

Presented on : 20-01-2011
Registered on: 25-02-2011
Decided on : 09-04-2015
Duration : Ys. Ms. Ds.
04 02 13

IN THE COURT OF 16th JT. CIVIL JUDGE JUNIOR DIVISION
PUNE AT PUNE

[Presided over by Abhijit R. Solapure]

R. C. S. NO. 276/2011
EXH. NO. 84

- 1- Shobha Satishchandra Sawant
Age: 54 yrs., Occu.: Housework
- 2- Arvind Satishchandra Sawant
Age: 35 yrs., Occu.: Service
- 3- Vivek Satishchandra Sawant
Age: 32 yrs., Occu.: Service
- 4- Surendra Satishchandra Sawant
Age: 30 yrs., Occu.: Service
All R/at 163, Somwar Peth,
Pune – 11.

..... Plaintiffs.

V/s.

- 1- Kaveri Harishchandra Dhadphale (abated)
- 2- Vinayak Harishchandra Dhadphale
Age: 45 yrs., Occu.: Service
Both R/at – Yashwant Sahakari
Gruhrachana Sanstha Ltd.
Hotgi Road, Kumtha Naka
Solapur – 413 003.

- 3- Nandini Harishchandra Ghamende
Age: 40 yrs., Occu.: Housework
R/at – Block No. 10, Bhagyodaya Society,
Behind Ujni Colony, Solapur 413003.
- 4- Somnath Sukhdeo Ghule
Age: 33 yrs., Occu.: Business
- 5- Rahul Sharadchandra Rokade
Age: 36 yrs., Occu.: Business
No. 4 & 5 R/at – Dhanvanti Apartments,
Dhairi, Pune 41.
- 6- M/s. J. K. Developers
Through
Kailas Sahadeo Nimhan
Age: 38 yrs., Occu.: Agri. & Business
R/at – 16 B, Someshwarwadi
Pashan, Pune -8.
- 7- Ashok Dttatraya Kalbhor
Age: 50 yrs., Occu.: Agriculture
R/at – Loni Kalbhor,
Taluka Haveli, District Pune.
- 8- Arvind Sakharam Kanchan
Age: 51 yrs., Occu.: Agriculture
R/at – Uruli Kanchan,
Taluka Haveli, District Pune.

..... Defendants.

Claim : Suit for Specific Performance of Contract.

APPEARANCES:-

Shri. N. M. Thite - Advocate for the plaintiffs.
Shri. S. R. Firodiya - Advocate for defendant No. 6.
Smt. S. V. Rege - Advocate for defendant No. 8.
Exparte against defendants No. 2 to 5, 7 and 8.

J U D G M E N T

[Delivered on 6th April, 2015]

Present suit is for specific performance of agreement.

2. Bereft of unnecessary details, the plaintiff's case, as emanated from the plaint, can be portrayed thus,

Agricultural land bearing Survey No.10 having CTS No.793, totally adm.81-R, out of it an area adm.17-Gunthe at village Pashan within the local limits of Pune Municipal Corporation is the subject matter of the present suit, which is more particularly described in Para 1 of the plaint. It is here-in-after referred to as the suit land. Harishchandra Dhadphale was the original owner of the suit land and it was his ancestral property. Said Harishchandra agreed to sell the suit land to Satishchandra Sawant for the consideration of Rs.17,000/- on 23-08-1980. As such, deceased Harishchandra accepted Rs.5,000/- towards part payment and executed an agreement to sell in favour of deceased Satishchandra. Deceased Harishchandra agreed to take the necessary permission of Collector and to get the land measured for the execution of sale deed. The said sale deed was to be executed within three months of such compliance. But meanwhile, Harichandra, the vendor, and Satishchandra, the purchaser, died. Present plaintiff No.1 is the widow of deceased Harishchandra, while plaintiffs No.2 to 4 are the sons. Defendant No.1 was the widow of deceased Harishchandra, defendant No.2 is his son and defendant No.3 is his daughter. After the death of Harishchandra, defendants No.1 to 3, being the legal representatives, inherited the said property. Deceased Satishchandra and after his death, plaintiffs No.1 to 4 had for time and again requested,

but they were repeatedly told that the compliance was yet to be done. Hence Satishchandra relied on those words. Even after the death of Harishchandra, present defendants No.1 to 3 were asked about the sale deed, but the same reply was given by them. Thereafter, plaintiffs met defendant No.2 in the first week of December 2010 and asked about the sale deed. At that time, defendant No.2 gave evasive reply. When the plaintiffs remained firm on their stand, defendant No.2 asked for enhancing the amount of consideration for execution of sale deed. The plaintiffs consented to enhance the amount of consideration but even then, the defendants did nothing. When the plaintiffs perused the 7/12 extracts, they came to know that defendants No.1 to 3 have executed irrevocable power of attorney in favour of defendants No.4 and 5 on 05-08-2002. Further, defendants No.1 to 5 had executed a power of attorney and deed of development agreement in favour of defendant No.6 on 08-07-2004. Besides defendants No.1 to 6 executed a registered sale deed No.736 in favour of defendants No.7 and 8 for an area 0-H 61-R in the said property on 24-01-2007. Plaintiffs are having right to purchase the suit land and sale deed executed in favour of defendants No.7 and 8 is not in accordance with law. As defendants No.1 to 3 declined to perform their part on 07-12-2010, the plaintiffs were constrained to file a present suit.

3. Defendant No.1 is reported dead and my Learned Predecessor passed an order to that effect on 17-10-2011.

4. Defendants No.2 to 5 and 7 failed to appear, though were duly served with the suit summons. Hence, the suit is proceeding exparte

against them by order of my Learned Predecessor on 02-06-2011 and 17-10-2011.

5. The matter initially proceeded ex-parte against defendant No.6. But, defendant No.6 filed application Ex.33 and as per that order he was permitted to file appearance and written statement. The written statement is at Ex.35 and this defendant strongly objected the claim. This defendant denied that Harishchandra Dhadphale had executed any such agreement in favour of Satishchandra on 23-08-1980 or at any time. He came up with contentions that the suit is barred by law of limitation. The plaintiffs are sleeping over their alleged rights for more than 31 years and this fact dis-entitled them from claiming the equitable and discretionary relief of specific performance. Harishchandra left behind widow defendant No.1, son defendant No.2 and daughter defendant No.3. Meanwhile, defendant No.1 also died. So, whole suit is abated. The plaintiffs have filed the present suit only to extract money from these defendants. Defendants No.1 to 3 have executed deed of development and power of attorney in favour of defendants No.4 and 5 on 05-08-2002 in respect of whole area adm.0-H 81-R. Defendants No.4 and 5 had published a notice in newspaper 'Lokmat' on 01-09-2002 before the execution of those documents. Defendants No.4 and 5 did not receive any objection after the said notice. Defendants No.1 to 3 had handed over the possession of the said area to defendants No.4 and 5. Thereafter, defendants No.1 to 5 executed development agreement and power of attorney in respect of the whole land in favour of defendant No.6 on 08-07-2004. Present defendants No.1 to 3 never disclosed any such transaction in between Harishchandra and Satishchandra to these

defendants at any point of time. So, defendant No.6 is a bonafide purchaser for value without notice. Plaintiffs and their ancestor Satishchandra were and are well acquainted with this developments. Thereafter, defendant No.6 has executed the sale deed of area adm.61-R in favour of defendants No.7 and 8 and has also handed over the possession. The names of defendants No.7 and 8 are entered into the revenue records. So now, the plaintiffs cannot seek the reliefs. Hence, the suit be dismissed with costs.

6. Defendant No.8 did not appear and the matter was proceeding exparte against him. But meanwhile, he filed application Ex.48 and Ex.49 and as per that order, his written statement is taken on record at Ex.50. This defendant also vehemently objected the claim of the plaintiffs. He rhymed in the words of defendant No.6 and took similar objections to the suit. He also pleaded that he is a bonafide purchaser for value without notice and prayed for dismissal of the suit.

7. This Court framed issues at Ex.37. Those issues are reproduced below along-with my findings thereon for the reasons recorded are as under,

ISSUES

FINDINGS

- 1 Whether plaintiffs prove that deceased Harishchandra Dhadphale had executed an agreement to sell in respect of suit land in favour of deceased Satishchandra Sawant on 23-08-1980 ?

In the affirmative.

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|----|--|---------------------|
| 2 | Whether they proved that deceased Satishchandra Sawant had paid Rs.5,000/- towards part payment of the consideration to deceased Harishchandra Dhadphale ? | In the affirmative. |
| 3 | Whether the plaintiffs prove that they and their ancestor Satishchandra Sawant were and are ready and willing to perform their part of contract ? | In the negative. |
| 4 | Whether the plaintiffs are entitled to the specific performance of the contract as prayed ? | In the negative. |
| 5 | Whether the suit is barred by law of limitation ? | In the affirmative. |
| 6 | Whether defendant No.6 is the bonafide purchaser for value without notice ? | In the affirmative. |
| 6A | Whether defendant No. 8 is bonafide purchaser for value without notice ? | In the affirmative. |
| 7 | Whether the defendant No. 6 is entitled to compensatory costs as prayed ? | In the negative. |
| 8 | What Order and Decree ? | Suit is dismissed. |

REASONS

8. Plaintiffs have examined plaintiff No.1 Shobha Sawant at Ex.25 and Dattatraya Gawade at Ex.30. Plaintiffs are further relying upon the 7/12 Extract (Ex.32 & Ex.35), Death Certificate (Ex.33), Agreement to sell (Ex.36), Map (Ex.37), Mutation Entry (Ex.39), Certified Copies of the Proceedings before the Revenue Tribunal (Ex.84

to Ex.86, Ex.91). Defendant No.6 Kailas examined himself at Ex.62. Defendant No.8 Arvind examined himself at Ex.72. These defendants are relying upon Original Deed of Development (Ex.65), Power of Attorney (Ex.66), Newspaper (Ex.67), Copy of Sale Deed (Ex.56), Copy of Notification (Ex.75).

9. I have heard Learned Advocate Shri. N. M. Thite for the plaintiffs, Learned Advocate Mr. S. R. Firodiya for defendant No.6 and Learned Advocate Smt.Rege for defendant No.8 at length. None present from and on behalf of the rest of the defendants.

AS TO ISSUES NO. 1 AND 2 :-

10. Issue No.1 relates to the execution of agreement to sell in between deceased Harishchandra and Satishchandra, while issue No.2 is about the payment of Rs.5,000/- as part consideration.

11. Plaintiffs came up with averments that the suit land was the ancestral property of deceased Harishchandra and he agreed to sell the same to deceased Satishchandra for the consideration of Rs.17,000/-. He executed an agreement to sell in furtherance of that transaction and deceased Satishchandra paid an amount of Rs.5,000/- as part payment of the consideration. Plaintiffs are the legal representatives of deceased Satishchandra, the intended purchaser. Plaintiff No.1 is the widow, while plaintiffs No.2 to 4 are the sons. Defendant No.1 was the widow of deceased Harishchandra, while defendants No.2 and 3 are the son and daughter respectively of Harishchandra.

12. If we peruse the rival pleadings, there is no dispute about the relationship in between plaintiffs and deceased Satishchandra vis-a-vis defendants No.1 to 3 and deceased Harishchandra. So, there is no need to ponder over that aspect. It is also clear that deceased Harishchandra was the owner of the land bearing Survey No.10 having CTS No.793, totally adm.81-R, which also includes the suit land. Now, this Court will have to see as to whether any such agreement was actually executed by deceased Harishchandra in favour of deceased Satishchandra.

13. Present plaintiffs have filed original agreement to sell at Ex.36. It goes to show that deceased Harishchandra agreed to sell an area adm.17 Gunthe out of Survey No.10 at village Pashan to deceased Satishchandra on 23-08-1980. The agreement also provides the consideration amount of Rs.17,000/- and states that deceased Harishchandra received an amount of Rs.5,000/- out of the same. The agreement purportedly bears the signature of deceased Harishchandra Dhadphale and those of witnesses Nandkumar Lonkar and Dattatraya Gawade.

14. To substantiate the claim and to prove the document, plaintiffs have examined plaintiff No.1 Shobha Sawant at Ex.25. She has filed affidavit in lieu of her examination in chief and has reiterated all the averments in the plaint. She affirmed that she was present at the time of execution of that agreement in between Harishchandra and Satishchandra. So, she was cross examined by defendants No.6 and 8 at length. Her cross examination goes to show that she is not having any

evidence to prove her presence at the time of execution of that document. Admittedly, she is not a party and signatory to that agreement (Ex.36). So, this witness i.e. plaintiff No.1 Shobha is not competent to depose and or to prove the contents in that agreement.

15. So, the plaintiffs further examined Dattatraya Laxman Gawade at Ex.30. He deposed that deceased Satishchandra was his cousin and he also knew Harishchandra Dhadphale. He had been to Harishchandra with Satishchandra in relation to talks about the land bearing Survey No.10. At that time, Satishchandra agreed to purchase 17-Gunthe in Survey No.10 from Harishchandra and as such the agreement was executed by paying Rs.5,000/-. He also identified the document of agreement to sell (Ex.36) to be the same and affirmed that transaction and his signature thereon along-with others.

16. Defendants No.6 and 8 came down heavily on this witness. They submitted that the witness is not competent and he does not know anything about the transaction. So, the witness cannot prove the said document. This witness was thoroughly cross examined by these defendants. Indeed, he was not able to reiterate the day and date on which he had been to the place of Harishchandra. He was not able to state, whether the suit land was within the local limits of Pune Municipal Corporation. But still, this witness did deny all the material suggestions in respect of his presence at the time of transaction and at the time of the execution of agreement (Ex.36).

17. Agreement (Ex.36) was executed way back on 23-08-1980. This witness Gawade (Ex.30) is merely an attesting witness to that

document. Further, a person is not expected to have a photographic memory and he cannot be expected to explain each and every details took place prior to 34 years. If at all, he states any such details, the defendants will attack him branding him to be tutored and or a puppet. PW-2 Gawade (Ex.30) has identified his signatures and that of executor deceased Harishchandra. He has thoroughly set out the broad facts, which took place in between Satishchandra and Harishchandra.

18. The absence of minute details and inability to state the same after 34 years cannot be a ground to throw away the evidence of this witness. The defendants will have to exert more to create a suspicion about the trustworthiness of this witness. Indeed, PW-2 Gawade (Ex.30) is closely related to deceased Satishchandra and present plaintiffs. But, again this cannot be a ground to ouster him, when he clearly identifies and underlines his presence at the time of execution. Normally, a person purchasing a land and entering into agreement, will take his close ones with him. So, the close relations will not be a hurdle to pass the test of trustworthiness.

19. Defendants did get an opportunity to wipe out the evidence of this witness by impeaching his credit. But, if at all the whole cross examination is perused, the defendants were not able to wipe out the evidence of this witness in relation to the execution of the agreement (Ex.36). So, PW-2 Gawade (Ex.30) proves his competence and his presence at the time of that agreement and transaction. He also satisfactorily proves that deceased Harishchandra agreed to sell the suit land to deceased Satishchandra for the consideration of Rs.17,000/-.

Resultantly, PW-2 Gawade (Ex.30) successfully proves the execution of agreement (Ex.36) and the contents therein.

20. So, the agreement to sell (Ex.36) stands proved. It is established that deceased Harishchandra executed the said agreement to sell in relation to the suit land in favour of deceased Satishchandra on 23-08-1980 by accepting part payment of Rs.5,000/-. Besides, it has to be kept in mind that defendants No.2, 3, the legal representatives of deceased Harishchandra, did not turn up to Court and did not deny the existence of that agreement (Ex.36). Indeed, defendants No.6 and 8 have entered into the shoes of defendants No.2 and 3 and they can deny the execution and existence of such document.

21. Still, there are certain inherent disabilities of defendants No.6 and 8 and their objection cannot go beyond certain extent. Those limitations are personal and legal. These defendants are not related to the family of deceased Harishchandra and they are just purchasers of some portion of the land. So, their denial will not be of much consequence in the absence of defendants No.2 and 3 and when the plaintiffs prove the execution. Learned Advocate for defendant No.8 drew my attention towards the agreement (Ex.36) and the anomalies therein.

22. She pointed towards certain scratching and erasion in the end of that agreement (Ex.36). The whole document does not bear any overwriting. But at the end, near the names of attesting witnesses, one name was typed and it has been subsequently removed by overwriting. However, such single instance that too at such place, which does not

make any change in the crucial contents, will not create any doubt about the truthfulness of that document. So, that instance of overwriting and the objection in that regard is not sustainable.

23. Learned Advocate for defendants also contended that the agreement (Ex.36) does not bear the signature of deceased Satischandra, so it is not valid. Again, I do not find any water in these submissions. The signatures of deceased Harishchandra, who is the executor and vendor are very much important. Absence of signature of Satishchandra will not make any consequence, unless and until it is shown that Satishchandra had no intention to execute such document. Such is not the case of the present defendants.

24. Defendants also contended that the plaintiffs have not examined the scribe of the said agreement (Ex.36). The document goes to show that one Dnyaneshwar Panse is scribe to the said agreement. Admittedly, he is not examined in this matter. But, absence of his evidence will not make any difference. The role of scribe is very limited in nature. He is just writer of that document and may or may not know the parties and the contents. Herein, plaintiffs have already examined PW-2 Gawade (Ex.30), who has sufficiently proved the document. So, only because the scribe is not examined, it will not hamper the case of plaintiffs.

25. The discussion here in before goes to show that plaintiffs prove the execution of agreement by deceased Harishchandra in favour of deceased Satishchandra relating to the suit land on 23-08-1980. They also prove payment of Rs.5,000/- by Satishchandra to Harishchandra as

part consideration. Hence, I answer the issues accordingly in the affirmative.

AS TO ISSUE NO. 3 :-

26. This issue deals with one crucial aspect about continuous readiness and willingness of deceased Satishchandra and thereafter of the present plaintiffs.

27. The law of specific relief permits a contracting party to approach the Court and require other party to perform its side of bargain. The basis lies in equity, as the contracts create legally binding relationships and thus a party cannot sit idly by and refuse to perform its obligation. The approach of the Court is founded on equity and it requires the plaintiff to establish that the matter, being pursued, is not a stale claim. The plaintiffs are required to show their own readiness and willingness to perform their side of obligations and then only the Court would require defendants to act. The distinction between readiness and willingness is that the former refers to financial capacity and the latter to the conduct of the plaintiffs wanting performance. Such readiness and willingness to perform has to be determined and ascertained from the conduct of the parties. Reliance can be had upon the ratio laid down by Hon'ble Supreme Court in the case of **J. P. Builders and another V/s. A Ramadas Rao and another** reported in **(2011)1 SCC 429** and in the case of **Azhar Sultana V/s. B. Rajamani** and others reported in **AIR 2009 SC 2157**.

28. Plaintiffs averred that Satishchandra in his lifetime was pursuing the matter with Harishchandra. Record goes to show that

Harishchandra died in year 1996. The plaintiffs further averred that Satishchandra thereafter came in touch with defendants No.1 to 3 and asked for the performance. However, he had to face repetitive answers. Satishchandra died on 16-02-2005. Thereafter, these plaintiffs pursued the matter with defendants No.1 to 3 and requested for time and again. However, their requests fell on deaf ears. They were frequently told that yet the required permission has not been taken and measurement is not done. But finally, in the first week of December 2010, defendants No.1 to 3 asked for raise in the consideration and denied the performance even after that acceptance.

29. So far, the plaintiffs are burdened to prove the readiness and willingness not only of Satishchandra but also of themselves. So, when the agreement took place on 23-08-1980, the plaintiffs must prove continuous readiness and willing on their part. For that purpose, we will have to turn to the agreement to sell (Ex.36). Agreement states that deceased Harishchandra agreed to take permission of District Collector and also agreed to measure the suit land. Deceased Satishchandra had paid Rs.5,000/- and he was to pay remaining Rs.12,000/- at the time of execution of sale deed.

30. Learned Advocate for the plaintiffs argued that deceased Satishchandra and thereafter plaintiffs had nothing to do in the said agreement. The primary part was on the shoulders of deceased Harishchandra. Unless and until, the required permission of District Collector is taken and measurement is done, the sale deed could not be completed. The plaintiffs also stated that they were and they are ready

to pay the remaining consideration and get the sale deed executed. Plaintiffs have examined plaintiff No.1 Shobha Sawant at Ex.25 and PW-2 Dattatraya Gawade at Ex.30. So far, the role of PW-2 Gawade (Ex.30) is very much limited. He is the attesting witness on the agreement (Ex.36). So, his evidence will not be of much help to ascertain the continuous readiness and willingness of deceased Harishchandra and thereafter of the present plaintiffs. So, there remains the evidence of plaintiff No.1 Shobha only to gather this aspect.

31. As discussed earlier, plaintiff No.1 Shobha has reiterated all the averments in the plaint by way of affidavit in lieu of examination in chief. So far, if the averments in the plaint are thoroughly perused, they are very much vague. It has to be kept in mind that agreement to sell (Ex.36) was executed on 23-08-1980 and the suit came to be filed on 20-01-2011. So, the plaintiffs will have to show the details of these 31 years and their active role in completing the said contract. But, the averments are very much silent as to when deceased Satishchandra approached Harishchandra for completion of the terms and conditions.

32. So far, the plaintiffs cannot waive their obligation and sit idle for decades together by saying that they have no part to play in the said agreement. The plaintiffs must be active enough to bring the agreement to a plausible conclusion and to end the uncertainty. Such agreements cannot be kept lingering for years together. Indeed, the agreement to sell (Ex.36) does not cast deceased Satishchandra with any responsibility. He is to just pay the remaining amount and get the sale deed executed. But, every contract puts inherent responsibility on both the parties to take it to conclusion.

33. So far, the long drawn period in between the agreement and the suit puts extra burden on the plaintiffs to prove this aspect. As discussed earlier, the pleadings are as vague as they can be. They do not show any kind of details as to when deceased Satishchandra and thereafter present plaintiffs approached Harishchandra and defendants No.1 to 3. The averments also do not disclose as to why deceased Satishchandra and thereafter present plaintiffs were sitting on the agreement to sell (Ex.36), when deceased Harishchandra and defendants No.1 to 3 were not in a mood to perform their part of contract.

34. In such circumstances, deceased Satishchandra and plaintiffs should have played a proactive role, so as to bring the contract to a probable conclusion. If at all, deceased Harishchandra and defendants No.1 to 3 were giving evasive answers to their questions, then it was for them to take effective steps to compel deceased Harishchandra and thereafter these defendants No.1 to 3 to perform their part. But, nothing of this sort has been done by the plaintiffs and it is very much clear that the plaintiffs were taking a long rest for a period of 30 years.

35. The vagueness in the pleadings of the plaintiffs is equally carried in their evidence. Plaintiff No.1 Shobha (Ex.25) satisfied herself only by reiterating the contents in the plaint. She had a great opportunity to explain the circumstances taken place over 30 years and their inability to take coercive steps against the errant defendants. But, the plaintiffs missed this train. This witness plaintiff No.1 did not bother to elaborate these circumstances running over 30 years. So, the evidence

is also vague and superficial. She was thoroughly cross examined by defendants No.6 and 8.

36. Plaintiff No.1 Shobha did admit that her husband Satishchandra never asked in writing to Harishchandra about the permission and the measurement. Her husband did not file any suit to get the sale deed executed. Even, she did not ask the defendants No.1 to 3 to perform their part of contract. There is absolute want of any written communication in between Satishchandra and Harishchandra and in between plaintiffs and defendants No.1 to 3. This aspect goes to show a clear inaction on the part of deceased Satishchandra and the present plaintiffs.

37. This inaction cannot be ignored and rather it becomes grave and serious, when deceased Satishchandra was involved in various land dealings followed by plaintiff No.1 Shobha as well. The evidence goes to show that deceased Satishchandra and thereafter present plaintiff No.1 Shobha are land dealers. This profession of theirs put them in a peculiar situation. So, deceased Satishchandra and present plaintiff No.1 cannot be put on the footings of a layman or a rustic villager. On the contrary, Satishchandra and plaintiff No.1 Shobha will be knowing the essence of the transaction in immovable property.

38. So, the plaintiffs cannot be treated as the persons having little knowledge of land dealings. But, they are well conversant with the minute details and requirements. Deceased Satishchandra and the plaintiffs also know the effects of delay and default in such transactions of immovable property. So, it requires that deceased Satishchandra and

thereafter the present plaintiffs should be more vigilant about the agreement (Ex.36) and its probable conclusion. But, there are no apparent efforts on record and the evidence fails substantially.

39. Plaintiffs cannot run away from the responsibility and cannot come with vague averments that they were pursuing the matters orally for over 30 years. Learned Advocate for defendant No.8 rightly stated that the readiness and willingness of the plaintiffs appears to be secrete emotions, which are not known to deceased Harishchandra and thereafter defendants No.1 to 3. Further the ignorance of these plaintiffs is apparent on the face of record. The suit is filed against defendants No.1 to 8. Suit summons were issued to defendants No.1 and 2 on their given address at Solapur vide Ex.6. Report goes to show that defendant No.1 died on 22-01-2009.

40. Ironically, the plaintiffs averred that they approached the defendants No.1 to 3 in the first week of December 2010 and had to face denial. If at all, the plaintiffs actually approached these defendants in December 2010, they should have rather must have known the death of defendant No.1. But, the plaintiffs still came up with a suit against defendant No.1, who died two years before filing the present suit. This anomaly clearly goes to show fallacy in the averments of the plaintiffs that they were continuously approaching the defendants and seeking the performance.

41. The discussion draws me to only conclusion that plaintiffs miserably failed to prove the continuous readiness and willingness on

the part of deceased Satishchandra and on their part as well. Hence, I answer the issues accordingly in the negative.

AS TO ISSUE NO. 5 :-

42. This issue deals with another crucial objection relating to the period of limitation.

43. Defendants No.6 and 8 filed their respective written statement and took strong exception to the averments and the claim. They came up with contentions that there was no any such agreement in between deceased Satishchandra and Harishchandra. Even if, there was such agreement in year 1980, the suit filed in year 2011 is hopelessly time barred. However, Learned Advocate for the plaintiff submitted that there are specific pleadings about how the suit is within the period of limitation. Plaintiffs were proceeding with the transaction diligently and the suit is perfectly within limitation.

44. So far, the objection about the existence and execution of agreement to sell (Ex.36) does not survive in view of earlier discussion. The plaintiffs proved the execution of that agreement. If the said agreement is given a look, it has been executed on 23-08-1980 and present suit came to be filed on 20-01-2011. So far, there is a period of 31 years in between this and it has to stand to the test of limitation. Both the parties are relying upon Article 54 of the Limitation Act, which lays down a period of 3 years from the date fixed for performance and if no such date is fixed, when the plaintiff has notice that performance is refused. The agreement (Ex.36) does not lay down any specific time

frame and it binds the parties to execute the sale deed within three months of the compliance.

45. Plaintiffs came up with averments that their ancestor Satishchandra was diligently pursuing the matter with deceased Harishchandra and thereafter with defendants No. 1 to 3. But, they used to give evasive replies and were doing nothing. Plaintiff No.1 Shobha reiterated these aspects by way of her affidavit in lieu of examination in chief at Ex.25. She was thoroughly cross examined by these defendants. She did admit that deceased Satishchandra never asked in writing to deceased Harishchandra about the permission and measurement. Not only this, she further added that she also did not ask about these important factors to defendants No. 1 to 3 in writing.

46. The agreement (Ex.36) is for sale of the immovable property. It is very much clear that time is not essence in such type of contract for immovable property. But, this principle cannot be stretched too far and it has to be applied judiciously. Indeed, as per the agreement (Ex.36), deceased Satishchandra and thereafter present plaintiffs had only a role to pay the remaining amount of consideration. Deceased Harishchandra was to take necessary permission and get the land measured. The sale deed was to be executed within three months of this compliance.

47. These stipulations do not burden deceased Satishchandra and the plaintiffs. But, in every agreement parties are saddled with responsibility to avoid laches. Present agreement (Ex.36) also carries the said inherent condition, though may not be express, but still, it is

implied. Herein, the plaintiffs went on and on to take the shelter of evasive replies given by deceased Harishchandra and present defendants No. 1 to 3 for 30 years. But, in December 2010, these defendants allegedly asked for enhanced consideration and denied to perform. But this aspect of denial is as vague as those of vague replies. Further there is little evidence to show that plaintiffs met the defendants in December 2010 and had to face the demand of rise in price. These submissions are not at all substantiated by the plaintiffs by leading cogent evidence. As much vague evidence indeed has been laid by the plaintiffs, which will have no consequence on the outcome.

48. For the sake of arguments, if it is taken to be true that deceased Harishchandra and present defendants No.1 to 3 were giving evasive replies as stated, then such first evasive reply will have to be considered as refusal to perform. Admittedly, deceased Harishchandra died on 17-03-1996. If Harishchandra was giving such evasive replies, then the suit should have been filed in his life time itself, but that was not to happen. The agreement (Ex.36) does not lay down any time frame within which it is to be performed. But, absence of such time frame does not entitle the parties to sit on the terms and agreement for years together and in this matter for decades together. The averments of the plaintiffs and the evidence on record goes to show that deceased Harishchandra had shown his reluctance and unwillingness to perform his part in his life time only. So, the refusal starts way back even before the death of Harishchandra i.e. before 17-03-1996. But, the suit came to be filed on 20-01-2011. Neither deceased Satishchandra nor the plaintiffs did take any efforts for performance, though there was implied

denial. So, the present suit is hopelessly time barred. Hence I answer the issue accordingly in the affirmative.

AS TO ISSUES NO. 6 AND 6A :-

49. Defendants No.6 and 8 filed their respective written statements and averred that they are bonafide purchaser for value without notice. Both these issues deal with these aspects and they are taken for discussion together.

50. Section 19(b) of the Specific Relief Act affords protection to a subsequent purchaser who purchases the property in good faith and for value without notice of original contract. The onus of proof is upon the subsequent purchaser who takes the plea. The averments of the defendants No.6 and 8 go to show that defendants No.1 to 3 executed registered power of attorney and development agreement in favour of defendants No.4 and 5 on 05-08-2002 in respect of whole land Survey No. 10, which includes the suit land. Thereafter, defendants No.1 to 5 collectively executed registered power of attorney and development agreement in favour of defendant No.6 on 08-07-2004. Defendant No.6 further executed registered sale deed of area adm.0-H 61-R in Survey No.10 in favour of defendants No.7 and 8 on 24-01-2007.

51. So far, these subsequent execution of documents in between the defendants is not disputed by the plaintiffs at any point of time. On the contrary, the plaintiffs impleaded these defendants for getting the sale deed executed from all of them. Defendant No.6 has filed the registered development agreement at Ex.65 and power of attorney at Ex.66. It is evident that present defendants No.4 and 5 executed these

two documents in favour of defendant No.6 in respect of the same land for valuable consideration. These documents are executed on 08-07-2004 and they are registered. Defendant No.6 Kailas (Ex.62) has reiterated the execution of these documents and that has not been disputed. Defendant No.6 has also produced the original newspaper Daily Lokmat dated 01-09-2002 in which notice was published before executing documents. This aspect is not denied by the plaintiffs during the course of cross-examination.

52. Defendant No.8 produced the certified copy of the registered sale deed dt.24-01-2007 and it is executed by defendant No.6 as a power of attorney of defendants No.1 to 5. So far, defendants No.1 to 5 have not objected the execution of the document so also the plaintiffs. Defendant No.8 Arvind examined himself at Ex.72 and proved the execution of this document. Now, it will have to be seen, whether defendants No.6 and 8 are the bonafide purchasers for value without notice.

53. Both these defendants have averred these aspects and also reiterated the same in their evidence. They were thoroughly cross examined by the plaintiffs in this respects. But, there is nothing on record, which will show that they had any knowledge about the existence of agreement to sell (Ex.36) and or the transaction in between deceased Satishchandra and Harishchandra. It has to be kept in mind that agreement to sell (Ex.36) is not a registered document. So, these defendants had no any occasion to ascertain the existence of this transaction and agreement.

54. Indeed, the plaintiffs did suggest that these defendants had knowledge of the transaction, but it has been vehemently denied. The plaintiff's focus of cross examination was more on the aspect of possession of these defendants. So, these submissions of the defendants that they are bonafide purchasers for value without notice of the agreement (Ex.36) and the transaction are cogent and believable. There is nothing on record, which will show that these defendants could have the knowledge of the transaction and they still proceeded with the same.

55. Admittedly, there is no mention of agreement (Ex.36) in the revenue records of the suit land. These transaction in between defendants started in year 2002 till year 2007. Agreement (Ex.36) was executed in year 1980 and these defendants had remote opportunities to get the knowledge about this transaction. These statements of the defendants are trustworthy and are probable in the eyes of law. However, learned advocate for the plaintiffs took another objection to the bonafides. He relied upon the documents at Ex.84 to Ex.86, Ex.91 and Ex.92 and argued that though the sale deed was executed, defendants No.6 and 8 did not get possession. So there is absolute want of bonafides due to lack of possession. He relied upon the ratio laid down by Hon'ble Supreme Court in the unreported case of **R.K. Mohammed Ubaidullah & others vs. Hajee C. Abdul Wahab & others decided on 18-07-2000** and of Hon'ble Bombay High Court in the case of **Laxman Sakharam Salvi and others vs. Balkrishna Balvant Ghatage** reported in **AIR 1995 Bom 190**. He also questioned the sale deed (Ex.56) as insufficiently stamped.

56. So far the lack of sufficient stamp duty on the sale deed (Ex.56) is concerned, the objection is not tenable. The document is registered and the concerned authority has certified it. Indeed this Court is having authority to look in the same, but the objection was not taken at the proper time. It is taken at the fag end of the arguments and is after thought. Even otherwise if the objection is taken to be true now for the sake of arguments, then also the document can not be thrown out as it is already taken in evidence and has been exhibited. The assumptions and presumptions, about the stamp duty and valuation of the sale deed, so drawn by the plaintiffs are on thee wrong premises and can not be accepted.

57. Plaintiffs are much pondering over the issue of possession of defendants No.6 and 8 to challenge the bonafides of these defendants. It has to be kept in mind that the knowledge of defendants No.6 and 8 is to be ascertained about the agreement (Ex.36) before their transaction or their reasonable efforts. It is already evident that the defendants No.6 and 8 had no such knowledge. Now, the reliance on documents at Ex.84 to Ex.86, Ex.91 and Ex.92 are placed. Those document relate some dispute of tenancy and these defendants are party to the same. That dispute does not anywhere makes out the factum of existence of agreement (Ex.36) and or of the transaction in the parties. So also the ratio in the cases cited supra on which plaintiffs intend to rely are of peculiar circumstances. The factual aspects are totally different and they do not match the case at hand. So those ratios are not available to the plaintiffs.

58. Even if for the sake of arguments, it is held that defendants No.6 and 8 did not get possession, it will not hamper their case at least in respect of deceased Satishchandra and the plaintiffs. It is not the case that deceased Satishchandra and or plaintiffs are or were in possession so as to give a notice of their rights to the defendants No.6 and 8. So, hue and cry about their possession is uncalled for. So, I do find that defendants No. 6 and 8 are bonafide purchaser for value without notice. Hence, I answer the issues accordingly in the affirmative.

AS TO ISSUES NO. 4 AND 7 :-

59. Issue No.4 deals with the entitlement of the plaintiffs to specific performance and issue No.7 deals with the defendant No.6 to compensatory costs.

60. Plaintiffs did prove that deceased Harishchandra had executed the said agreement to sell (Ex.62) in favour of deceased Satishchandra on 23-08-1980 for the suit land. They also proved payment of part consideration of Rs.5,000/-. But, they failed to prove the continuous readiness and willingness on the part of deceased Harishchandra and of themselves also. Continuous readiness and willingness is a condition precedent for grant of the relief of specific performance as held by Hon'ble Supreme Court in the case of N.P. Thirugnanam (Dead) by Lrs. V/s. Dr. R. Jagan Mohan Rao and others reported in (1995)5 Supreme Court Cases 115. This Court also held that the suit is barred by law of limitation. So, the plaintiffs are not entitled to the specific performance.

61. While objecting the claim, defendant No.6 came up with objection that as defendant No.1 died and in view of the order dt.17-10-2011, the whole suit is abated. He relied upon the ratio laid down by Hon'ble Supreme Court in the case of Zilla Singh and another V/s. Chandgi and others reported in AIR 1991 Supreme Court 263. He also relied upon the ratio laid down by Hon'ble Bombay High Court in the case of Krashnabai Parashram Vaidya and others V/s. Shaikh Yusuf Hasan Khatik and others reported in 2011(2) Mh. L. J. 803 and in the case of Gajanan s/o. Namdeo Kale V/s. Sakhubai w/o. Bhimaji Kharat (died) and others reported in 2012(4) Mh. L. J. 470. He also cited the ratio of Hon'ble Andhra Pradesh High Court in the case of Puvvada Chiranjeeva Rao V/s. Busi Koteshwara Rao reported in AIR 2012 Andhra Pradesh 17.

62. I have gone through all these ratios. The facts in these case are peculiar. It is very much clear that defendant No.1 died on 22-01-2009 i.e. even prior to filing the present suit. So, the suit was necessarily against a dead person and it is not maintainable. My Learned Predecessor passed order of abatement dt.17-10-2011. So far, the abatement will take place if the party died pending the suit and when the legal representatives are not taken on record. Present matter is not the same case. So, the question of abatement does not arise. Now, the name of defendant No.1 has been deleted and her legal representatives are already on record from the date of suit. So, the exercise of defendant No.6 to state that the suit is abated is futile and does hold any water. So with due respect, the said ratio are not applicable to the case at hand.

63. Defendant No.6 has branded this suit as false and vexatious and attempt to extract money. So far, the plaintiffs did establish the execution of agreement, but failed in other crucial aspects. So, the suit cannot be said to be false and vexatious. Hence, defendant No.6 is not entitled to any such compensatory costs. So I proceed to answer both the issues in the negative.

AS TO ISSUE NO.8 :-

64. In view of my findings over the crucial issues, the suit needs to be dismissed. The costs shall follow the cause. Hence, the order follows,

ORDER

1. The suit is dismissed with costs.
2. Decree be drawn up accordingly.

(Dictated and pronounced in Open Court)

Date:-09-04-2015.

(Abhijit R. Solapure)
16th Jt. Civil Judge Junior Division,
Pune.

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

Name of the Court :- Shri. Abhijit R. Solapure
16th Jt. Civil Judge J. D., Pune.

Name of the Steno :- Smt. U. S. More.
Stenographer (L.G.)

Date of Judgment :- 09-04-2015.

Judgment signed by
presiding Officer on :- 24-04-2015

Judgment uploaded on :- 24-04-2015