

CNR NO.MHPU020011832013



Received on : 02/03/2013
Registered on:08/03/2013
Decided on : 06/12/2021
Duration : **08Y.09M.04D.**

IN THE COURT OF CIVIL JUDGE, SR. DIVISION, PUNE
(Presided over by S.M.A.Sayyed, 8th Jt. Civil Judge Sr. Div.,Pune)

Spl. Civil Suit No.331/2013

Exh.No.81

- 1) **Smt. Sapna Vilasrao Dhumal**
Age: 50 years, Occupation : Housewife,
- 2) **Mr. Amar Vilasrao Dhumal**
Age: 30 years, Occupation : Service,
Nos.1 and 2 R/o – 562/4, Girijashankar
Apartment, Shivajinagar, Pune 411005.
- 3) **Ms. Rajlaxmi Digvijay Jedhe**
Age: 27 years, Occupation : Housewife,
R/o- Ganeshmala, Dattawadi,
Pune 411009.
- 4) **Mr.Ajitkumar Ramesh Bayas**
Age: 64 years, Occupation : Service,
R/o- Flat No.1003, Shilpa Society,
Opp. M.I.T. Pune 411038.
- 5) **Mr. Vishwanath Purushottam Dube**
Age: 60 years, Occupation : Legal Practitioner,
R/o- 371, Shukrawar Peth, Pune 411002.
- 6) **Miss. Nandini Vasant Deshpande**
Age: 54 years, Occupation : Legal Practitioner,
R/o- 462, Sadashiv Peth, Pune 411030.

... Plaintiffs.

Versus

- 1) **M/s. Golden Horizon Promoters Pvt. Ltd.**
A company incorporated under Indian Companies Act
Having its office at – Tejas, Plot No.6, Sahajeevan Society,
Bhosalenagar, Pune 411007.
 - a) **Through its Managing Director,
Mr. Dilip J. Girme**
Age – 50 years, Occupation – Business,
R/o – 14, “Sawatamali”, Bhandarkar Road,
Pune 411004.
 - b) **Authorized signatory
Mr. Deepak Laxmanrao Kudale**
Age: 55 years, Occupation : Business,
R/o – Tejas, Plot No.6, Sahajeevan Society,
Bhosalenagar, Pune 411007.
- 2) **Bharat Forge Ltd.**
A company registered under Indian Companies Act
Having its office at – Mundhwa, Pune 411036.
- 3) **Devi Resorts Pvt. Ltd.**
A company registered under Indian Companies Act
Having its office at – Devi House,
Behind Hotel Pride, Shivajinagar,
Pune 411005. **...Defendants.**

Claim : Suit for Specific Performance of contract.

Advocate for Plaintiffs - Mr. Devidas P. Sali
Advocate for Defendant No.1 - Mr. Devendra V. Saralkar
Suit proceed Ex-parte against Defendants No.2 and 3.

J U D G M E N T

(Delivered on 6th day of December, 2021)

A suit for specific performance of agreement for sale
dated 21/02/1996 executed between the plaintiffs and defendant

No.1 and to declare joint venture agreement entered between defendant No.1 to 3, not binding on the plaintiffs for the properties mentioned below;

Plot No.13 and 24, each admeasuring 1 Acre out of layout of Survey Nos.223/224/261 (part) situated at village Bhugaon, Tal. Mulshi, Dist. Pune having four boundaries as under;

(a) Plot No.13:

On or towards East	:	Plot No.14 (part)
On or towards South	:	Internal road and thereafter Plot No.12
On or towards West	:	Internal road and thereafter Plot No.24
On or towards North	:	Plot No.18 (part)

(b) Plot No.24:

On or towards East	:	Internal road and thereafter Plot No.13
On or towards South	:	Internal road and thereafter Plot No.25
On or towards West	:	S.No.225 (part)
On or towards North	:	Open Space

(Hereinafter referred to as 'suit property').

Pleadings of Plaintiffs in a nutshell is as under;

2. That, the defendant No.1 is owner of suit property. On 21/02/1996 an agreement for sale of suit property was executed between the plaintiffs and defendant No.1 for total consideration amount of Rs.9,50,000/-. Out of which the defendant No.1 accepted Rs.2,80,000/- towards part payment. There was encumbrance of Bank of Maharashtra upon the suit property, which the defendant No.1 agreed to remove and execute conveyance of suit property with clear and marketable

title. The plaintiffs time and again requested the defendant No.1 to remove said encumbrance however, the defendant No.1 kept assuring to do so and asked the plaintiffs to make further payments. Accordingly, at different intervals plaintiffs paid Rs.9 Lakhs to defendant No.1 by dated 25/10/2020 leaving a balance of Rs.50,000/- only, which was to be paid at the conveyance. In the month of May, 2007 plaintiffs learnt that defendant No.1 is trying to negotiate for sale of suit property with third party. The plaintiffs immediately wrote a letter dated 16/05/2007 calling upon the defendant No.1 to refrain from doing so and to complete the agreement. On 07/09/2007, the defendant No.1 replied to said letter and for the first time informed the plaintiffs that he removed the encumbrance of Bank and had obtained 'No Dues Certificate' (NOC). He also informed that he entered into joint venture agreement with defendant No.2 and said agreement was converted into joint venture agreement with defendant No.3. However, the defendant No.1 failed to furnish any document in this regard. In the said reply notice the defendant No.1 has also informed the plaintiffs that he is ready to repay received consideration amount with compensation. As the plaintiffs were ready and willing to perform their part of contract, had issued letter dated 13/03/2008 and asked the defendant No.1 to execute conveyance of suit property by accepting balance consideration amount of Rs.50,000/-. But, the defendant No.1 failed to comply the same. The plaintiffs after awaiting for two years again sent notice dated 05/04/2010 through their Advocate and asked the defendant No.1 to complete the transaction. Despite receipt of

said notice the defendant No.1 failed to reply or comply with the same. Hence, this suit for specific performance of agreement for sale and declaration.

3. The defendant No.1 appeared and filed its written statement at Exh.27. He admitted the description of the suit property and execution of agreement for sale. It is specifically contended that the plaintiffs while entered into the agreement for sale of suit property were aware of encumbrance of Bank. The obligation is on the defendant No.1 to clear said encumbrance. Accordingly, encumbrance of Bank from the suit property has been cleared by the defendant No.1 on 19/11/2001 and said fact has been informed to the plaintiffs. Moreover, the defendant No.1 has developed the suit property as per the instruction of plaintiffs from time to time. Even, the execution of joint venture agreement with the defendant No.2 and 3 was also communicated to the plaintiffs and they have knowledge of said agreement. It was agreed and accepted by the plaintiffs to this defendant that the cost for the better development of the suit property shall be borne and reimbursed by plaintiffs. As per the understanding between the plaintiffs and the defendant No.1, he had incurred lot of expenditure for the plot wise sanction and also for better development of the three star amenities and called upon the plaintiffs to his office for discussion and to decide upon the fresh agreement. The plaintiffs on 08/04/2008 through reply letter raised various baseless allegations against the defendant, though the defendant No.1 vide reply letter dated 07/09/2007 called the

plaintiffs for amicable settlement considering the value addition done in the said plots by the defendant No.1. The only obligation on this defendant was to clear the title and nothing else. In the reply letter dated 07/09/2007 the defendant No.1 clearly stated that there has to be a fresh agreement between the parties regarding the suit property as many thing have change between the parties and also the nature of the property since 1996 and thereby clearly denied performance of agreement for sale. Till the year 2007 plaintiffs have kept mum regarding the conveyance of suit property in their favour. Therefore, suit is hopelessly barred barred by limitation and no cause of action arose to file the same. Lastly, prayed for dismissal of suit.

4. Following issues were framed by my learned predecessor at Exh.29 to which I record my findings along with reasons as under;

SR. NO.	ISSUES	FINDINGS
1)	Do the plaintiffs prove that defendant No.1 entered into agreement for sale dated 21/02/1996 and agreed to sell suit property to them?	Yes
2)	Do the plaintiffs prove that they have paid Rs.9,00,000/- towards part payment of the contract?	Yes
3)	Do the plaintiffs prove that they were/are ready and willing to perform their part of contract?	No

- | | |
|---|--------------------------------------|
| 4) Whether the suit is barred by law of limitation ? | Yes |
| 5) Whether the plaintiffs are entitle for specific performance of agreement for sale? | No |
| 6) Whether the plaintiffs are entitle for declaration as sought? | No |
| 7) Alternatively, whether the plaintiffs are entitle for damages and compensation? | No |
| 8) What order and decree? | Suit is dismissed with costs. |

REASONS

5. To substantiate their claim the plaintiffs examined plaintiff No.6 Nandini Vasant Deshpande as PW-1 at Exh.34 and produced following documents viz; letter dated 16/05/2007 issued to defendant No.1 at Exh.43, postal acknowledgment at Exh.44, unclaimed (refused) envelop at Exh.45, letter dated 19/11/2001 issued by defendant No.1 to Chief Manager, Bank of Maharashtra, Pune at Exh.46, Reply Notice of defendant No.1 dated 07/09/2007 at Exh.47, letter dated 28/03/2008 given by plaintiffs to defendant No.1 along with postal receipt and certificate of posting at Exh.48/1 to 48/3, Notice dated 05/04/2010 issued by plaintiffs through Advocate V.S.Gokhale to defendant Nos.1 to 3 along with postal receipts at Exh.49 and Agreement for sale dated 21/02/1996 at Exh.50. The Plaintiffs have close their evidence by filing evidence pursis at Exh.76.

6. On the other hand, the defendant No.1 examined its representative Deepak Laxmanrao Kudale as DW-1 at Exh.77 and produced following documents viz; Memorandum of Understanding dated 03/08/1994 at Exh.78 and Notarized Development Agreement dated 26/03/2003 at Exh.79 and closed its evidence by filing pursis at Exh.80.

As to Issue No. 1 and 2 :

7. The PW-1 deposed that the plaintiffs and defendant No.1 entered into an agreement for sale dated 21/02/1996 with respect to suit property for total consideration amount of Rs.9,50,000/-. Accordingly, the plaintiffs have paid an amount of Rs.9 Lakhs to defendant No.1 by dated 25/10/2000 leaving balance amount of Rs.50,000/- which will be paid at the time of conveyance. It is pertinent to note that the defendant No.1 admitted execution of agreement for sale of suit property and also admitted payment of part consideration amount of Rs.9 Lakhs by the plaintiffs at different intervals till 25/10/2000. He further admitted that only Rs.50,000/- is remained to be paid to complete the transaction. Hence, considering the oral and documentary evidence, especially admissions of DW-1, I hold that plaintiffs proved execution of agreement for sale and payment of part consideration amount of Rs.9 Lakhs out of total consideration amount of Rs.9,50,000/-. Hence, I answer issue No.1 and 2 in affirmative.

As to Issue No.4 :

8. It is an unique case of specific performance of agreement for sale in which the description of property, execution of agreement for sale, payment of part consideration amount of Rs.9 Lakhs are admitted. The dispute is only with respect to ready and willingness of plaintiffs to perform their part of contract and limitation of suit.

9. The issue of limitation being the real crux of suit, I decided to deal with this issue first.

10. The PW-1 deposed that in spite of issuance of notice dated 16/05/2007, the defendant No.1 did not execute conveyance of suit property by accepting Rs.50,000/-. The defendant No.1 had issued notice dated 07/09/2007 and for the first time informed the plaintiffs that he has removed encumbrance of Bank and obtained NOC. He also informed that he has entered into joint venture agreement with the defendant No. 2 and 3. However, these documents were not supplied to the plaintiffs. Thereafter, on 13/03/2008 the plaintiffs issued another notice and asked the defendant No.1 to execute conveyance of suit property by accepting balance payment of Rs.50,000/-. The defendant No.1 kept on assuring about the conveyance. The plaintiffs waited for two years and thereafter sent notice dated 25/04/2010 through their Advocate and called upon the defendant No.1 to complete the transaction. The defendant No.1 neither replied to said notice nor execute the conveyance. During cross-

examination, the PW-1 admitted that, in the year 2001 the defendant No.1 informed the plaintiffs that he has removed encumbrance of Bank. She volunteers that no document has been supplied regarding the same. She further admitted that plaintiffs have not issued any notice to furnish document regarding removal of encumbrance of Bank.

11. On the other hand, the DW-1 deposed that vide notice dated 07/09/2007, it is made clear to the plaintiffs that there has to be a fresh agreement between the parties regarding the suit property as many thing have changed between the parties and also the nature of the property since 1996 and thereby clearly denied performance of agreement for sale. It was agreed and accepted by the plaintiffs to defendant No.1 that the cost for the better development of the suit property shall be borne and reimbursed by plaintiffs. As per the understanding between the plaintiffs and the defendant No.1, he had incurred lot of expenditure for the plot wise sanction and also for better development of the three star amenities and called the plaintiffs to his office for discussion and to decide upon the fresh agreement. Till the year 2007 plaintiffs have kept mum regarding the conveyance of suit property in their favour.

12. The learned Advocate for defendant No.1 submitted that, vide notice dated 07/09/2007, the defendant No.1 had clearly stated and communicated to the plaintiffs that he has removed encumbrance of Bank from the suit property. Service of

said notice is nowhere denied by the plaintiffs. As per the agreed terms in the agreement for sale, conveyance of suit property needs to be executed within three months from removal of said encumbrance. However, the plaintiffs failed to get conveyance done by paying balance consideration amount of Rs.50,000/-. Moreover, in the said notice, defendant No.1 has clearly stated that fresh agreement with respect to suit property has to be executed and also showed willingness to returned consideration amount received under the agreement for sale. It means that there is clear refusal to perform contract on the part of defendant No.1.

13. He further submitted that when date is fixed for performance of contract then Part I of Article 54 of the limitation Act (in short the Act) will come into play and Part II of Article 54 of the Act will attract when refusal to perform the agreement is communicated. Limitation prescribed for Article 54 of the Act is three years. In the present case at hand, Part I of Article 54 of the Act is applicable as three months period was fixed for performance of contract after removal of encumbrance of Bank. The defendant No.1 had removed said encumbrance in the year 2001 and communicated said fact to the plaintiffs. Therefore, the period of limitation begin to run after completion of three months and the plaintiffs have to file suit immediately thereafter, however they failed to do so. Moreover, the defendant No.1 vide notice dated 07/09/2007 had clearly refused to perform the agreement therefore, Part II of Article 54 of the Act will also attracts and the limitation period begin to run from the year 2007.

It means that the plaintiffs ought to have filed suit within three years from the 2007. However, present suit is filed in the year 2013 which is beyond the period of limitation. He relied on following reported judgments;

- 1) Manick Lal Seal and Anr Vs. K.P. Chowdhur, AIR 1976 Calcutta High Court 115
- 2) Ramzan Vs. Smt. Hussaini, AIR 1990 Supreme Court 529
- 3) Suresh Bhatt and Anr Vs. S. Brahmanand & Ors, AIR 2004 Kerala High Court 101
- 4) Ranjit Singh Vs. Shakti Singh and Ors, AIR 2008 Punjab and Haryana High Court 93

14. Per contra, the learned Advocate for plaintiffs submitted that there was an obligation on the defendant No.1 to remove encumbrance of Bank from the suit property. The defendant No.1 did not gave any document regarding removal of said encumbrance as well as joint venture agreement. Mere explicit clause of 'time as the essence' may not be sufficient. No doubt, there is mentioned in agreement for sale that within three months of removal of encumbrance of Bank, conveyance is required to be executed. However, parties never treated it accordingly. Even before clearing said encumbrance, consideration amount of Rs.9 Lakhs out of Rs.9,50,000/- was paid. Moreover, the entire property in which suit property is situated was mortgaged to Bank of Maharashtra and at no point of time, the defendant No.1 ever provided the copy of deed of redemption of mortgage to the plaintiffs. The defendants is coming with the plea that in the year 2001 it was informed to the plaintiffs about the clearance of encumbrance, while document

filed by the defendant No.1 of the year 2003 at Exh.79 shows that it was still under the mortgage. None of the Parts of Article 54 of the Act do not come into way as the defendant No.1 never talked about the refusal. Notice dated 07/09/2007 speaks about the agreement for additional cost and no refusal of contract. In support of her contentions, she relied on following reported judgments of Hon'ble Supreme Court;

- 1) Lata Construction Vs. Rameshchandra Ramnikial Shah, LAWS (SC) 1999 8 80
- 2) Welspun Specialty Solutions Limited Vs. Oil and Natural Gas Corporation Ltd, LAWS (SC) 2021 11 27

15. Before appreciating the oral and documentary evidence with respect to issue of limitation, it is necessary to see the relevant provision. Article 54 of the Act speak about the limitation provided for specific performance of contract. The period of limitation prescribed is 3 years. The period of limitation begin to run from the date fixed for the performance (Part I), or, if no such date is fixed, then it runs from the date when the plaintiff noticed that performance is refused (Part II).

16. Admittedly, as per the pleadings of the parties to suit, the only obligation which the defendant No.1 needs to be performed as his part of contract was to remove encumbrance of Bank from the suit property. The terms and conditions mentioned in agreement for sale plays a vital role. There is specific mentioned in the agreement for sale (Exh.50) that “*vendor have received total amount of Rs.9 Lakhs leaving balance of*

Rs.50,000/- to be paid against the conveyance, which vendor shall execute within three months after clearing encumbrance”. It means that, as soon as the defendant No.1 cleared the encumbrance of Bank from the suit property, the plaintiffs have to get the conveyance done within three months by paying balance consideration amount. It also mean that date of performance was fixed hence, Part I of Article 54 of the Act will apply. The DW-1 deposed that in the year 2001 he cleared encumbrance of Bank and same was communicated to the plaintiffs. The plaintiffs denied said fact and stated that the defendant No.1 neither furnished copy of NOC nor copy of joint venture agreement executed between the defendant No.1 to 3. However, the reply notice dated 07/09/2007 (Exh.47) issued by the defendant No.1 to the plaintiffs if perused, reveal that there is mentioned that the suit property was released from the Bank of Maharashtra and said fact was communicated to the plaintiffs on 19/11/2001 and the Bank of Maharashtra had given NOC on 27/06/2003. Moreover, said Exh.47 further reveal that copy of NOC from Bank and letter to Bank of Maharashtra was enclosed with the said notice. The plaintiffs nowhere denied receiving of notice Exh.47. Which goes to show that the plaintiffs have received copy of NOC and letter to Bank of Maharashtra on or about 07/09/2007. Further more, the plaintiffs filed letter to Bank of Maharashtra by the defendant No.1 dated 19/11/2001 (Exh.46) on record however, they failed to file copy NOC for the reason best known to them.

17. The learned Advocate for the plaintiffs submitted that the defendant No.1 is coming with the plea that in the year 2001 the plaintiffs were informed about the removal of encumbrance of Bank, while document filed by the defendant No.1 of the year 2003 at Exh.79 shows that it was still under the mortgage. The PW-1 during cross-examination admitted that they were aware of removal of encumbrance of Bank over the suit property in the year 2001, however, she volunteers that no document in that behalf was supplied by the defendant No.1 to them. Pertinent to note that the plaintiffs never denied removal of encumbrance of Bank from the suit property. Their only contention is that no document of such removal of encumbrance of Bank has been supplied to them. If the plaintiffs are believed and it is also assumed that no document regarding removal of encumbrance of Bank has been supplied to the plaintiffs in the year 2001 and there was mortgage in the year 2003. However, the removal of encumbrance of Bank has been communicated to plaintiffs vide notice Exh.47 along with copies of NOC and letter to Bank of Maharashtra. Thus, in such circumstances as per the terms and conditions of agreement for sale and in the light of Part I of Article 54 of the Act, time begin to run to get the conveyance done within three months from removal of encumbrance i.e September, 2007 when notice is served. However, the plaintiffs failed to get the conveyance of suit property done with the stipulated period.

18. The learned Advocate for the plaintiffs submitted that, mere explicit clause of 'time as the essence' may not be sufficient. No doubt, there is mentioned in agreement for sale that within three months of removal of encumbrance of Bank, conveyance is required to be executed. However, parties never treated it accordingly. She further submitted that, whether time is of the essence in a contract has to be culled out from the reading of the entire contract as well as the surrounding circumstances. It is important to note that the plaintiffs failed to lead any oral or documentary evidence to show that time is not the essence of contract. Even, no suggestion has been put forth to DW-1 to show that the intentions of parties to said agreement regarding execution of conveyance within three months from the date of removal of encumbrance of Bank was different. On the contrary, the plaintiffs themselves by issuing first notice dated 16/05/2007 had specifically mentioned that the balance consideration amount of Rs.50,000/- is payable within three months after removal of encumbrance of Bank. Moreover, if the terms and conditions of agreement for sale, intentions of parties to said agreement coupled with other surrounding circumstances are considered, it clearly goes to show that time is the essence of contract. Therefore, I hold that the case laws filed by the plaintiffs on the point of time being essence of contract cannot be considered as the facts and circumstances mentioned in these case laws are totally different than the facts and circumstances of the present case at hand.

19. Admittedly, the plaintiffs failed to get the conveyance of suit property done within the three months from 07/09/2007 and also failed to file suit for specific performance within three years i.e. on or before the year 2010 as per Part I of Article 54 of the Act. It is apparent that suit is filed in the year 2013 which is beyond the prescribed period of limitation, hence I hold that as per Part I of Article 54 of the Act, present suit is barred by law of limitation. The case laws relied by the learned Advocate for the defendant No.1 are squarely applicable to present case at hand. Apart from this, for the sake of argument even if it considered that time is not the essence of contract and Part I of Article 54 of the Act is not applicable, then also I am of the considered opinion that the suit is barred by law of limitation under Part II of Article 54 of the Act for the reasons mentioned hereafter.

20. As mentioned above, Part II of Article 54 of the Act comes into play when no such date is fixed for performance, then the period of limitation begin to run from the date when the plaintiff noticed that performance is refused. It is pertinent to note that the defendant vide notice dated 07/09/2007 had specifically stated that they have to execute fresh agreement regarding the suit property as many things have changed between the parties and the nature of the property. Even, the notice clearly states that he is ready to repay part consideration amount with compensation and looked forward to amicable understanding. It means that there is clear cut refusal on the part of defendant No.1

to execute conveyance of suit property on the basis of agreement for sale dated 21/02/1996.

21. The learned Advocate for the plaintiffs submitted that Part II of Article 54 of the Act does not come into play as the defendant No.1 never talked about the refusal. Said notice speaks about the agreement for additional cost and no refusal of contract. Firstly, if there is no refusal of contract on the part of defendant No.1 then, the plaintiffs have no cause of action to file present suit. Secondly, the defendant No.1 in the said notice had clearly mentioned that he is not only ready to repay the consideration amount but also the compensation. Moreover, the plaintiffs themselves had pleaded that in derogation of their rights, the defendant No.1 has created third party interest over the suit property and had executed joint venture agreement infavour of defendant No.2 and 3. What else is needed to show refusal on the part of defendant No.1. A plain reading of notice dated 07/09/2007 unequivocally reveal that the defendant No.1 refused to perform his part of contract on the basis of agreement for sale. Therefore, I hold that if Part I of Article 54 of the Act is** than also ignored the suit is barred by law of limitation under Part II of Article 54 of the Act. The limitation prescribed in Article 54 of the Act to file suit is three years from the date of refusal. As above mentioned, the defendant No.1 refused to perform the agreement for sale as per the terms and conditions mentioned therein in the year 2007. The suit is required to be filed on or before 2010 however, present suit is filed in the year 2013 which

is beyond the period of limitation. Moreover, there is no explanation put forth by the plaintiffs that why notice dated 05/04/2010 was issued. If the notice dated 05/04/2010 is perused along with notice dated 13/03/2008, it appears that they are identically same and notice dated 05/04/2010 was issued just to bring the suit within limitation. Therefore, considering the above mentioned reasons along with oral and documentary evidence I hold that the suit is barred by law of limitation. Hence, I answer issue No.4 in affirmative.

As to Issue No.3 :

22. PW-1 deposed that the plaintiffs have paid almost of the amount i.e. Rs.9 Lakhs out of Rs.9,50,000/- and only Rs.50,000/- is remained to be paid at the time of conveyance. The DW-1 deposed that since the execution of agreement for sale dated 21/02/1996 to till 2007 the plaintiffs did not ask him to execute conveyance of suit property by accepting Rs.50,000/-. The only condition which was there to execute the conveyance is clearance to encumbrance of Bank, which was cleared in the year 2001. The learned Advocate for the plaintiffs submitted that there was no denial on the part of the defendant No.1 that the plaintiffs were not ready and willing to pay the balance amount.

23. As held in foregoing paragraphs that though the defendant No.1 has cleared the encumbrance of Bank in the year 2001 but said fact is communicated to the plaintiffs and copy of NOC was supplied in the year 2007. It means that the defendant

No.1 has performed his part of contract and now it is for the plaintiffs to get the conveyance done by paying balance consideration amount of Rs.50,000/-. Moreover, said conveyance has to be done within three months from 07/09/2007. It is pertinent to note that the record nowhere reflects that after receipt of notice dated 07/09/2007 the plaintiffs showed their ready and willingness to get the conveyance done by paying balance consideration amount. Even, the notice dated 28/03/2008 issued by the plaintiffs to the defendant No.1 nowhere speaks about their ready and willingness to perform their part of contract. There is not a single whisper which shows that they were willing to perform their part of contract. If really, the plaintiffs were ready and willing to perform their part of contract then they ought to have issued letter or communicated to the defendant No.1 regarding their willingness to pay Rs.50,000/- and get the conveyance done. Moreover, if the plaintiffs were ready and willing to perform their part of contract then they would have deposited Rs.50,000/- in the Court during the pendency of suit and would have shown their bona-fide to perform their part of contract. However, they failed to opt this opportunity. Hence, considering the above mentioned reasons and in absence of any document, cogent and clinching evidence, I hold that the plaintiffs failed to prove that they were ready and willing to perform their part of contract. Hence, I answer issue No.3 in negative.

As to Issue No.5 to 8 :

24. In view of findings recorded to issue No.3 and 4, I hold that the plaintiffs are neither entitled for specific performance of contract nor for declaration and alternative relief of damages and compensation. Hence, I answer issue No.5 to 7 in negative. Thus, issue No.8 is answer accordingly.

ORDER

- 1) Suit is stands dismissed with costs.
- 2) Decree be drawn accordingly.

Place : Pune
Date : 06/12/2021

Sd/-xxx
(S. M. A. Sayyed)
8thJt.Civil Judge Sr.Division, Pune

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment
is same word for word as per original Judgment.

Name of Steno : Mr. K. V. Marathe,
Stenographer (Grade-II)
Court Name : Shri. S. M. A. Sayyed
: 8th Jt.Civil Judge Sr.Div., Pune.
Date of judgement : 06/12/2021
Judgement signed by P.O. On : 10/12/2021
Judgement uploaded on : 10/12/2021