

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 03<sup>RD</sup> DAY OF JUNE 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE D K SINGH**

**AND**

**THE HON'BLE MR. JUSTICE T.M.NADAF**

**REGULAR FIRST APPEAL NO. 9 OF 2014**



**BETWEEN:**

1. MAHABEER MALLARAJ URS  
S/O LATE M.S. MALLARAJ URS  
AGED ABOUT 64 YEARS  
R/A NO.502,  
SARITHA SWAPNA NAGAR  
MULUND (WEST)  
MUMBAI 400 080

...APPELLANT

(BY SRI. T.SURYANARAYANA, SENIOR ADVOCATE FOR  
SRI. PRASHANTH MURTHY S G., ADVOCATE)

**AND:**

1. SRI V SRINIVASA  
S/O M.P. VENKATESH MURTHY  
AGED ABOUT 42 YEARS
2. SMT. POORNIMA SRINIVASA  
W/O SRI V. SRINIVASA  
AGED ABOUT 37 YEARS

BOTH ARE R/A MALLATHAHALLI POST  
BANGALORE 560056

BOTH ARE REP. BY SPA HOLDER  
M.P. VENKATESH MURTHY  
S/O LATE PUTTASWAMIAH  
AGED ABOUT 71 YEARS  
R/A MALLATHAHALLI MAIN ROAD



MALLATHAHALLI POST  
BANGALORE - 560 056.

...RESPONDENTS

(BY SRI. LAKSHMINARAYANA, SENIOR ADVOCATE FOR  
SRI. PRATHAM N., AND SMT. L. ANUSHA, ADVOCATE  
FOR R1 & R2)

THIS RFA IS FILED UNDER SECTION 96 OF CPC,  
AGAINST THE JUDGMENT AND DECREE DATED 10.10.2013  
PASSED IN O.S.NO.297/2008 ON THE FILE OF PRINCIPAL  
SENIOR CIVIL JUDGE AND CJM, RAMANAGARA, DECREERING  
THE SUIT FILED FOR SPECIFIC PERFORMANCE OF CONTRACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR  
JUDGMENT ON 22.04.2026, COMING ON FOR  
PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE  
D K SINGH** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH  
and  
HON'BLE MR. JUSTICE T.M.NADAF

**CAV JUDGMENT**

(PER: HON'BLE MR. JUSTICE D K SINGH)

**I. PREFACE:**

The present regular first appeal has been filed by the  
appellant/defendant under Section 96 read with Order XLI  
Rule 1 of the Code of Civil Procedure 1908 (hereinafter  
referred to as '**the CPC**') impugning the judgment and  
decree dated 10.10.2013 passed by the Principal Senior

Civil Judge and CJM, Ramanagara, in O.S.No.297/2008 instituted by the plaintiffs/ respondents herein seeking specific performance of the Agreement of Sale dated 17.09.2005, in respect of the suit schedule properties, by receiving the balance sale consideration of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only).

2. Parties are referred to as per the ranking before the Trial Court for the sake of convenience.

**II. FACTS OF THE CASE:**

3. The case of the plaintiffs before the trial Court in sum and substance was that the appellant/defendant was the owner and possessor of agricultural lands situated at Nidagal, Aralalsandra Village, Kasaba Hobli, Kanakapura Taluk, formerly Bangalore Rural District, presently Ramanagara District, totally ad measuring 34 acres 21 guntas comprised of nine survey numbers (herein after referred to as '*the suit schedule properties*'). The defendant having got absolute saleable right over the suit

schedule properties, offered to sell the suit schedule properties in favour of plaintiffs and the plaintiffs after verifying the documents agreed to purchase the suit schedule properties for consideration of a sum of Rs.60,41,875/-. On 17.09.2005, plaintiffs and the defendant entered into registered Agreement of Sale (Ex.P2) and on the date of the agreement, the defendant received a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) as advance amount and balance sale consideration of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only) was to be paid at the time of execution of the registered sale deed in favour of the defendant i.e. on or before 15.11.2005.

4. The defendant was residing in Mumbai, whereas the properties were situated in Kanakapura Taluk. The defendant was required to get the suit schedule properties measured through Taluk surveyor and survey sketch prepared, to be submitted before the Sub Registrar for registration of the sale deed. The survey sketch was mandatory requirement as per the Government of

Karnataka Circular bearing No.76/2001-2002 dated 10.01.2005. The defendant after execution of Ex.P2 went back to Mumbai and never turned up to contact the plaintiffs to measure the suit schedule properties and also to prepare the survey sketch. Portion of the suit schedule properties was being encroached by the neighbours. Though it was mentioned in the agreement of sale that there were no disputes or litigation in respect of the suit schedule properties, but actually some portion of the suit schedule properties had been encroached by the neighbouring land owners. The defendant did not show any interest to conduct the survey and also to settle the dispute on the spot and execute the sale deed by accepting the balance sale consideration of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only).

5. Suddenly, on 18.11.2005, defendant issued the legal notice (Ex.D4) purportedly cancelling the Agreement dated 17.09.2005 (Ex.P2) and forfeiting the advance amount of Rs.10,00,000/- (Rupees Ten Lakhs Only) paid by the

plaintiffs to the defendant. The plaintiffs issued a reply notice on 15.02.2006 to the defendant setting out the correct facts and expressing that the plaintiffs were always ready and willing to perform their part of the contract, to get the sale deed registered in their favour by paying the entire balance sale consideration amount. Again on 17.04.2008, the plaintiffs got issued another legal notice (Ex.P.14) to the defendant calling upon him to come forward and perform his part of the contract by complying the terms as per the Agreement of Sale, appoint surveyor to measure the suit schedule properties, mark boundaries in the presence of the plaintiffs and also to furnish the original relevant documents to receive the balance sale consideration amount and to get the sale deed registered. However, no response came from the defendant and therefore, the plaintiffs filed the suit seeking specific performance of the Agreement of Sale dated 17.09.2005 (Ex.P2) for execution of the sale deed after accepting the balance sale consideration of Rs.50,41,875/- (Rupees Fifty

Lakhs Forty One Thousand Eight Hundred and Seventy Five Only).

6. The defendant's case before the Trial Court was that the balance sale consideration of ₹ 50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only) was payable to the defendant by demand draft, drawn on any schedule Government Bank payable at Mumbai on or before 15.11.2005. The time was the essence of the contract. Parties had clearly understood and agreed that time was the essence of the contract, which was reflected in Para 1(b) of the Agreement of Sale dated 17.09.2005 (Ex.P2). The defendant sent a letter through courier dated 05.10.2005 to the plaintiffs informing the plaintiffs about the availability of the defendant at Bangalore from 04.11.2005 to 15.11.2005 and requested the plaintiffs to complete the transaction of sale and registration of sale deed in respect of the suit schedule properties within that period. The said letter was duly served on the plaintiffs (Ex.D2). Defendant met the father of plaintiff No.1 at his office on 03.11.2005 and

apprised him of the defendant's availability at Bangalore from 04.11.2005 to 15.11.2005 and also requested him to get the sale transactions completed as agreed in the agreement of sale dated 17.09.2005 (Ex.P2). The plaintiff failed to pay the balance sale consideration of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only) on or before the due date i.e., 15.11.2005 despite the time being the essence of the contract.

7. As per paragraph 8 of the agreement of sale dated 17.09.2005 , if the intending purchaser (plaintiffs) fails to pay the balance sale consideration on its due date, the vendor (defendant) would be entitled to terminate the agreement of sale and forfeit the advance amount. After service of notice dated 18.11.2005 (Ex.D4) on the plaintiffs, the plaintiffs got issued false untenable and vague reply dated 15.02.2006 (Ex.P12) to which the defendant replied vide notice dated 08.03.2006 (Ex.D6) stating therein that the Agreement of Sale had been terminated by issuing the notice dated 18.11.2006. As

per paragraph 2 of the Agreement of Sale dated 17.09.2005, the plaintiff's had agreed and confirmed that they had perused all the title deeds, investigated the title of the defendant and were fully satisfied with the same and the plaintiffs even waived of issuing of public notice and the plaintiffs had agreed to purchase the suit schedule properties from the defendant on "as is where is " and "as it is what is" basis. Further as per clause 2 of the agreement dated 17.09.2005 the purchaser has agreed that they shall not be entitled to raise any requisition or objection to the title of the said properties or any part thereof, the said clause reads as under :-

*"2. The Intending Purchasers agree and confirm that they have perused all the title deeds and waived issuing of Public Notice and have investigated the title of the Intending Vendors to the said property and are fully satisfied with the same. The Intending Purchasers shall not be entitled to raise any requisitions or objections to the title of the said property or any part thereof."*

8. The defendant stated that the plaintiffs were not ready and willing to perform their part of the agreement within the time stipulated under the agreement of sale dated 17.09.2005 (Ex.P2). and after the defendant issued reply notice dated 08.03.2006 (Ex.D6), the plaintiffs had filed the suit on 01.09.2008 i.e., just before the 3 years would have got expired from the date of execution of the Agreement of sale dated 17.09.2005.

**III. IMPUGNED JUDGMENT AND DECREE:**

9. On the basis of the aforesaid pleadings, the Trial Court framed following issues vide order dated 14.09.2010:

"1. Whether the plaintiffs prove that, defendant executed registered agreement on 17.09.2005 in their in favour for total consideration of Rs. 60,41,875/-and on the same day, defendant received 10,00,000/as an advance amount ?

2. Whether the plaintiffs prove that, they are always ready and willing to perform their part of contract with balance consideration amount Of Rs.50,41,875/- to defendants and also to get the sale deed registered in their favour ?

3. Whether the defendant proves that, the time is the essence of contract as averred in the written statement ?

4. Whether the defendant proves that, he terminated the agreement dated 17.09.2005 by issuing notice dated 18.11.2005 ?

5. Whether the defendant proves suit is barred by time?

6. Whether the plaintiffs are entitled for the relief as prayed ?

7. What order or Decree ?"

10. Plaintiffs in order to prove their case, got examined Sri. Venkatesha Murthy as PW1, the Special Power of Attorney Holder of the plaintiffs and adduced documentary evidence Exs.P1 to P16. Exhibit P1 is the Special Power of Attorney of the plaintiffs dated 12.10.2010 in favour of M.P. Venkatesha Murthy, Exhibit P2 is the Agreement of Sale dated 17.09.2005 Exhibits P3 to P11 are the RTC Extracts, Exhibit P12 is legal notice dated 15.02.2006, Exhibit P13 is the postal acknowledgement, Exhibit P14 is

the legal notice dated 17.04.2006 and Exhibits P15 and 16 are the RTC Extracts.

11. The defendant examined himself as DW1 and adduced documentary evidence Exhibits.D1 to D6 i.e, Exhibit D1 is the Courier Acknowledgment, Exhibit D2 is the Notice dated 05.10.2005, Ex.D3 is the Postal Acknowledgement, Ex.D4 is the Legal Notice dated 18.11.2005, Ex.D5 is the Government Circular dated 06.02.2008 and Ex.D6 is the Legal Notice dated 08.03.2006.

12. Issue No. 1 was deleted vide Order dated 08.08.2012, whereas all the other issues were decided in favour of the plaintiffs. The trial Court answered Issue No. 2 with regard to readiness and willingness of the plaintiffs in affirmative and Issue No. 3 with regard to whether the time was the essence of the contract in the negative.

13. In arriving at its finding on Issue Nos.2 and 3, the Trial Court has held that:-

(a) It was necessary to obtain the survey sketch before executing registered sale deed and this obligation lies on the defendant, who allegedly failed to discharge the same;

(b) The suit schedule properties stood in the joint names of the appellant/defendant and other persons, and that the appellant/defendant had not taken steps to have the khata separated in his name;

(c) Certain boundary stones of the suit schedule properties were removed by the neighboring landowners, and the appellant/defendant failed to resolve the said dispute.

14. Insofar as Issue Nos.4 and 6 are concerned, the Trial Court answered Issue No.4 (Whether the contract was validly terminated) in negative and Issue No. 6 (Whether the respondents/ plaintiffs are entitled to relief) in the affirmative.

**IV. SUBMISSIONS OF THE APPELLANT:**

15. Sri T. Suryanarayana, learned Senior Counsel appearing for the appellant has submitted that the findings recorded by the Trial Court on Issue No. 2 with respect to (readiness and willingness) of the plaintiffs and whether the time was the essence of the contract are wholly erroneous, against the evidence on record and settled legal position. The Trial Court has recorded the findings ignoring the express terms of the Agreement of Sale dated 17.09.2005 and in complete disregard to the relevant oral and documentary evidence on record. The aforesaid findings are solely based on the submissions of the plaintiffs without having any material evidence in support thereof. The findings recorded by the Trial Court, viz., that the appellant/defendant had not obtained the survey sketch and had not settled the boundary dispute are absolutely unsustainable. The Trial Court has decided Issue Nos.2 and 3 in favour of the plaintiffs without any cogent, oral and documentary evidence to support such conclusions.

16. It is further submitted that the findings of the Trial Court on Issue Nos.4 and 6 are result of flawed conclusions on Issue Nos.2 and 3, while the findings on Issue Nos.2 and 3 are themselves unsustainable, the conclusion on Issue Nos.4 and 6, also cannot be sustained.

17. It is further submitted that clause 1(b) of the Agreement of Sale dated 17.09.2005 (Ex.P2) would make it abundantly clear in unambiguous terms that time was the essence of the contract. A cumulative reading of clause 1(b) of Ex.P2 with clause 8, would make it clear that non performance of the agreement by the plaintiffs within the time prescribed i.e., on or before 15.11.2005 would entitle the defendant to terminate the agreement of sale and forfeit the advance, and thus, the agreement of sale must necessarily be construed that time was the essence for performance of the contract and the parties thus, understood it while signing the agreement. The Learned Senior Counsel for the appellant has placed reliance on following judgments in support of his submissions:-

(i) ***DESH RAJ AND ORS. Vs. ROHTASH SINGH***

(2023) 3 SCC 714 (para 21 to 25).

(ii) ***R. KANDASWAMY AND ORS. Vs. TRK***

***SARASWATHY*** (2025) 3 SCC 513 (para 13)

(iii) ***P. DAIVASIGAMANI VS. S. SAMBANDAN*** (2022)

14 SCC 793 (Para 26 to 31) and

(iv) ***I. S. SIKANDAR VS. K. SURBRAMANI & ORS.***

(2013) 15 SCC 27 (para 39 to 43).

18. It is further submitted that the Trial Court had failed to consider the relevant evidence i.e., the letter dated 05.10.2005 (Exhibit D2), addressed by the defendant to the plaintiffs, intimating his availability at Bangalore from 04.11.2005 to 15.05.2005 for completing the sale transaction and registering the sale deeds. The receipt of the said letter was duly acknowledged by the plaintiffs. The plaintiffs never came forward to make the payment of the balance sale consideration and get the sale deed executed, despite the defendant having intimated them, his readiness and willingness to perform his part of the contract by executing the registered sale deed in favour of

the plaintiffs. After expiry of the last date of the payment of the balance consideration i.e., 15.11.2005, the defendant had issued legal notice on 18.11.2005 (Ex.D4) terminating the agreement of sale and forfeiting the deposit in terms of clause 8 of the Agreement of Sale. These notices were also duly acknowledged by the plaintiffs. The plaintiffs kept quiet for considerable time and only after 3 months from the date of termination of the Agreement of Sale, the plaintiffs conspicuously did not deny the defendant's assertion that the time was the essence of the contract. Even in the plaint, there is no assertion whatsoever that time was not the essence of the contract and therefore, in the absence of such a pleadings, the finding of the Trial Court on the issue is wholly unsustainable and liable to be set aside.

19. Insofar as the plaintiffs' readiness and willingness to perform their part of the contract is concerned, apart for stray averments in paragraph Nos.7 and 8 of the plaint, there are no detailed pleadings or particulars whatsoever, with respect to the plaintiff's source of funds for payment

of the balance sale consideration, and they did not produce an iota of evidence before the Trial Court to establish that the plaintiffs had sufficient funds to pay the balance amount of sale consideration of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Thousand Only). It is further submitted that admission of DW.1 in the cross examination that plaintiffs were financially capable of honoring the terms of the Agreement of Sale would not enure to the benefit of the plaintiffs as in a suit for specific performance, the plaintiffs would be required to independently prove not only their financial capacity but also the actual availability of the requisite funds for completion of the transaction as on the relevant date.

20. In support of his submission, the learned Senior Counsel for the appellant has placed reliance on the following judgments:-

1. **P. DAIVASIGAMANI VS. S. SAMBANDAN** (Supra).
2. **T.S CHANNEGOWDA VS. H THOPAIAH** (ILR 2015 KAR 2809) (Para 49 to 51).

21. It is further submitted that, the finding of the Trial Court that it was the duty of the defendant to have obtained a survey sketch for the purpose of registration of sale deed, is also incorrect. In any event, no such obligation was cast upon the appellant/defendant under the Agreement of Sale.

22. On the contrary, clauses 3 and 10 of the Agreement of Sale, the obligation to get the conveyance deed registered and bear the charges payable with respect to any other documents required for registration was expressly cast upon the plaintiffs. Further clause 2 of the Agreement of Sale (Exhibit P2) would clearly stipulate that the plaintiffs shall not be entitled to raise any accusation or objection with respect to the defendant's title to the suit schedule properties or any part thereof. It is well settled as held in **STATE OF RAJASTHAN VS. BASANT NAHATA** (AIR 2005 SC 3401) that production of Form 11-E sketch is not mandatory for the purpose of registration of a conveyance deed. Even otherwise, at the relevant point of time i.e., on 15.11.2005 there was no requirement for 11-

E survey sketch for registration of the conveyance deed. The learned counsel for the appellant has cited a few judgments of this Court in this regard.

1. **K. VITTAL BHANDARY HAREKALA V. STATE OF KARNATAKA**, WP No. 39906/2002, decided on 11.07.2006, Para 7 onwards
2. **G. RAMACHAR AND ANR. V. STATE OF KARNATAKA**, 2016 (3) Kant LJ 1 (DB), Paras 8, 14, 15, 20, 21 and 22
3. **P. NAGARATHNA V. STATE OF KARNATAKA**, WP No. 24988/2018, decided on 15.06.2018, Para 4
4. **SMT. VAISHALI V. STATE OF KARNATAKA**, WP No. 103813/2021, decided on 05.10.2021, Paras 3 and 6
5. **SRI. VEMANNA V. STATE OF KARNATAKA**, WP No. 9256/2024, decided on 10.04.2024, Para 3 onwards.

23. It is further submitted that even otherwise, the plaintiffs never informed the appellant/defendant of any alleged requirement to obtain a survey sketch nor did they call upon him to do so, either before the due date i.e., on

15.11.2005 or before the filing of the suit. The said contention taken by the plaintiffs was an afterthought and ought to have been rejected. It is further submitted that the Trial Court has gravely erred in holding that the suit schedule properties stood in the joint names of the appellant/defendant and other persons and the defendant had not taken any step to get the khata separated in his name. In arriving at the said finding, Trial Court misconstrued the RTCs produced by the plaintiffs themselves and marked Exs.P3 to Exs.P11 as well as the statement of DW1 in cross examination to the effect that the names of other landowners were reflecting in the said RTCs. A careful examination of Exs.P3 to P11 would establish that although the names of the persons other than the defendant appeared therein, the specific extent of land held by the defendant in his own name along with katha number is distinctly and clearly noted in the said RTCs. The Trial Court therefore, committed grave error in holding that the defendant had not taken any steps to get the khatas separated in his name, which finding is

contrary to the very document produced and relied upon by the plaintiffs themselves.

24. It is further submitted that the recital No.1, clause No.2 and Annexure 1 thereto of the Agreement of Sale would clearly indicate that the plaintiffs had verified all these documents including RTCs and had satisfied themselves regarding the defendant's title to the suit schedule properties prior to the execution of Agreement of Sale. Because even the averments in the plaint, would disclose that the plaintiffs after having verified and satisfied about the ownership and possession of the defendant over the suit schedule properties entered into the Agreement of Sale dated 17.09.2005. Further there is nothing on record to suggest that the plaintiffs at any point of time called upon or demanded the defendant to obtain separate khatas in his name.

25. It is further submitted that Trial Court erred in holding that the defendant failed to settle the boundary dispute at the spot. The finding is based solely on the

submissions of the plaintiffs and misconstrued the statement of DW1 in cross-examination regarding removal of a few boundary stones by the adjacent landowners. There was nothing else on record in the form of any litigation or Court proceedings to establish the existence of any such dispute. PW-1 himself has admitted that he was not aware of where exactly dispute was pending. The findings of the Trial Court on non-settlement of alleged boundary dispute is erroneous and contrary to the express terms of the Agreement of Sale. The recitals and clauses 1, 2 and 5 of the Agreement of Sale would clearly show that the respondents/plaintiffs agreed to purchase the suit schedule properties on "as is where is " and "as it is what it is" basis. The plaintiffs were not entitled to raise any objection with respect to the defendant's title. Neither any party was entitled to seek any variation with regard to the consideration even if the area of the boundary was found to differ, than what was mentioned in the agreement of sale. Having expressly agreed to purchase the property on the aforesaid terms, "as is where is" and "as it is what

it is" basis, the plaintiffs were estopped from raising any objection with respect to the alleged boundary dispute. Therefore, the findings of the Trial Court on the said ground is unsustainable and liable to be set aside.

26. It is further submitted that the suit filed by the plaintiffs for specific performance of the Agreement of Sale dated 17.09.2005 (Ex.P.2) was not maintainable inasmuch as the Agreement of Sale was terminated vide legal notice dated 18.11.2005. The plaintiff did not challenge the legal notice dated 18.11.2005 and therefore, a simplicitor suit for a specific performance of the Agreement of Sale dated 17.09.2005 was not maintainable. In support of the aforesaid submission, the learned Senior Counsel for the plaintiffs has placed reliance on the following judgments:-

1. **R. KANDASWAMY AND ORS. V. TRK SARASWATHY** (2025) 3 SCC 513 (para 41).
2. **IS SIKANDAR V. SURBRAMANI AND ORS.** (supra).
3. **MOHINDER KAUR V. SANT PAUL SINGH** (2019) 9 SCC 538 (para 8)

It is therefore submitted that the appeal be allowed and consequently the suit be dismissed.

**V. SUBMISSIONS OF THE RESPONDENTS:**

27. Sri. V. Lakshminarayana, learned Senior Counsel for the respondents would submit that there is a statutory presumption for granting the specific performance of contract for sale of immovable property once the agreement of sale is proved, as held in **M. L. DEVENDER SINGH V. SYED KHAJA** (1973) 2 SCC 515. The relevant paragraph is as follows:-

*"21. The second assumption underlying the contentions on behalf of the defendants-appellants is that, once the presumption, contained in explanation to Section 12 of the old Act, is removed, the bar contained in Section 21 of the old Act, against the specific enforcement of a contract for which compensation in money is an adequate relief, automatically operates, overlooks that the condition for the imposition of the bar is actual proof that compensation in money is adequate on the facts and circumstances of a particular case before the court. The effect of the presumption is that the party coming to court for the specific performance*

*of a contract for sale of immovable property need not prove anything until the other side has removed the presumption. After evidence is led to remove the presumption, the plaintiff may still be in a position to prove, by other evidence in the case, that payment of money does not compensate him adequately."*

28. Once the agreement is proved, the burden shifts heavily upon the defendant to demonstrate why the equitable relief should be refused. The appellant/defendant has utterly failed to discharge this burden.

29. The overwhelming evidence on record particularly, the admission of DW1 would establish beyond any doubt that the defendant/vendor had committed repeated and fundamental breaches of both express and implied obligations and therefore, the plaintiffs were entitled for the decree granted by the Trial Court.

30. On Issue Nos.2 and 3 is concerned readiness and willingness and time being the essence of the contract, it is submitted that the clauses in the contract would provide that the contract has to be performed as agreed by the

parties within the stipulated time, but it would not make the time as the essence of the contract. Whether the time is the essence of the contract would depend on conditions of the contract and conduct of the parties on various circumstances of the case. Learned counsel for the respondents/plaintiffs in support of his submission has placed reliance on following judgments:

1. **WELSPUN SPECIALTY SOLUTIONS LTD. VS. ONGC**,  
(2022) 2 SCC 382.

2. **C.NAZEER AHMAD VS. JAHAN ARA** [ILR 2000 KAR  
3536 (DB)].

31. Insofar as the findings of the Trial Court on readiness and willingness of the plaintiff is concerned, the learned Senior Counsel for the respondents has supported the findings and has submitted that the defendant did not raise any specific defence under Section 16(c) of the Specific Relief Act, 1963, in his written statement filed before the Trial Court regarding the readiness and willingness of the plaintiffs. Therefore, the defendant cannot be permitted to urge this ground for the first time

in this regular first appeal. Any evidence or submission advanced on this unpleaded issue would be liable to be completely disregarded. The entire defense in the written statement was mainly based on termination of contract for non-payment of sale consideration. But so far as the capacity of the plaintiffs to perform their part of the contract, there was no averment by the defendant. On the other hand, the defendant admitted in the cross-examination that the plaintiffs were having very good financial capacity.

32. Even otherwise, clause 4(h) of the registered Agreement of Sale dated 17.09.2005 expressly links the payment of balance consideration to the correctness of the declarations, assurances and statements contained in clauses 4(a) to (o) of the agreement. The DW1 had categorically admitted in the cross examination that he never demanded the balance consideration within the time fixed under the contract and the suggestion by the plaintiffs' counsel to the defendant that, immediately after the letter dated 05.11.2005 the money was ready, but the

mandatory 11-E survey sketch was required for registration. The appellant, having failed to perform his implied statutory obligation and contractual obligation cannot now seek to take advantage of his own wrong. It is further submitted that the plea under Section 16(c) of the Specific Relief Act 1963, is equally unsustainable. It is well settled law that when the vendor is in breach, the vendor cannot be permitted to complain of the purchaser's alleged non-readiness/non-willingness as held in the case of :

**"(i) *Beemaneni Mahalakshmi Vs. Gangumalla, Appa Rao (2019) 6 SCC 233***

**14.** *Therefore, on conjoint reading of Ext. A-1 and the reply to the notice by the defendant dated 14-4-1987 and the cross-examination of the defendant vendor, both the learned trial court and the High Court have rightly observed and held that it was the appellant vendor that did not perform her part of the contract. Once, the finding is recorded that it was the appellant vendor that did not perform her part of the contract, thereafter as rightly observed by the High Court, the failure on the part of the vendee to "demonstrate" that he was having sufficient money with him to pay the balance sale consideration under*

*Ext. A-1 by the date of his evidence is not much of consequence. Even otherwise, it is required to be noted that the plaintiff deposited the entire balance sale consideration as directed by the learned trial court within the extended period of time. It is required to be noted that as it was submitted on behalf of the defendant before the learned trial court that the plaintiff does not have any capacity to pay the balance sale consideration, to test his bona fides the learned trial court directed the plaintiff to deposit the balance sale consideration which the plaintiff did deposit. Merely because the said amount was deposited out of the fund/amount received by him by selling the property in the year 1993, by that itself cannot be presumed and/or inferred that at the time of execution of the agreement to sell and/or thereafter even at the time of the notice, the plaintiff was not having sufficient fund to pay the balance sale consideration. It is required to be noted that an agreement to sell is dated 30-12-1985 and the plaintiff was directed to deposit the amount in the year 1993. It is not expected from the plaintiff that he would continue to deposit the same with the bank all these years. What is required to be considered is as and when he is called upon to make the deposit, he has deposited the amount to show his bona fides or not? Therefore, as such, both the learned trial court as well as the High Court have rightly passed a decree for specific performance.*

(ii) ***K. Gajendran v. Chikkathimma, 2007 SCC  
OnLine Kar 446***

*15. The learned counsel for the defendants further relied on judgement of this court in N.K. Giriraja Shetty v. N.K. Parthasarathy Shetty ILR 2006 Kar 1692 and contend that the plaintiff must be always ready with necessary financial resources and must have mental attitude to perform his part of the contract. Again the law laid down in Giriraja Shetty's case has no application to the facts of the present case. It is settled position of law that plaintiff need not produce ready cash to demonstrate his readiness and willingness to pay the balance consideration and to have the sale deed registered in his name. Admittedly, plaintiff is a builder and man of affluence. The plaintiff in his pleadings and evidence stated that he is having the capacity to mobilise the funds to pay the balance sale consideration and to have the sale deed registered in his name. The readiness and willingness of the plaintiff to pay the balance sale consideration depends on the performance of certain obligations by the defendants under the agreement of sale. We have already held that defendants failed to perform their part of obligation under the agreement of sale and on the other hand, the plaintiff was ready and willing to perform his part of obligation under the agreement of sale."*

33. The defendant in his cross examination as DW1 had admitted that the plaintiffs were financially very strong. The capacity to generate funds is sufficient compliance under Section 16(c) of the Specific Relief Act, 1963. The plaintiffs had proved their readiness and willingness beyond any shadow of doubt. To prove the readiness and willingness, purchasers are not required to produce the money or carry it with them or vouch a concluded scheme of finance. The readiness and willingness is to be inferred from the conduct of the parties. Even otherwise, since the breach was committed by the vendor, a person who had committed the breach cannot urge compliance of Section 16(c) of the Specific Relief Act, as held in **BEEMANENI MAHALAKSHMI** (Supra). It was for the defendant, to obtain 11-E survey sketch for registration of the sale deed in terms of the Agreement of Sale dated 17.09.2005.

34. Section 131(c) of Karnataka Land Revenue Act, 1964 R/w Rule 46(h) of the Karnataka Land Revenue Rules 1966 and the Government Orders dated 30.10.2002, 10.01.2005, 14.10.2005 and 11.07.2007 would

mandatorily require the 11E survey sketch. DW-1 has admitted in the cross examination that no phodi was conducted (except belatedly in 2010 for one survey number), the khata application was given only in 2010, boundary stones were removed by neighbours and the plaintiffs informed about it to the defendant, but he did not even make an enquiry. The defendant had made an application for khata to mutate in his name, only in the year 2010.

35. Under Section 131(c), r/w Section 46(h) of the Land Revenue Act and Rule 15 of the Karnataka Registration Rules, 1965 the Sketch Survey, and the maps are mandatory for the purpose of registration. Without effecting phodi, khata cannot be made and a hissa number cannot be assigned. Therefore, in absence of the khata, the registration could not have been effected. The statutory requirements constitute implied terms of the contract as is evident from clause 4(a) to (o), which would make it abundantly clear that compliance of the statutory requirement was implied. The defendant's complete failure

to comply with the implied statutory obligation would constitute a fundamental breach, which prevented the plaintiffs from completing the transaction. The learned counsel for the respondents has placed reliance on the following judgments in support of his submission:

"(1) ***CITI Bank N.A. v. Standard Chartered Bank*** reported in (2004) 1 SCC 12, paragraph 54 reads as under:

*54. SCB soon after the payment of Rs 50 crores and receiving BRs from Citi Bank acknowledging its liability to deliver the Bonds wrote a letter dated 19-9-1991 asking for and accepting SGL of CMF. Admittedly, SGL of CMF was not honoured by PDO twice and an endorsement to that effect had been made on SGL. As to why a creditor like SCB had asked for and accepted the instrument which was on the face of it unrealizable from the debtor which is even described by it as "useless and worthless"? It owed a duty of explanation to the Court as to why did it ask for or accepted the delivery of such an instrument. SCB has conspicuously and completely failed to give any explanation either in its plaint or even in evidence. It is difficult to import an implied condition or warranty, as was sought to be urged at the hearing, in the absence of such an explanation by SCB. The contention that the words "in our*

*favour” be read as introduced by necessary implication in SCB's request for SGL of CMF and the expression – “We now request you to give us SGLs of Canbank Mutual Fund in exchange of the same” be read as “We now request you to give us SGLs of Canbank Mutual Fund in our favour in exchange of the same” to give it a commercial sense, cannot be accepted. Such a rewriting of SCB's letter of request of 19-9-1991 and imposing a qualification in the acceptance of Canbank SGL by SCB is not permissible. The clear intention of SCB was to ask for and take SGL of Canbank which was in possession of Citi Bank. The said SGL was in favour of Citi Bank. SCB as a business house was clearly aware of the terms of an SGL of CMF from Citi Bank when it asked Citi Bank for it and accepted and retained it. For getting SGL of CMF in its own favour it need not have routed its request through Citi Bank. It could have straight away approached Canbank for either buying 11.5% GOI 2009 Bonds in its favour or for getting SGL of CMF drawn in its favour. A term can only be implied by way of sense to give efficacy to the transaction which is intended by the parties. Implied terms in law are founded on the presumed intention of the parties. In this case, the intention of SCB was clear and unambiguous. SCB for its own reasons wanted to take SGL of CMF in possession of Citi Bank. The subsequent receipt of interest on the face value of the price of Bonds mentioned in SGL is a*

*clear pointer to the fact that SCB had taken SGL of CMF from Citi Bank for its own purpose or at the behest of an undisclosed third party who paid interest to SCB. In the absence of any explanation as to how SCB knew that Citi Bank was in possession of SGL of CMF; as to why it had asked for an instrument which on the face of it was unrealizable by it from the debtor; why did it accept and act upon the same, and, further treating itself as a beneficial owner and receiving interest on it, the implied condition or warranty such as is sought to be urged on behalf of SCB cannot be imported into the transaction. The plea of implied warranty is one made in desperation and is clearly an afterthought.*

**(2) *Maharaj Singh v. Karan Singh, (2024) 8 SCC 83***  
paragraph 27 reads as under:

**27.** *Now the question is whether the vendor and the persons claiming through him can be directed to apply for permission in accordance with clause (h) of sub-section (2) of Section 154-B to sell and whether a decree for execution of the sale deed can be made contingent upon the grant of permission to sell. The law on this aspect is no longer res integra. In *Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai* [*Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai, (1986) 3 SCC 300*] , in paras 12 to 14, this Court held thus : (SCC pp. 307-309)*

*"12. Although Rana Mohabat Singh having failed to fulfil the terms of his contract with the appellant and execute a sale deed in his favour might have rendered the contract between them incapable of performance, but with the extinction of the title of Rana Mohabat Singh and the conferral of the rights of an occupant on the appellant, the property became transferable subject, of course, to the express covenant on the part of the appellant to do all things necessary to give effect to the agreement. Here, the suit banakhat (Ext. 25) embodies an express covenant to that effect. There is always in such contracts an implied covenant on the part of the vendor to do all things necessary to give effect to the agreement, including the obtaining of the permission for the transfer of the property. The principles on which a term of this nature may be implied in contracts are well settled. It is enough to refer to Halsbury's Laws of England, Vol. 8, 3rd Edn., p. 121 where the principles are summarised as follows:*

*'In construing a contract, a term or condition not expressly stated may, under certain circumstances be implied by the court, if it is clear from the nature of the transaction or from something actually found in the document that the contracting parties must have intended such a term or condition to be a part of the agreement between them. Such an implication must in all cases be founded on the presumed intention of the*

*parties and upon reason, and will only be made when it is necessary in order to give the transaction that efficacy that both parties must have intended it to have, and to prevent such a failure of consideration as could not have been within the contemplation of the parties.'*

*Chitty on Contracts, Vol. 1, 23rd Edn., Paras 694-95 points out that a term would be implied if it is necessary in the business sense, to give efficacy to the contract.*

*13. In this context, reference may be made to the decision of the Privy Council in Motilal v. Nanhelal [Motilal v. Nanhelal, 1930 SCC OnLine PC 71] . There, the facts were these. In that case, the plaintiff Mst Jankibai entered into an agreement to purchase from Rajbahadur Seth Jiwandas of Jabalpur four annas proprietary share of Mauja Raisalpur together with the sir and khudkast lands appurtenant thereto, with cultivating rights in the sir lands. The property was subject to the provisions of the Central Provinces Tenancy Act, 1920. She filed a suit for specific performance of the said contract. The Privy Council held that the contract was for a transfer of the sir lands without reservation of the right of occupancy, and that the sanction of the Revenue Officer to the transfer was necessary under Section 50(1) of the Act, which was in these terms:*

**'50. (1)** *If a proprietor desires to transfer the proprietary rights in any portion of his sir land*

*without reservation of the right of occupancy specified in Section 49, he may apply to a revenue officer and, if such revenue officer is satisfied that the transferor is not wholly or mainly an agriculturist, or that the property is self-acquired or has been acquired within the twenty years last preceding, he shall sanction the transfer.'*

*14. It was contended before the Privy Council that a decree for specific performance of the agreement of sale could not be made, because such performance would necessitate an application by or on behalf of the vendor to the Revenue Officer for sanction to transfer the cultivating rights in the sir land, and that the court had no jurisdiction to require the vendor to make such an application. In repelling the contention, the Privy Council observed that in view of their construction of the agreement, namely, that the vendor agreed to transfer the cultivating rights in the sir land:*

*'[T]here was, in their Lordships' opinion, an implied covenant on the part of the vendor to do all things necessary to effect such transfer, which would include an application to the Revenue Officer to sanction the transfer.'*

*It was further observed that it was not necessary for their Lordships to decide whether in that case the application for sanction to transfer must succeed, but that it was material to mention that no facts were brought to their Lordships' notice*

*which would go to show that there was any reason why such sanction should not be granted. After making the said observations, the Privy Council held that in those circumstances the court had jurisdiction to enforce the contract under the Specific Relief Act, 1877 and Order 21, Rule 35 of the Code of Civil Procedure, 1908 by a decree ordering the vendor to apply for sanction and to execute a conveyance on receipt of such sanction. The decision of the Privy Council in Motilal v. Nanhelal [Motilal v. Nanhelal, 1930 SCC OnLine PC 71] therefore is an authority for the proposition that if the vendor agrees to sell the property which can be transferred only with the sanction of some government authority, the court has jurisdiction to order the vendor to apply to the authority within a specified period, and if the sanction is forthcoming to convey to the purchaser within a certain time. See also Chandnee Widya Vati Madden v. C.L. Katial [Chandnee Widya Vati Madden v. C.L. Katial, 1963 SCC OnLine SC 183] and R.C. Chandiok v. Chuni Lal Sabharwal [R.C. Chandiok v. Chuni Lal Sabharwal, (1970) 3 SCC 140] wherein this Court following the Privy Council decision in Motilal v. Nanhelal [Motilal v. Nanhelal, 1930 SCC OnLine PC 71] reiterated the same principle.”*

*(emphasis in original and supplied)*

36. It is further submitted that the RTCs produced by the plaintiffs (Exs.P3 to P11) would suggest that several survey numbers remain in joint khata and that mutation application was filed only in the year 2010 during the pendency of the suit. These obligations were implied terms arising from the agreement, and the statutory requirements for registration. The phrase "as is where is " in the agreement cannot override the express declaration in clause 4(a) to (o) which are the implied statutory obligations of the registered agreement dated 17.09.2005.

37. In fact, the defendant has admitted that the boundary stones were removed by neighbours and that the plaintiffs informed him of the dispute in the year 2006 itself. This violation of the declaration in clause 4(a) to (o) would render the defendant's position untenable and the phrase "as is where is" would not absolve the vendor of the duty to resolve the dispute which would have prevented registration of the sale deed.

38. It is further submitted that the appellant's contention that the suit was not maintainable without a declaratory

relief challenging the termination notice dated 18.11.2005 is wholly misconceived. Agreement dated 17.09.2005 is registered document and cannot be cancelled by unilateral notice. The power under clause 8 is conditional upon the vendor performing his obligations. No prior notice of breach or opportunity to declaration, conditions and assurances in clauses 4(a) to (o) which he never did to perform, was ever given. The Learned Senior Counsel for the respondents has submitted that the issue is squarely covered in the case of ***K.S MANJUNATH AND ORS. V. MOORASAVIRAPPA MUTTANNA CHANNAPPA BATIL*** (2025 SCC Online 2378), wherein it has been held that unilateral termination without notice when the other party is ready and willing to perform its part of the contract, is impermissible, and the contract remains subsisting and enforceable, there is no necessity to seek declaration and suit for specific performance simplicitor would be maintainable. It is therefore submitted that the appeal is without any merit and same is liable to be dismissed.

**VI. INTERLOCUTORY APPLICATIONS :**

39. Before proceeding further, we are required to consider two applications filed by the respondents i.e., IA No.1/2022 filed under Order XLI Rule 27 of CPC seeking permission for production of additional documents. The respondents have filed this application to adduce as many as 25 documents, which are the sale deeds from 2001 to 2018 and document No.16 Death Certificate 16.12.2021 and document number 17 Chartered Accountant Certificate. In the supporting affidavit it has been stated that the properties mentioned in the affidavit, stands in the name of the members of the joint family comprising of Late Sri M.P. Venkatesha Murthy (Father of respondent No.1) Smt. Sulochana, (Mother of respondent No.1) and respondent Nos.1 and 2. All together 17 properties have been mentioned.

40. It is further stated that father of respondent No.1, late M.P. Venkatesha Murthy had substantial flow of money, and also being a land developer and promoter, had formed various residential co-operative societies in and around Bengaluru, details of which have been given in

paragraph 2 of the affidavit. The aforesaid documents are being sought to be produced to show that the plaintiffs had enough funds and capability to perform their part of the contract and thus, were ready and willing to perform their part of the contract. It is further stated that for proper adjudication of the dispute between the parties, the respondents be permitted to bring on record the additional evidence under Order XLI Rule 27 of the CPC.

41. The said application has been contested by the appellant. It has been stated that the application has been filed after a delay of over 14 years and there are no reasons indicating as to why the documents or evidence sought to be adduced in the appeal could not be produced before the Trial Court. No reasons are given to state as to whether the respondents exercised diligence in order to produce the documents before the Trial Court. These documents were clearly in the possession and knowledge of the respondents even before filing of the suit. The respondents/plaintiffs never attempted to adduce the additional documents sought to be adduced in this appeal

before the Trial Court nor stated the existence of the additional documents before the Trial Court. The present matter can be adjudicated by this Court with the materials already on record and additional documents are not required to adjudicate the present appeal. The plaintiffs witness No.1 (PW.1) has admitted that the plaintiffs did not have the entire sale consideration to pay to the defendant. This is evident from the cross examination dated 19.02.2013. and therefore, the additional documents sought to be produced are contrary to the deposition of their own witnesses. The respondents never tendered themselves for evidence before the Trial Court, and were represented by the General Power of Attorney Holder and therefore, it is submitted that the application is not maintainable and is to be dismissed. As the respondents never tendered themselves for evidence since they were represented by their GPA, therefore it is submitted the application has to be dismissed.

42. We have considered the submissions of the learned counsels for the parties.

43. The only ground which has been taken in the affidavit filed in support of the said application is that these documents are very relevant for proper adjudication of the dispute between the parties and the respondents be permitted to place on record the aforesaid documents under Order No.XLI Rule 27 of CPC. We have to consider whether the documents sought to be adduced under Order XLI Rule 27 of the CPC would fall in any of the three grounds as enumerated under Order XLI Rule 27. These documents were admittedly within the reach of the plaintiffs, and no reason is coming forth as to why these documents were not adduced before the Trial Court. Even otherwise, the judgment can be rendered on the basis of the evidence and documents on record. Documents sought to be adduced now, which were in possession and reach of the plaintiffs, are not required for proper adjudication of the dispute between the parties. We therefore, reject the application inasmuch as the Appellate Court is not required to conduct a retrial, the plaintiffs though had these documents, did not produce the same

before the Trial Court, and therefore, there is no reason for this Court to allow I.A.No.1/22 and accordingly the same is dismissed.

44. I.A.No.1/2026 has been filed under Order VI Rule 17 R/W Section 151 of CPC seeking amendment of the plaint by inserting additional prayer, claiming compensation and damages and refund of advance money with 24% interest. The plaintiffs/respondents seek to amend the prayer in the plaint, immediately after para 10 (d) and seek to insert 10 (e) as under:

*"(e) direct the defendant to refund a sum of Rs.10,00,000/- along with interest at the rate of 24% per annum and also award damages and compensation that the plaintiffs/respondents is entitled to award and compensation equivalent to the compensation payable under Land Acquisition Act 30 of 2013 as laid down by the Hon'ble Apex Court in Case reported in (1992) 1 SCC 647 and pass any other appropriate order or direction in the circumstances of the case to meet the ends of justice. This application has been filed after 18 years from the date of filing this suit."*

45. It is settled proposition of the law that:

(1) The amendment of the plaint can be sought and allowed in an appeal only if the amendment is necessary to determine the real controversy; and

(2) The amendment does not change the fundamental nature of the suit or prejudice the other side in an incurable way; and

(3) Under the Proviso to Order VI Rule 17 of CPC, post trial amendment would be barred unless despite due diligence the amendment sought could not have been brought earlier.

46. This triple test has been articulated in several decisions including **LIFE INSURANCE CORPORATION OF INDIA VS. SANJEEV BUILDERS PRIVATE LIMITED AND ANR.** [2022 SCC Online SC 1128] and **NORTH EASTERN RAILWAY ADMINISTRATION, GORAKHPUR Vs. BHAGWAN DAS (DEAD)**, [(2000) 8 SCC 511]. The amendment of plaint in appeal is not a routine or automatic entitlement. The Appellate Court may permit such amendments when they are necessary to determine

the real issues and it does not change the fundamental cause of action or defeat accrued rights and are not tainted by mala fide or undue prejudice subject to due diligence and the proviso constraints. The Courts are always cautious and against post-trial amendments unless due diligence is shown (***L.C HANUMANTHAPPA VS. H.B. SHIVAKUMAR*** [(2016) 1 SCC 332])

47. If one seeks to amend the plaint in appeal the application filed under Order VI Rule 17 of CPC, the Appellate Forum must clearly show :

- (1) Why the amendment is necessary to determine the real controversy?
- (2) That it does not introduce a new cause of action or prejudice the other party beyond compensable costs and
- (3) See that due diligence was exercised.

48. In the present case, the amendment is sought after 18 long years and there is nothing in the application to

suggest that despite due diligence having been exercised the prayer could not be amended before the Trial Court. We are therefore of the view, that the application filed by the respondents to amend the plaint under Order VI Rule 17 r/w Section 151 CPC does not come with the triple test as enumerated herein above and therefore, we dismiss the application.

**VII. THE POINTS FOR CONSIDERATION:**

49. Having considered the pleadings and evidence on record as well as submissions of the learned counsels appearing for the appellant/defendant and the respondents/plaintiffs, the following points arise for consideration in this appeal:

- (1) Whether the time was the essence of the contract and the plaintiffs failed to perform their part of the contract as provided under the Agreement of Sale dated 17.09.2005 (Ex.P2) ?

(2) Whether the plaintiffs have proved their readiness and willingness to perform their part of the contract within the stipulated time?

(3) Whether the appellant or the defendant has breached the terms of the agreement of sale and therefore, the suit was liable to be decreed?

**VIII. ANALYSIS AND CONCLUSION:**

50. It would be apt to take note of the important clauses of the Agreement of Sale dated 17.09.2005 (Ex.P2) to determine the scope and extant of the Agreement (Ex.P2). The recitals of the said agreement would read as under:-

*"WHEREAS the Intending Vendor has informed the Purchasers and the Intending Purchasers have verified the relevant records and satisfied that the Intending Vendor is absolutely seized and possessed of or otherwise well and sufficiently entitled to all that piece and parcel of Revenue land together with structures standing thereon bearing Survey No. 46,47,48, 56(Part), 57 (part), 58(Part), 59(part), 60, and 61, situated at Nidagal Aralassandra, Kasaba Hobli, Kanakapura*

*Taluk Bangalore District and more particularly described in the schedule hereunder written and shown in red coloured boundary line on the plan annexed hereto (hereinafter referred to as the Schedule said property"). The said property is a self acquired Property acquired by the Intending Vendor, in his personal capacity, in 1983 and 1984 and does not form a part of any ancestral property. The same is shown in the Intending Vendor's Income Tax returns filed yearly in his personal capacity. Prior to the execution of these presents, the intending Purchasers have investigated the title of the intending vendor to the said property and also waived issuing of a Public Notice in the newspapers. The Intending Vendor has agreed to sell and transfer and the Intending Purchasers have agreed to purchase the said property from the Intending Vendor on "as is where is" and "as it is what is" basis but free from any encumbrance, mortgage, charge at, lien for a total consideration of "Rs.60,41,875-00 (Rupees Sixty lakhs forty one thousand eight hundred seventy*

*five Only) on the terms and conditions hereinafter appearing."*

51. Further, Paragraphs 1, 2 ,4, 5, 7 and 8 of the Agreement of Sale dated 17.09.2005 would read as under:

*"1. The Intending Vendor has agreed to sell and transfer and the Intending Purchasers have agreed to purchase the said property i.e., all that piece or parcel of land together with structure standing thereon bearing Survey Nos. 46,47,48, 56 (Part), 57 (part), 58(part), 59 (part), 60 and 61, situated at Nidagal Aralassandra, Kasaba Hobli, Kanakapura Taluk, Bangalore District and more particularly described in the schedule hereunder written on "as it is where is" and "as it is what is" basis but for from any encumbrance, mortgage, charge at, lien for a total consideration of Rs.60,41,875-00 (Rupees Sixty lakhs forty one thousand eight hundred seventy five Only) to be paid in the following manner.*

*a. A sum of Rs.10,00,000/- (Rupees Ten lakhs Only) shall be paid by the Intending Purchasers to the Intending Vendor, as*

*deposit, by Demand Draft drawn on any Scheduled Government Bank, payable at Mumbai on execution hereof (the payment and receipt whereof the Intending Vendor doth hereof admits and acknowledge) and*

*b) The balance sum of Rs.50,41,875-00 (Rupees Fifty lakhs forty one thousand eight hundred seventy five Only) shall be paid by the Intending Purchasers to the Intending Vendor by Demand Draft, drawn on any Scheduled Government Bank, payable at Mumbai on or before 15th November, 2005, time being the essence of the contract.*

*2. The Intending Purchasers agree and confirm that they have perused all the title deeds and waived issuing of Public Notice and have investigated the title of the Intending Vendors to the said property and carefully satisfied with the same. The Intending Purchasers shall not be entitled to raise any requisitions or objections to the title of the said property or any part thereof.*

*4. The Intending Vendor does hereby declare and shall also give separate solemn declaration as under.*

*a. That there are no suits, litigations, civil or criminal or any other proceedings pending in any Court of law in respect of the said property or any part thereof.*

*b. That except the Intending Vendor no other person Or persons is in physical possession of the said property or any part thereof.*

*c. There are no attachments or prohibitory orders against or affecting the said property and the said Property is free from all encumbrances, charges at, and/or are not subject to any lispedense or easements or attachments either before or after judgement. The Intending Vendor has not received any notice either from the Government or Semi Government regarding any of the proceedings in respect of the said property.*

*d. That there is no subsisting mortgage, charge at, lein, encumbrances or any other charge of any nature whatsoever on*

*the said property or any part thereof. The Intending Vendor states that there is no other person interested in the said property except himself.*

*e. That all the taxes, levies and outgoings payable in respect of the said property has been duly paid up to date and there is no outstanding amount payable to any statutory body, Government body or any other authority. The Intending Vendor has not received any notice from any statutory body or authorities asking for the payment of any nature whatsoever in respect of the said property.*

*f. There is no subsisting agreement either in the form of sale, lease, exchange, assignment or any other way whatsoever and have not created any tenancy, leave and licence or any other rights of the like nature on the said property and as such has not dealt with or disposed off the said property in any manner whatsoever.*

*g. During the subsistence of this sale agreement, the Intending Vendor shall not sell, assign, lease, exchange, or otherwise deal with or dispose off the said property. He will not create any mortgage, charge*

*at, encumbrances of any nature whatsoever on the said Property nor he shall enter into any tenancy agreement, leave and licence agreement or any other agreement of any nature whatsoever.*

*h. Subject to the aforesaid, the Intending Vendor has free and clear title to sell the said property to the Intending Purchasers.*

*i. The Intending Vendor has not received any notice from any Government authority or any other statutory body or authorities regarding the requisition and/or acquisition of the said property.*

*j. The Intending Vendor has not received any compensation of any nature from any Government authority or any other statutory body or authorities regarding the requisition and/or acquisition of the said property.*

*k. To the best of his knowledge, the Intending Vendor is not restricted either in the Income Tax Act, Gift Tax Act, Wealth Tax Act, Estate Duty Act or under the Karnataka Land Revenue Code or under Karnataka Tenancy and, Agricultural Lands Act from selling and/or disposing Off, of*

*the said property or any part thereof.*

*l. The Intending Vendor has not done any act, deed, matter or thing whereby he is prevented from entering into this sale agreement on the various terms and conditions as stated herein in favour of the Intending Purchasers and that he has all the right, title and interest to enter into this sale agreement with the intending purchasers on the various terms and conditions as stated therein.*

*m. The Intending Vendor states that there is no right Of way in favour of any other person passing through the said property and on the best of his knowledge there is no restrictive covenant or any easement in favour of any other person affecting the said property.*

*n. The Intending Vendor states that relying upon the correctness of the aforesaid declarations, statements, and representations made by him as stated herein above, the Intending Purchasers have agreed to pay the consideration for acquiring the said property. The Intending Vendor undertakes to indemnify and always keep indemnified the Intending*

*Purchasers against any loss, damages, claims, costs, charges and expenses on account of any statements, representations, declarations and assurances, made by him as stated above is proved to be false, incorrect, inaccurate or wrong.*

*o. The intending Vendor states that the aforesaid declarations and/or representations, assurances and statements made by and given by him shall be binding not only on him but also on his legal heirs, executors, administrators and permitted assigns and shall be enforceable not only by the Intending Purchasers but also by their respective legal heirs, executors, administrators and permitted assigns.*

*5. It is agreed between the parties that if the area of the said property as described in the Schedule hereunder written is found to be more or less neither party shall be entitled to increase or decrease the purchase consideration mentioned in clause 1(b) herein above.*

*7. If the Intending Vendor fails to perform his obligations under these presents, the Intending Purchasers shall be entitled either to terminate this Sale Agreement and demand refund of the amount paid there under without interest and shall not be entitled to any costs, charges that may be suffered and/or incurred by them or shall be entitled to demand specific performance of the-said sale agreement.*

*8. If the Intending Purchasers fails to pay the balance consideration on its due date or fails to comply with their obligations under these presents inspite of the Intending Vendor complying with his obligations then the Intending Vendor shall be entitled to terminate this sale agreement and forfeit the amount paid under these presents."*

52. Time is not ordinarily the essence of a contract for sale of immovable property unless expressly so stated. However, if the contract does not contain unequivocal time essence clause, and the surrounding circumstances do not convert into an essential term, the relief of specific performance should not be denied merely on the ground of

lapse of time. Especially where the vendee was ready and willing, and the vendor failed to perform his/her obligations under the contract. This is the governing presumption in Indian law as repeatedly held in several judgments including **SMT. INDIRA KAUR AND ORS. V. SHEO LAL KAPOOR** (1988) 2 SCC 488, **SMT. CHAND RANI (DEAD) V. KAMAL RANI (DIED) BY LEGAL HEIRS** (1993) 1 SCC 519 and **GOVIND PRASAD CHATURVEDI V. HARI DUTT SHASTRI AND ANR.** [(1977) 2 SCC 539]

53. Whether the time is the essence of a contract or not has to be ascertained from the express terms of the contract, from the nature of the property and from the surrounding circumstances. There can be no presumption as to the time being the essence of the contract. The Constitution Bench of the Supreme Court in the case of **CHANDRANI** (Supra) has held that under the Agreement of Sale of immovable property, whether time is the essence of the contract or not, has to be ascertained from the terms of the contract. An intention to make the time

as the essence of the contract must be explicit in unequivocal language.

54. In the present case, in the Agreement of Sale dated 17.09.2005 (Ex.P2) the balance sale consideration of sum of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only) was required to be paid by the plaintiffs to the defendant by demand draft drawn on any scheduled Government Bank, payable at Mumbai on or before 15.11.2005 and further provided that time was the essence of the contract.

55. Thus the parties to the agreement clearly understood and provided in unequivocal terms that the time was essence of the contract, and the payment of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only) was to be made by the plaintiffs on or before 15.11.2005. This gets further fortified by clause 8 which provided the consequence of not making payment of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only) i.e., the balance sale consideration on or before

15.11.2005 which provided that if the Intending Purchaser failed to pay the balance consideration on its due date or failed to comply other obligations under the agreement, the Intending Vendor would be entitled to terminate the sale agreement and forfeit the amount paid under the agreement. The plaintiff's having got satisfied after verifying the records about the ownership, title and possession of the defendant, agreed to purchase the suit schedule properties on "as is where is", and "as it is what it is" basis. Even in paragraph 2 of the plaint, the plaintiff has admitted the absolute ownership and possession of the defendant over the suit schedule properties. It is further stated as defendant having got absolute saleable right over the suit schedule properties and the plaintiffs after verifying the documents as mentioned in the agreement agreed to purchase the suit schedule properties. Para 2 of the plaint is would read as under:

*"2. Defendant is the owner and possessor of the Agricultural lands, situated at Nidagal Aralassandra village, Kasaba Hobli, Kanakapura Taluk, formerly Bangalore Rural District, presently Ramanagara*

*District, totally measuring 34 acres 21 guntas, comprised of nine survey numbers properties, which have been mentioned in the schedule to the plaint, and hereinafter referred to as 'suit schedule properties' for the sake of convenience. Defendant having got absolute salable Properties right, he offered to sell the suit schedule properties, in favour of the plaintiffs and plaintiffs after verifying the documents as mentioned in the agreement, agreed to purchase the suit schedule properties. In this regard negotiations was settled for Rs.60,41,875/- for the entire suit schedule properties as the sale consideration amount. On 17.9.2005, both plaintiffs and defendants enter into registered sale agreement without possession. Accordingly that agreement reduced into writing and that agreement is duly registered before the sub-registrar, Kanakapura, herein both the plaintiffs and defendants have signed the document."*

56. The intention to make time the essence of the contract was expressed in writing in unmistakable language. The unambiguous language and intention employed in the Agreement of Sale dated 17.09.2005 (Ex.P2), provided that the time was the essence of the contract. The plaintiffs were required to make payment of

the balance sale consideration of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only) on or before 15.11.2005. Nothing has been brought on record by leading a cogent evidence to suggest that the plaintiffs ever approached the defendant and offered to make payment of balance sale consideration on or before 15.02.2006 (Ex.P12). This Exhibit P12 dated 15.02.2006 is reply to the notice dated 18.11.2005 (Ex.D4) of the defendant whereby the defendant had terminated the agreement.

57. Further defendant had sent notice dated 05.10.2005 (Ex.D2) to the plaintiffs stating that he would be available in Bangalore from 04.11.2005 to 15.11.2005 for completing the sale transaction of the suit schedule properties. However, the plaintiffs never came forward to perform their part of the contract and get the sale deed executed. The receipt of this letter was acknowledged by the plaintiffs.

58. The conduct of the plaintiffs is also required to be taken note of. The plaintiffs never issued any notice asking

the defendant to execute the sale deed or to perform any other so called "implied obligations" before 15.02.2006 (Ex.P12) The reply to the termination notice dated 18.11.2005 was given almost after 3 months i.e. on 15.02.2006 (Ex.P12). The plaintiffs never replied to the notice dated 05.10.2005 (Ex.D2), whereby the defendant intimated his availability at Bangalore from 04.05.2005 to 15.05.2005 for completing the sale transaction and registering the sale deeds. The suit was filed just a few days before the expiry of the limitation period of 3 years from the date of the agreement. The conduct of the plaintiffs therefore, would suggest that the plaintiffs were not ready and not willing to perform their part of the contract. The plea of some encroachment or a dispute and non-production of the sketch survey are nothing but an afterthought attempt to get out of the failure on their part in performing their obligations under the Agreement of Sale (Ex.P2). From the evidence led by the plaintiffs, it is evident that the plaintiffs did not prove that they were ready to perform their part of the contract, i.e., to make

payment of the balance sale consideration. The plaintiffs witness i.e PW-1, in his cross examination dated 19.02.2013 had stated that "it is true to suggest that since the Bank will not give Demand Draft for the entire amount, separate Demand Drafts were to be obtained and that the balance amount was to be paid within 15.11.2005. It is true to suggest that a demand draft for the balance amount was to be obtained in the name of the defendant and the same was not obtained. No document is given to demonstrate that Sri Srinivasa Murthy and my daughter-in-law had money on that day. I cannot say that how much amount was in the name of Sri Srinivasa and my daughter-in-law on that day. It is not correct to suggest that there was not enough money with my daughter-in-law and son from the time of execution of the agreement till filing of the suit. "It is true to suggest that it was agreed that the agreement will be cancelled if balance amount is not paid within 15.11.2005."

59. Thus, to say that the plaintiffs were ready and willing to perform their part of the contract and therefore Clause

1(b) read with clause 8 of the Agreement of Sale dated 17.09.2005 would not be enough to deny the decree of a specific performance to the plaintiffs, would not be correct. The plaintiffs were not ready and willing to perform their part of the contract within the stipulated time. The Trial Court, in absence of oral and documentary evidence on record to suggest that the plaintiffs were always ready and willing to perform their part of the contract and the time was not the essence of the contract, has erred in recording the finding on Issue Nos.2 and 3 that it was necessary to obtain a survey sketch before executing the registered sale deed and this obligation lies on the defendant, who allegedly failed to discharge the suit schedule properties, which stood in the joint names of the defendant and other persons and as the defendant had not taken steps to have the khata separated in his name and there was dispute regarding the boundaries are completely based on no evidence, to support such conclusions.

60. The relief of specific performance is a discretionary relief of the Court. The Court is required to consider the

circumstances in exercising this discretion. The readiness and willingness to perform their part of the contract has to be proved by the plaintiffs and if time is the essence of the contract, they must prove that they were ever ready and willing to perform their part of the contract within the stipulated time. Even where the time is not the essence of the contract the Courts have held that it should be performed within the reasonable time, having regard to the terms of the contract, prescribing a time limit and nature of the property. The Supreme Court in the case of case of **A. S. VIDYANADAM AND ORS. V. VAIRAVAN** [(1997) 3 SCC 1] In paragraph 10, 11 and 14 has held as under :-

*"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that*

*time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani [(1993) 1 SCC 519] : (SCC p. 528, para 25)*

*"... 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 (evident?): (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."*

*In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether*

*its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades — particularly after 1973 [ It is a well-known fact that the steep rise in the price of oil following the 1973 Arab-Israeli war set in inflationary trends all over the world. Particularly affected were countries like who import bulk of their requirement of oil.] . In this case, the suit property is the house property situated in Madurai, which is one of the major cities of Tamil Nadu. The suit agreement was in December 1978 and the six months' period specified therein for completing the sale expired with 15-6-1979. The suit notice was issued by the plaintiff only on 11-7-1981, i.e., more than two years after the expiry of six months' period. The question is what was the plaintiff doing in this interval of more than two years? The plaintiff says that he has been calling upon Defendants 1 to 3 to get the tenant vacated and execute the sale deed and that the defendants were postponing the same representing that the tenant is not vacating the building. The defendants have denied this story. According to them, the plaintiff never moved in the matter and never called upon them to execute the sale deed. The trial court has accepted the defendants' story whereas the High Court has accepted the plaintiff's story. Let us first consider whose story is more probable and*

*acceptable. For this purpose, we may first turn to the terms of the agreement. In the agreement of sale, there is no reference to the existence of any tenant in the building. What it says is that within the period of six months, the plaintiff should purchase the stamp papers and pay the balance consideration whereupon the defendants will execute the sale deed and that prior to the registration of the sale deed, the defendants shall vacate and deliver possession of the suit house to the plaintiff. There is not a single letter or notice from the plaintiff to the defendants calling upon them to get the tenant vacated and get the sale deed executed until he issued the suit notice on 11-7-1981. It is not the plaintiff's case that within six months', he purchased the stamp papers and offered to pay the balance consideration. The defendants' case is that the tenant is their own relation, that he is ready to vacate at any point of time and that the very fact that the plaintiff has in his suit notice offered to purchase the house with the tenant itself shows that the story put forward by him is false. The tenant has been examined by the defendant as DW 2. He stated that soon after the agreement, he was searching for a house but could not secure one. Meanwhile (i.e., on the expiry of six months from the date of agreement), he stated, the defendants told him that since the plaintiff has abandoned the agreement, he need not vacate. It is equally an admitted fact that between 15-12-1978*

*and 11-7-1981, the plaintiff has purchased two other properties. The defendants' consistent refrain has been that the prices of house properties in Madurai have been rising fast, that within the said interval of 2 1/2 years, the prices went up three times and that only because of the said circumstance has the plaintiff (who had earlier abandoned any idea of going forward with the purchase of the suit property) turned round and demanded specific performance. Having regard to the above circumstances and the oral evidence of the parties, we are inclined to accept the case put forward by Defendants 1 to 3. We reject the story put forward by the plaintiff that during the said period of 2 1/2 years, he has been repeatedly asking the defendants to get the tenant vacated and execute the sale deed and that they were asking for time on the ground that tenant was not vacating. The above finding means that from 15-12-1978 till 11-7-1981, i.e., for a period of more than 2 1/2 years, the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property. We are inclined to accept the defendants' case that the values of the house property in Madurai town were rising fast and this must have induced the plaintiff to*

wake up after 2 1/2 years and demand specific performance.

11. *Shri Sivasubramaniam cited the decision of the Madras High Court in S.V. Sankaralinga Nadar v. P.T.S. Ratnaswami Nadar [AIR 1952 Mad 389 : (1952) 1 MLJ 44] holding that mere rise in prices is no ground for denying the specific performance. With great respect, we are unable to agree if the said decision is understood as saying that the said factor is not at all to be taken into account while exercising the discretion vested in the court by law. We cannot be oblivious to the reality — and the reality is constant and continuous rise in the values of urban properties — fuelled by large-scale migration of people from rural areas to urban centres and by inflation. Take this very case. The plaintiff had agreed to pay the balance consideration, purchase the stamp papers and ask for the execution of sale deed and delivery of possession within six months. He did nothing of the sort. The agreement expressly provides that if the plaintiff fails in performing his part of the contract, the defendants are entitled to forfeit the earnest money of Rs 5000 and that if the defendants fail to perform their part of the contract, they are liable to pay double the said amount. Except paying the small amount of Rs 5000 (as against the total consideration of Rs 60,000) the plaintiff did nothing until he issued the suit notice 2 1/2 years after the agreement. Indeed, we are inclined to think*

*that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties — evolved in times when prices and values were stable and inflation was unknown — requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so. The learned counsel for the plaintiff says that when the parties entered into the contract, they knew that prices are rising; hence, he says, rise in prices cannot be a ground for denying specific performance. May be, the parties knew of the said circumstance but they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as non-existent? All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limit(s) cannot be ignored altogether on the ground that time has not been made the essence of the contract (relating to immovable properties).*

*14. Shri Sivasubramaniam then relied upon the decision in Jiwan Lal (Dr) v. Brij Mohan Mehra [(1972) 2 SCC 757 : (1973) 2 SCR 230] to show that the delay of two years is not a ground to deny specific performance. But a perusal of the judgment shows that there were good reasons for the plaintiff to wait in that case because of the pendency of an appeal against the order of requisition of the suit property. We may reiterate that the true principle is the one stated by the Constitution Bench in Chand Rani [(1993) 1 SCC 519] . Even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property."*

61. In the case of **PADMAKUMARI AND ORS. VERSUS DASSAYAN AND ORS** (2015) 8 SCC 695, on consideration of the terms of the Agreement of Sale, Supreme Court has held that time was the essence of the contract and as the plaintiff had failed to make payment of the balance sale consideration within the stipulated time, the plaintiff would not be entitled for decree of specific

performance. Paragraphs 19 and 20 of the said judgment are extracted hereunder:-

*"19. The said legal contention urged on behalf of Defendants 12 to 15 has been strongly rebutted by the learned counsel on behalf of the plaintiff contending that the question of payment of balance consideration amount of Rs 63,000 within nine months would have arisen after the terms and conditions of the contract agreed upon by Defendants 1 to 11 if they had measured the suit scheduled property. They have not discharged their part of the contract stipulated in the agreement to sell, therefore, it is urged by him that time was not the essence of the contract as Defendants 1 to 11 themselves have failed to perform their part of the agreement.*

*20. The said contention urged on behalf of the plaintiff is unacceptable to us that the question of taking measurement would not arise before the plaintiff performed his part of the contract regarding the balance consideration within the period stipulated in the agreement. Undisputedly, that had not been done by the plaintiff in the instant case within the stipulated time and the notice was issued by the plaintiff only after one year, therefore, the plaintiff has not adhered to the time which is stipulated to pay the balance consideration amount to Defendants*

*1 to 11 which is a very important legal aspect which was required to be considered by the courts below at the time of determining the rights of the parties and passing the impugned judgment. The courts below have ignored this important aspect of the matter while answering the contentious Issues (i) and (ii) in favour of the plaintiff and granted decree of specific performance in respect of the suit scheduled property. The said finding of fact is contrary to the terms and conditions of the agreement, pleadings and the evidence on record. Accordingly, we answer the said issues in favour of Defendants 12 to 15 after setting aside the concurrent finding of fact recorded by the High Court."*

62. Having given our thoughtful consideration to the facts, evidence and the law, we are of the considered view, that time was the essence of the contract and the plaintiffs had failed to prove that they were ever ready and willing to perform their part of the contract before 15.11.2005 . The evidence of PW-1 extracted above would suggest that the plaintiffs did not lead any cogent and credible evidence to prove their readiness to perform their part of the contract before 15.11.2005. The plaintiffs had replied to the termination notice dated 18.11.2005 only on

15.02.2006 and filed the suit almost after 3 years from the date of the Agreement of Sale seeking specific performance. Even if it is assumed that a sketch survey 11-E was required for registration of the sale deed, the plaintiffs never asked the defendant to obtain the sketch survey within the time stipulated i.e., 15.11.2005. All these contentions have been raised only after the date i.e., the last date of performance, i.e., 15.11.2005 got passed. There is nothing on record to suggest that the plaintiffs agreed to pay the balance amount of sale consideration of Rs.50,41,875/- (Rupees Fifty Lakhs Forty One Thousand Eight Hundred and Seventy Five Only) even when the defendant had addressed the letter dated 05.10.2005 (Exhibit D2) to the plaintiffs intimating his availability at Bangalore from 04.11.2005 to 15.11.2005 for completing the sale transaction.

63. We are, therefore, of the view that the Trial Court has completely misled itself in decreeing the suit in favour of the plaintiffs. The findings of the Trial Court are contrary

to the express terms of the Agreement of Sale dated 17.09.2005 and the evidence on record.

64. Accordingly, the appeal is **allowed** and the impugned judgment and decree dated 10.10.2013 passed by the Trial Court is set aside. Consequently, the suit in O.S.No.297/2008 stands dismissed with costs.

Let a decree be drawn accordingly.

65. In view of the appeal having been allowed, pending interlocutory applications, if any do not survive for consideration, hence stand disposed of.

**SD/-  
(D K SINGH)  
JUDGE**

**SD/-  
(T.M.NADAF)  
JUDGE**

NG  
CT: SN