matter is pending since 2002 and Court has not decided that application though for the purpose of discussion said application is referred herein. It also transpires



that the Court has also observed in the judgment that the Court has also exercised power under Section 72 of Bharatiya Sakshya Adhiniyam by comparing the signature and finding that there is interpolation made by the party. The Court has to also properly considered the deposition of another witness i.e. the plaintiff witness No.2 Ramesh Chand Agrawal who is witness of execution of document. It is also relevant to note deposition of Ramesh Agrawal who has supported the case of plaintiff. The Court has also discussed evidence of Ramesh Agrawal who has said that he is friend of plaintiff, the notice is issued on 5.1.1981 and he has specifically denied the fact that 1980 is subsequently converted into 1981. The Court has also not properly appreciated the fact that defendant has removed the sign board and though police complaint is filed but further documents are not available and therefore, the Court has not believed that factum. That finding also seems to be erroneous. The prayers which are sought in para 12 of plaint read as under:-

''क. वाद चरण 7(सात) में बतायी तफसील अनुसार वाद चरण 1 (एक) में उल्लेखित कृषि भूमि का बिक्री लेख प्रतिवादीगण से निष्पादित करवाकर और प्रतिवादीगण निष्पादित न करें तो माननीय न्यायालय उसे वादी के हक्क में निष्पादित कर विधिवत पंजीकृत करवाया जावे इस आशय का जयपत्र वादी के हित में दिया जावे।

क. प्रतिवादी मधुसुदन से प्रतिवादी क्रमांक-3 शकुन्तलादेवी ने जानबुझकर दाविया अनुबन्ध एवं इस वाद का ज्ञान होते हुए कराया गया पंजीकृत विक्रयपत्र दिनांक 18-8-89 (अट्ठारह अगस्त उननब्बे) अवैध एवं प्रभावशून्य होकर वादी पर बंधनकारक नहीं है, इस आशय की घोषणा की आज्ञप्ति वादी के पक्ष में एवं प्रतिवादीगण के विरुद्ध पारित की जावे।

ख. वाद चरण 7(सात) में बताई गई तफ्सील अनुसार वादी को प्रतिवादीगण से नुकसानी रकम रुपये 200/-(दो सौ रुपये) वसूल दिलाई जावे।

ग. वादी के हक्क में व प्रतिवादीगण के खिलाफ ऐसी स्थायी निषेधाज्ञा जारी की जावे कि प्रतिवादीगण खुद या अन्य किसी के द्वारा वाद चरण 1 (एक) में उल्लेखित सम्पत्ति में वादी के स्वत्वों



एवं आधिपत्य में किसी प्रकार का हस्तक्षेप न करें न करवावें ।

घ. समस्त वाद व्यय वादी को प्रतिवादीगण से दिलाया जावे ।

च. अन्य योग्य सहायता जो वादी पाने के पात्र हो एवं माननीय न्यायालय वादी को दिलवाना उचित समझें वह वादी को प्रतिवादीगण के खिलाफ प्रदान की जावे ।

14. Therefore, it cannot be said that in absence of any cancellation of agreement, the defendant has right to execute any sale transaction with respondent no.3. I found that learned trial Court has not appreciated this fact. At this stage, it is relevant to refer to the judgments cited by counsel for appellant as under:-

(I) In case of **Ramesh Chandra Agrawal (supra),** the Hon'ble Apex court in para 16 and & 18 has held as under:-

> **16.** The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the layperson. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialised and perhaps even esoteric, the central role of an expert cannot be disputed. The other requirements for the admissibility of expert evidence are:
>
> (*i*) that the expert must be within a recognised field of expertise,
> (*ii*) that the evidence must be based on reliable principles, and
> (*iii*) that the expert must be qualified in that discipline.
>
> **18.** The importance of the provision has been explained in *State of H.P.* v. *Jai Lal* [(1999) 7 SCC 280 : 1999 SCC (Cri) 1184] . It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

(ii) In case of **K. Prakash (supra)** it has been held as under:

13. Indisputably, remedy for specific performance is an equitable remedy. The court while granting relief for specific performance exercises discretionary jurisdiction. Section 20 of the Act specifically provides that the court's jurisdiction to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with the sound and reasonable judicial principles.

15. The Court of Chancery in *Attorney General* v. *Wheate* followed *Rooke's case* and observed:

"… the law is clear, and courts of equity ought to follow it in their judgments concerning titles to equitable estates; otherwise great uncertainty and confusion would ensue. And though proceedings in equity are said to be *secundum discretionem boni viri*, yet, when it is asked, *vir bonus est quis*? The answer is, *qui consulta patrum*, *qui leges juraque servat*. And as it is said in *Rooke's case* [(1598) 5 Co Rep 99b : 77 ER 209. **Ed.** : As per the English Reports:"… and notwithstanding the words of the Commission give authority to the Commissioners to do according to their discretions, yet their proceedings ought to be limited and bound with the rule of reason and law. For discretion is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections; for as one saith, *talis discretio discretionem confundit*."] , that discretion is a science not to act arbitrarily according to men's wills and private affections; so the discretion which is to be executed here, is to be governed by the rules of law and equity, which are not to oppose, but each in its turn to be subservient to the other. This discretion, in some cases follows the law implicitly; in others assists it, and advances the remedy; in others, again, it relieves against the abuse, or allays the rigour of it; but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this, nor any other court, not even the highest, acting in a judicial capacity, is by the constitution entrusted with. This description is full and judicious, and what ought to be imprinted on the mind of every Judge."

16. The principle which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists upon a condition precedent to the grant of decree for specific performance : that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or the other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and



further requirements for getting such a decree are established then the court has to exercise its discretion in favour of granting relief for specific performance.

18. Subsequent rise in the price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstances and, therefore, on that ground a decree for specific performance cannot be reversed.

(iii) In case of J.P. Builders (supra), it has been held as under:

20. Section 16 of the Specific Relief Act, 1963 provides for personal bars to relief. This provision states that:

"16. *Personal bars to relief*.—Specific performance of a contract cannot be enforced in favour of a person—

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

(*b*) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(*c*) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (*c*),—

(*i*) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(*ii*) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

21. Among the three clauses, we are more concerned about clause (*c*). "Readiness and willingness" is enshrined in clause (*c*) which was not present in the old Act of 1877. However, it was later inserted with the recommendations of the 9th Law Commission's Report. This clause provides that the person seeking specific performance must prove that he has performed or has been ready and willing to perform the essential terms of the contract which are to be performed by him.

22. The words "ready" and "willing" imply that the person was prepared to carry out the terms of the contract. The distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.

23. In *N.P. Thirugnanam* v. *Dr. R. Jagan Mohan Rao* [(1995) 5 SCC 115] at SCC para 5, this Court held: (SCC pp. 117-18)

"*5*. … Section 16(*c*) of the Act envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is

required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."

24. In *P. D'Souza* v. *Shondrilo Naidu* [(2004) 6 SCC 649] this Court observed: (SCC p. 654, paras 19 and 21)

"*19*. It is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstances of each case. No straitjacket formula can be laid down in this behalf. …

***

21. … The readiness and willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendant did everything which was required of him to be done in terms of the agreement for sale."

25. Section 16(*c*) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

26. It has been rightly considered by this Court in *R.C. Chandiok* v. *Chuni Lal Sabharwal* [(1970) 3 SCC 140] that "readiness and willingness" cannot be treated as a straitjacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned.

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(*c*) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties.

(iv) In case of **Gomathinayagam Pillai (supra)**, it has been held as under:-

4. The facts which have a material bearing on the first question have already been set out. Section 55 of the Contract Act which deals with the consequences of

failure to perform an executory contract at or before the stipulated time provides by the first paragraph:

"When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promise if the intention of the parties was that time should be of the essence of the contract."

It is not merely because of specification of time at or before which the thing to be done under the contract is promised to be done and default in compliance therewith, that the other party may avoid the contract. Such an option arises only if it is intended by the parties that time is of the essence of the contract. Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable : it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract. Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immovable property, it would normally be presumed that time was not of the ,essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence. In Jamshed Khodaram Irani v. Burjorji Dhunjibhai (1) the Judicial Committee -of the Privy Council observed that the principle underlying s. 55 of the Contract Act did not differ from those which obtained under the law of England as regards contracts for sale of land. The Judicial Committee observed :

"Under that law equity, which governs the rights of the parties in cases of specific performance of contracts to sell real estate, looks not at the letter but at the substance of the agreement in order to ascertain whether the parties, notwithstanding that they named a specific time within which completion was to take place, really and in substance intended more than that it should take place within a reasonable time. . . . Their Lordships are of opinion that this is the doctrine which the section of the Indian Statute adopts and embodies in reference to sales of land. It may be stated concisely in the language used by Lord Cairns in Tilley v. Thomas (1867) L. R. 3 Ch. 61 "The construction is, and must be, in equity the same as in a Court of law. A Court of equity will indeed relieve against, and enforce, specific performance, notwithstanding a failure to keep the dates assigned by the contract, either for completion, or for the steps towards completion, if it can do justice between the parties, and if (as Lord Justice Turner said in Roberts v. Berry (1853) 3 De G. M. & G. 284), there is nothing in the 'express stipulations between the parties, the nature of the property, or the surrounding circumstances,' which would make it inequitable to interfere with and modify the legal right. This is what is meant, and all that is meant, when it is said that in equity time is not of the essence of the contract. of the three grounds mentioned by Lord Justice Turner express stipulations' requires no comment. The 'nature of the property' is illustrated by the case of reversions, mines, or trades. The 'surrounding circumstances' must depend on the facts of each particular case."



Their Lordships will add to the statement just quoted these observations. The special jurisdiction of equity to disregard the letter of the contract in ascertaining what the parties to the contract are to be taken as having really and in substance intended as regards the time of its performance may be excluded by any plainly expressed stipulation. But to have this effect the language of the stipulation must show that the intention was to make the rights of the parties depend on the observance of the time limits prescribed in a fashion which is unmistakable. The language will have this effect if it plainly excludes the notion that these time limits were of merely secondary importance in the bargain, and that to disregard them would be to disregard nothing that lay as its foundation. "Prima facie, equity treats the importance of such time limits as being subordinate to the main purpose of the parties, and it will enjoin specific performance notwithstanding that from the point of view of a Court of Law the contract has not been literally performed by the plaintiff as regards the time limit specified."

16. The trial Court framed six issues. There was no specific issue on the question whether the respondent was ready and willing to perform the contract. I do protest against any Court, be it the mofussil Court or the High Court, recording a finding on such a vital question without raising a specific issue on the point. Issue No. 2 was a general issue. The issue was "whether the plaintiff is not entitled to specific performance of the sale of the suit properties in his favour." Under this issue, the trial Court in paragraphs 17 to 20 of its judgment, discussed all kinds of questions such as readiness and willingness, default in performance of the contract, delay, waiver and abandonment. The substance of the finding of the trial Court was that the time was of the essence of the contract, and as the respondent had failed to perform his contract by April 30, 1959, he was guilty of breach of contract and could not claim specific performance. It further held that the respondent was disentitled to relief on the ground of delay, waiver, and abandonment. Incidentally, as the respondent had failed to perform the contract by April 30, 1959 and had taken no steps till July 30, 1959, the trial Court found that he was never ready and willing to perform the contract. The finding with regard to readiness and willingness was linked up with the finding that the time was of the essence of the contract and the respondent could not claim any relief on the ground of delay. As we are reversing the finding that the time was of the essence of the contract and also that the respondent was disentitled to relief on the ground of delay, we must reverse the finding that the respondent was not ready and willing to perform the contract.

(v) In case of **Chand Rani (supra)**, it has been observed as under:-

19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the

contract must be expressed in unequivocal language.

20. We will now refer to the decisions of this Court. In Gomathinayagam Pillai case [1967 (1) SCR 227 : 1967 AIR(SC) 868] it was held at pages 231 to 233 "

...Section 55 of the Contract Act which deals with the consequence of failure to perform an executory contract at or before the stipulated time provides by the first paragraph.

'When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the opinion of the promise if the intention of the parties was that time should be of the essence of the contract.'

It is not merely because of specification of time at or before which the thing to be done under the contract is promised to be done and default in compliance therewith, that the other party may avoid the contract. Such an option arises only if it is intended by the parties that time is of the essence of the contract. Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable: it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract. Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immovable property, it would normally be presumed that time was not of the essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence. In Jamshed Khodaram Irani v. Burjorji Dhunjibhai [ILR 40 Bom 289] the Judicial Committee of the Privy Council observed that the principle underlying Section 55 of the Contract Act did not differ from those which obtained under the law of England as regards contracts for sale of land. The Judicial Committee observed

'Under that law equity, which governs the rights of the parties is cases of specific performance of contracts to sell real estate, looks not at the letter but at the substance of the agreement in order to ascertain whether the parties, notwithstanding that they named a specific time within which completion was to take place, really and in substance intended more than that it should take place within a reasonable time.... Their Lordships are do opinion that this is the doctrine which the section of Indian Statute adopts and embodies in reference to sales of land. It may be stated concisely in the language used by Lord Cairns in Tilley v. Thomas.

The construction is, and must be, in equity the same as in a Court of law. A Court of equity will indeed relieve against, and enforce, specific performance, notwithstanding a failure to keep the dates assigned by the contract, either for completion, or for the steps towards completion, if it can do justice between the parties, and if (as Lord Justice Turner said in Roberts v. Berry [(1853) 3 DGM &G 284]) there is nothing in the 'express stipulation between the parties, the nature of the property, or the surrounding circumstances' which would make it inequitable to interfere with and modify the legal



right. This is what is meant, and all that is meant, when it is said that in equity time is not of the essence of the contract. Of the three grounds... mentioned by Lord Justice Turner 'express stipulations' requires no comment. The 'nature of property' is illustrated by the case of reversions, mines, or trades. The 'surrounding circumstances' must depend on the facts of each particular case.

Their Lordships will add to the statement just quoted these observations. The special jurisdiction of equity to disregard the letter of the contract in ascertaining what the parties to the contract are to be taken as having rally and in substance intended as regards the time of its performance may be excluded by any plainly expressed stipulation. But to have this effect the language of the stipulation must show that the intention was to make the rights of the parties depend on the observance of the time-limits prescribed in a fashion which is unmistakable. The language will have this effect if it plainly excludes the notion that these time-limits were of merely secondary importance in the bargain, and that to disregard them would be to disregard nothing that lay as its foundation. 'Prima facie, equity treats the importance of such time-limits as being subordinate to the main purpose of the parties, and it will enjoin specific performance notwithstanding that from the point of view of a court of law the contract has not been literally performed by the plaintiff as regards the time-limit specified.

21. In Govind Prasad Chaturvedi v. Hari Dutt Shastri following the above ruling it was held at page 543-544 :

"....It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. (Vide Gomathinayagam Pillai v. Pallaniswami Nadar (at p.233). It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time is of the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract."

22. In Hind Construction Contractors case quoting Halsbury's Laws of England, this Court observed at pages 1154-55 as under :

"In the latest 4th edn. of Halsbury's Laws of England in regard to building and engineering contracts the statement of law is to be found in Vol. 4, Para 1179, which runs thus

'1179. Where times is of the essence of the contract. - The expression time is of the essence means that a breach of the condition as to the time for performance will entitle the inconstant party to consider the breach as a repudiation of the contract. Exceptionally, the completion of the work by a specified date may be a condition precedent to the contractor's right to claim payment. The parties may expressly provide that time is of the essence of the contract and where there is power to determine the contract on a failure to complete by the specified date, the stipulation as to time will be fundamental. Other provisions of the contract may, on the construction of the contract, exclude an inference that the completion of the works by a particular date is fundamental; time is not of the essence where sum is payable for each week that the



work remains incomplete after the date fixed, nor where the parties contemplate a postponement of completion.

Where time has not been made of the essence of the contract or, by reason of waiver, the time fixed has ceased to be applicable, the employer may be notice fix a reasonable time for the completion of the work and dismiss the contractor on a failure to complete by the date so fixed.'

It will be clear from the aforesaid statement of law that even where the parties have expressly provided that time of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental; for instance, if the contract were to include clause providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clause would be construed as rendering ineffective the express provision relating to the time being of the essence of contract. The emphasis portion of the aforesaid statement of law is based on Lamprell v. Billericay Union [(1849) 2 Exch 283, 308];Webb v. Hughes [(1870) LR 10 Eq 281] and Charles Rickards Ltd. v. Oppenheim.

23. In Indira Kaur (Smt) v. Sheo Lal Kapoor in paragraph 6 it was held as under

"The law is well-settled that in transactions of sale of immovable properties, time is not the essence of the contract."

24. For this proposition reliance was placed on Govind Prasad Chaturvedi case quoted above.

25. From an analysis of the above case-law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:

1. From the express terms of the contract;

2. from the nature of the property; and

3. from the surrounding circumstances, for example: the object of making the contract.

15. As against this, counsel for respondents has cited following judgments:

(i) In case of **Chand Rani (supra)** the Hon'ble Apex court has held as under:

29. The analysis of evidence would also point out that the plaintiff was not willing to pay this amount unless vacant delivery of possession of one room on the ground floor was given. In cross- examination it was deposed that since income tax clearance certificate had not been obtained the sum of Rs. 98, 000 was not paid. Unless the property was redeemed the payment would not be made. If this was the attitude it is clear that the plaintiff was insisting upon delivery of possession as a condition

precedent for making this payment. The income tax certificate was necessary only for completion of sale. We are unable to see how these obligations on the part of the defendant could be insisted upon for payment of Rs. 98, 000. Therefore, we conclude that though as a general proposition of law time is not the essence of the contract in the case of a sale of immovable property yet the parties intended to make time as the essence under clause (1) of the suit agreement. From this point of view, we are unable to see how the case in Nathulal could have any application to the facts of this case.

30. The next question is whether the plaintiff was ready and willing ? The notices which were exchanged between the parties have to be looked into in determining readiness and willingness. On September 10, 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 August 26, 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 September 16, 1973, nothing would have been easier for the plaintiff than to pay the said sum. Instead of adopting that course what is stated in the notice dated September 24, 1971 by the plaintiff is as follows.

5. That as per agreement, your client has to pay all taxes, rates, municipal taxes up to the date of registration and that the previous and other documents pertaining to the said plot No. 30, Block 'K' sanctioned plan and completion certificates from Municipal Corporation of Delhi in respect of the superstructure built on the said plot shall be handed over along with the vacant possession of first floor by September 30, 1971.

You know that September 30, 1971 is fast approaching and your client is still to comply with these requirements besides mentioned in para Nos. 2 and 3 of the agreement.

I, therefore, call upon you to advise you client to comply with the requirements well before September 30, 1971 or latest by September 30, 1971 and obtain the further part consideration of Rs. 98, 000 from my clientess."

31. Therefore, even as late as September 24, 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. We are in agreement with the conclusion of the Division Bench.

(ii) In the matter of **Meghmala (supra),** it has been held as under:-

34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief



in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Changalvaraya Naidu (supra); Gowrishankar & Anr. Vs. Joshi Amba Shankar Family Trust & Ors. AIR 1996 SC 2202; Ram Chandra Singh Vs. Savitri Devi & Ors. (2003) 8 SCC 319; Roshan Deen Vs. Preeti Lal AIR 2002 SC 33; Ram Preeti Yadav Vs. U.P. Board of High School & Intermediate Education AIR 2003 SC 4628; and Ashok Leyland Ltd. Vs. State of Tamil Nadu.

(iii) In case of **Ram Chandra Singh (supra),** the Hon'ble Apex court has held as under:-

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.

(iv) In the matter of **T. Suryachandra Rao (supra)** it has been held as under:-

9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu v. Jagannath (1994 (1) SCC 1).

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319).

(v) In the matter of **V.N.A.S. Chandran (supra),** it has been held as under:-

42. Yet again, in Nanjappan V. Ramasamy, this Court has summarized the position of law, as it stood before 2018 as follows:

12. Under Section 20 of the Specific Relief Act, grant of specific performance



> of contract is discretionary. Though the decree for specific performance is discretionary, yet the court is not bound to grant such a relief merely because it is lawful to do so. But the discretion of the court is not arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a court of appeal and should be properly exercised keeping in view the settled principles of law as envisaged in Section 20 of the Act. The jurisdiction of decreeing specific performance is a discretion of the court and it depends upon facts and circumstances of each case. The court would take into consideration circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen.
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> 13. In Sardar Singh Vs. Smt. Krishna Devi (1994) 4 SCC 18, this Court observed that as the Court has to see the totality of the circumstances, conduct of the parties and respective interests under the contract while granting/refusing such relief."

16. I have considered the various submissions made at the bar. In view of the above mentioned contention raised by the parties and legal position which is reproduced here in above it is relevant to note that the suit was instituted in year 1983 and thereafter decreed and executed vide exparte judgment and decree dated 14.2.1995. Thereafter vide order dated 2.2.2000 passed in Misc. Appeal No. 213/1997 by Hon'ble High Court, the suit is restored and thereafter impugned decree is passed but relevant consideration is required to be kept in mind that the amount which is deposited by execution of sale deed is deposited before learned Executing Court by plaintiff. It is also relevant to note that regarding the total transaction of Rs. 28,501/-, advance payment of Rs. 5,001/- is accepted by original defendant and at the same time possession of land was handed over to the plaintiff. The plaintiff installed signboard on suit land. It also transpires that for such transaction a receipt of payment of amount was executed in favour of plaintiff on 5.2.1980. In the receipt, it has been mentioned that rest of the consideration shall be accepted by him while execution of sale deed before the Sub Registrar before 10.4.1981. Though the defendant has contended that it should be 10.4.1980 and due to interpolation the date is changed. It also transpires that the defendant has undertaken the responsibility to get



permission/NOC from different departments. It also transpires that the plaintiff published a notice in the newspaper and sought NOC from the Tehsildar also, IDA and also from the Town and Country Planning Department. It also transpires by reading paras 5 and 6 of the plaint that the plaintiff was ready and willing to pay consideration and incur all expenses for registration of sale deed throughout. Para 5 and 6 of plaint reads as under:-

> ''(५) वाद चरना ५ असत्य होकर अस्वीकार है। वादी का यह कथन कि इकरार नामे के अनुसार शेष रहा हुआ मूल्य रूपये २३,५००।- रजिस्ट्रेशन के समय प्रतिवादी ने वादी से लेना ठहरा था असत्य होकर अस्वीकार है। वादी का यह कथन कि इकरार के अनुसार वादी सदर रकम हर वक्त अदा करने को तैयार है या राजी था या आज भी राजी है असत्य होकर अस्वीकार है। वादी आगे भी करार अनुसार रकम देने को राजी है यह वादी का कथन असत्य होकर अस्वीकार है ।
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> (६) वाद चरण ६ क्सत्य होकर अस्वीकार है। वादी का यह कथन की भूमि के विक्रीकरण बाबद् अनापत्ति पत्र सम्बन्धित अधिकारी प्राप्त कर भूमि के बिक्री लेख को निष्पादित कर उसका पंजीकरण वादी के हक्म मैं कर देना था असत्य होकर अस्वीकार है। वादी का यह कथन भी असत्य होकर अस्वीकार है कि वादी पंजीकरण आदि में होने वाला समस्त खर्च करने को तैयार है व तैयार रहा है असत्य होकर अस्वीकार है । वादी का यह कथन सर्वथा असत्य होकर अस्वीकार है कि अनापत्ति प्रमाण पत्र प्राप्त करने की पूर्ण जवाबदारी बिक्रीदार प्रतिवादी पर अनुबंध के अन्तर्गत है असत्य होकर अस्वीकार है। वादी का यह कथन असत्य होकर अस्वीकार है कि वादग्रस्त भूमि पर वादी ने उसका साईन बोर्ड साइट फार सायरो बायाँ फार्म, बाम्बें आगरा रोड़ इन्दौर प्रो०सी०जी० नलवाई लगाया था । उक्त भू म पर वादी का कभी भी कोई भी साइन बोर्ड लगा रखा नहीं था व नहीं उसे प्रतिवादी ने हटाने का प्रयत्न करा नहीं। उक्त बोर्ड को प्रतिवादी के पुत्र मधूसूदन या उसके सहयोगीयों ने हटाया यह वादी का कथन असत्य होकर अस्वीकार है ।''

17. It also transpires that the plaintiff issued legal notice on 5.1.1981 to execute sale deed within seven days which was received by defendant on 9.1.1981 and thereafter it seems that on 23.4.1981 son of defendant removed the signboard installed by plaintiff causing damage. The plaintiff made a

written complaint to the police authority. Thereafter it seems that on 26.4.1981 defendant has sent the reply to legal notice through advocate and therefore, the suit is filed by seeking prayers prayed in the suit. While considering the issues for determination, it is also taken into consideration that the trial Court has heavily relied on expert opinion report. I found that such report cannot be relied upon in to-to as record of trial Court does not transpire filing of negatives of photographs. It also transpires that photographs are not captured by expert which is admitted by handwriting expert in para 14 of the cross-examination. It also transpires from the record that in expert report the finding at internal page of Ex.D/2, year 1980 was made year 1981 at later time is illegal being beyond jurisdiction of such expert. Similarly finding at internal page 7 about sufficient to prove is also illegal being jurisdiction. It also transpires that findings on Q-2, Q-3 and Q-4 are illegal being tendered in absence of specimen/admitted short signature of defendant no.1 and there is also no corroboration of said report with other evidence available on record and considering the special plea in written statement wherein compliance of agreement condition is mentioned to be upto 10.4.1981. It is also required to be noted that defendant witness No. 2 handwriting expert in para 21 of his deposition stated that short signature forms part of complete formal signature which is perse erroneous and therefore, when specific qualification of the handwriting expert is not coming on the record the judgment relied by counsel for plaintiff in (2009) 9 SCC 709 paras 16 and 18 are squarely applicable also the judgment relied upon by the plaintiff reported in (2025) 4 SCC 487 para 30 is also helpful to the case of plaintiff. The ratio of judgment reported in2003(2) SCC 745 that expert evidence is required to be trustworthy and cannot be considered as conclusive proof in absence of corroborative other evidence. The other issue

which is involved in the present case whether time was essence of contract, learned trial Court held that the agreement was to be performed upto 10.4.1980 in respect to findings given in purusant to issue no. 8. No adjudication about time was of essence for the contract is found. Even from Ex. P/1 which is receipt there is no express condition about time was of essence of contract and therefore, it cannot be presumed that time is essence of agreement to sale of an immovable property. The judgment which is relied by plaintiff reported in (1993) 1 SCC 519 para 19 and 25 is squarely applicable to the facts of present case. It is also required to be noted that mere mention of date of performance of agreement cannot be considered as time was the essence of contract. For this purpose the judgment relied on by counsel for appellant reported in AIR 1967 SC 868 para 4 and 16 are relevant. It is also required to be noted that the surrounding circumstances, pleading about undervaluation in written statement as well as Ex. D/1 offered by defendant No. 1 to plaintiff the sale of subject land @ Rs. 3 per square feet and therefore the judgment is bad in eye of law for non trial of time was of the essence of contract. From the material available on record it seems that time was not essence of contract as notice dated 5.1.1981 and obtaining of NOCs was responsibility of agent as reflected from special plea para 1 of the written statement and also considering the fact that the suit is filed within period of limitation. I found that this aspect is not properly considered by the trial court and therefore, the judgment is bad in eye of law. Regarding issue of readiness and willingness it transpires from the pleadings of the defendant that defendant has never disputed financial capacity of the plaintiff and intention and willingness to pay the balance amount is also not disputed by the defendants and therefore, in view of the judgment reported in (2011) 1 SCC 429 paras 20 to 27 is helpful to the case of the present



appellant. Lastly, the plaintiff is entitled to grant decree for specific performance though such relief is discretionary in view of Section 20 of Specific Relief Act but not in arbitrary manner. Such exercise of discretion must be judicious subsequent rise in price would not be treated as hardship for refusing the decree of specific performance and for that purpose the judgment reported in(2015) 1 SCC 597 (paras 13 to 16 and 18) are helpful to the case of present appellant and therefore, in that background, I find that the points of determination framed by this Court are required to be considering the case of appellant and answered accordingly.

18. Now considering the fact that Section 144 of CPC prescribes as under:-

> "144. Application for restitution.—(1) Where and in so far as a decree [or an order] is [varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order] shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree [or order] or [such part thereof as has been varied, reversed, set aside or modified]; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.
>
> [Explanation.—For the purposes of sub-section (1) the expression "Court which passed the decree or order" shall be deemed to include,— (a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance; (b) where the decree or order has been set aside by a separate suit, the court of first instance which



> passed such decree or order; (c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.]
>
> (2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).”

19. Though earlier court has passed judgment and decree in favour of present appellant thereafter the matter was remanded back by the High court by earlier order in Misc. Appeal. The fact remains that the sale deed is already executed pursuant to the execution proceeding and amount is also deposited. By considering this, it is relevant to take note of the judgment of Hon'ble Apex court regarding Section 144 in case of **Bhikchand (supra)**, the relevant paragraphs 26, 27 and 28 are reproduced as under:-

> 26. In view of the above discussion, we are satisfied that the present is a case where the decree is subsequently modified/varied, and the decretal amount was reduced from Rs. 27,694/- to Rs. 17,120/-, the sale of all the three attached properties was not at all required and further in the facts and circumstances of the case variation of the decree read together with the sale of the properties at a low price has caused huge loss to the judgment debtor where restitution by setting aside the execution sale is the only remedy available. It is not a case where the restitution can be ordered appropriately or suitably by directing the decree holder to make payment of some additional amount to the judgment debtor to compensate him for the loss caused due to sale of his properties. Doing so would perpetuate the injustice suffered by the judgment debtor.
>
> 27. It has been argued that the execution sale cannot be set aside at this stage when the judgment debtor has not paid any amount to satisfy the original decree or the modified decree nor he has challenged the legality of the auction sale on any permissible ground as contemplated in Order XXI CPC. However, we are not convinced with this submission made on behalf of the learned counsel for the respondents for the reason that we



> are not per se setting aside the execution sale as if the present is the proceedings challenging the execution of the decree by way of sale of the attached immovable properties of the judgment debtor. We are concerned herewith and we have confined ourselves to the core issue as to whether the present is a fit and suitable case for exercising power under Section 144 CPC directing restitution in favour of the judgment debtor by placing the parties in the position which they would have occupied before such execution and for this purpose the Court may make any order, as provided under Section 144 CPC. It is in exercise of this power that we have considered the aspect of execution of the decree by attachment of whole property when part of the property could have satisfied the decree. This examination was necessary to ascertain the extent of injury the judgment debtor has suffered at the time of execution of the original decree for Rs. 27,694/- opposite to the modified decree for Rs. 17,120/-. The execution of a decree by sale of the entire immovable property of the judgment debtor is not to penalise him but the same is provided to grant relief to the decree holder and to confer him the fruits of litigation. However, the right of a decree holder should never be construed to have bestowed upon him a bonanza only because he had obtained a decree for realisation of a certain amount. A decree for realisation of a sum in favour of the plaintiff should not amount to exploitation of the judgment debtor by selling his entire property.
>
> 28. For the foregoing, the appeal is allowed. The order dated 05.06.2017 passed by the High Court is set aside and the appellants' application under Section 144 CPC is allowed and the sale of the attached properties belonging to the judgment debtor is set aside and the parties are restored back to the position where the execution was positioned before the attachment of the immovable properties of the judgment debtor. The execution of the modified decree, if not already satisfied, shall proceed in accordance with law.

20. Considering this, I am of the view that to avoid any further multiplicity of the proceedings between the parties that the judgment and decree is drawn in favour of appellant accordingly and thereafter by way of consequences action under Section 144, the title and possession of the appellant shall be restored by keeping in mind the provisions of Section 144 CPC as this Court has reversed the impugned judgment and decree passed by trial Court.

21. In view of above discussion, I am of the view that in view of Section 16(c) of Specific Relief Act the Court has committed error that when receipt is executed appellant has given notice in newspaper within one month and thereafter legal notice is issued in January 1981 and therefore, considering this aspect also it cannot be said that appellant is not ready and willing to perform his obligation. The judgments which are cited by counsel for appellant is squarely applicable to the facts of the present case, moreover, considering the fact that in earlier round, the court has passed the decree in 1995 pursuant to which the sale deed is already executed in favour of plaintiff by the Court and therefore, unless the court has committed error in dismissing the suit of the plaintiff by giving erroneous findings though the interpolation and document will certainly create suspicion, but in the present case it cannot be said that time is essence of contract as there is no such formal agreement which is entered into between the parties who has signed original *sauda* receipt where there is some certain conditions are mentioned. Relying on the fact that in view of the admission made in the written statement by the defendant in para 1 and in view of Order 12 Rule 6 CPC when ownership of plaintiff is accepted and possession is also accepted the trial court has not taken into consideration this relevant aspect and plaintiff has proved his case and trial Court has committed serious error in dismissing the suit filed by plaintiff. The prayers made in the plaint is required to be granted as the appellant is having sale deed in his favour in pursuant to the earlier judgment and decree and therefore, the impugned judgment and decree is required to be interfered with and required to be set aside.

22. Accordingly, the prayer in the plaint is required to be allowed by considering all the points of determination framed in the present matter is required to be considered in favour of appellant/plaintiff and by considering

that the trial court has committed gross error in law as well as on fact in appreciating the pleadings of the parties and documentary as well as oral evidence on record. The appeal is accordingly allowed by exercising power under section 96 of CPC. Decree be drawn accordingly.

23. Record of the trial Court be remitted alongwith copy of this judgment after necessary formalities.

(SANDEEP N. BHATT)
JUDGE

BDJ