

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17th DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

REGULAR SECOND APPEAL NO.71/2021 (SP)

BETWEEN:

1 . SMT. PARVATHI ASHOK
W/O SRI. S.V. ASHOK
AGED ABOUT 56 YEARS
R/AT NO.125, 6TH CROSS
BAPUJI LAYOUT
VIJAYANAGARA
BENGALURU - 560 040.

... APPELLANT

(BY SRI. PRADEEP NAIK K., ADVOCATE)

AND:

1 . M/S. ROYAL ENCLAVE
A REGISTERED PARTNERSHIP FIRM
HAVING ITS BUSINESS OFFICE
AT D.NO.895/1,
SKANDA, 14TH CROSS
MAHALAKSHMI LAYOUT,
BENGALURU - 560 086
REPRESENTED BY ITS PARTNERS
(a) MR. V. BHASKER REDDY
(b) MR. T.R. REDDY.

2 . MR. V. BHASKER REDDY
PARTNER OF M/S. ROYAL ENCLAVE
S/O SRI BALAVENKATA REDDY

- 3 . MR. T.R. REDDY
PARTNER OF M/S. ROYAL ENCLAVE
R/AT D.NO.895/1
SKANDA, 14TH CROSS
MAHALAKSHMI LAYOUT
BENGALURU - 560 086.
- 4 . MR. U. VENKATA REDDY
S/O RAMIREDDY
AGED ABOUT 38 YEARS
R/AT NO.717, 2ND FLOOR
POORNESHASHI COMPLEX
MODI HOSPITAL ROAD
BENGALURU - 560 086.
- 5 . SRI. K.N. ANIL BABU
S/O LATE K. NARASIMHA MURTHY
AGED ABOUT 60 YEARS
R/AT NO.448, 7TH MAIN
1ST STAGE, HEBBAL
MYSURU - 570 016.
- 6 . SRI. GOVINDRAJ VAMAN RAYABAGI
S/O SRI. V.G.RAYABAGI
AGED ABOUT 44 YEARS,
R/AT NO.614, 12TH CROSS,
DR.SHIVARAM KARANTH NAGAR
BENGALURU - 560 077.
- 7 . SRI. S.M. KARIAPPA
S/O SRI. S.G. MUTHAPPA
AGED ABOUT 50 YEARS,
R/O NAPOKKLU VILLAGE AND POST
KODAGU DISTRICT - 571 214. ... RESPONDENTS

(BY SRI Y.V.PRAKASH & SRI VRATHIN N.K. ADVOCATES FOR R7;
VIDE ORDER DATED 03.06.2025,
NOTICE TO R1 TO R6 DISPENSED WITH)

THIS R.S.A. IS FILED UNDER SECTION 100 READ WITH ORDER XLII RULE 1 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 21.09.2020 PASSED IN R.A.NO.143/2018 ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, MYSURU, ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT AND DECREE DATED 16.03.2018 PASSED IN O.S.NO.158/2013 ON THE FILE OF THE III ADDITIONAL SENIOR CIVIL JUDGE, MYSURU.

THIS R.S.A. HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 09.10.2025 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE H.P.SANDESH

CAV JUDGMENT

1. Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. The second appeal is filed against the divergent finding of the Courts below. At the first instance, the relief of specific performance is granted in O.S.No.158/2013 directing the defendants to execute the sale deed and in the first appeal in R.A.No.143/2018, the Appellate Court

reversed the said judgment of Trial Court and directed to refund the earnest money of Rs.2,00,500/- with 6% interest per annum.

3. The factual matrix of case of the plaintiff/appellant before the Trial Court while seeking the relief of specific performance, it is contended that defendant Nos.1 to 3 have agreed to sell the suit schedule property for a total sale consideration of Rs.8,02,000/- and executed a registered sale agreement on 17.02.2010 in favour of the plaintiff by receiving an advance amount of Rs.2,00,500. It is also the contention of the plaintiff that she was always ready and willing to perform her part of contract and inspite of request, defendants did not come forward to execute the sale deed. It is contended that defendant Nos.1 to 3 through defendant No.4 have executed the sale deed in favour of defendant Nos.5 to 7 and the same came to the knowledge of the plaintiff on a verification with the Sub-registrar and immediately filed a suit for the relief of

specific performance and hence plaintiff is entitled for the relief of specific performance. It is also contended that sale deeds executed by defendant Nos.1 to 3 in favour of defendant Nos.5 to 7 respectively on 04.02.2012, 06.08.2010 and 27.11.2010 are null and void and not binding on the plaintiff. The defendant Nos.5 and 7 have filed their written statement contending that they have purchased the property for sale consideration and only with an intention to gain wrongfully, suit is filed and possession has also been delivered in favour of them and they are enjoying the same. The defendant No.7 also took the contention that the sale consideration is paid by way of hard cash. It is also the contention of both defendant Nos.5 and 7 that subsequent to the purchase of the property got changed khata and regularly paying the tax and plaintiff did not approach the defendant Nos.1 to 3 and plaintiff was not ready to perform his part of contract and she was not

diligent to perform her part of obligation to obtain the sale deed.

4. The Trial Court having considered both oral and documentary evidence framed the following Issues and Additional Issue:

ISSUES

- 1) Whether the plaintiff proves that the defendant Nos.1 to 3 agreed to sell the suit schedule property for a total sale consideration of Rs.8,02,000/- and on 17.02.2010 defendants No.1 to 3 executed an agreement of sale in favour of the plaintiff by receiving an advance amount of Rs.2,00,500/-?
- 2) Whether the plaintiff proves that she was always ready and willing to perform her part of contract?
- 3) Whether the plaintiff is entitled for specific performance of contract of an agreement of

sale dt:17.02.2010 in respect of suit schedule property, as prayed?

- 4) Whether the plaintiff proves that the Sale Deeds executed by defendants 1 to 3 in favour of defendants 5 to 7 respectively dt:04.02.2012, 06.08.2010 and 27.10.2010 are null and void and not binding on her?
- 5) What order or decree?

Additional Issue

- 1) Whether the 7th defendant proves that he is a bonafide purchaser of the Item No.3 of the suit schedule property under a registered Sale Deed dt:27.11.2010?

5. The plaintiff in order to prove the case examined herself as P.W.1 and got marked Ex.P.1 to Ex.P.7. On the other hand to substantiate the case of the defendants, defendant No.7 was examined as D.W.1, but no documents were placed on behalf of the defendants. The Trial Court having considered both oral and documentary evidence placed on record, answered all the Issue Nos.1 to 4 as

affirmative and answered the Additional Issue No.1 as negative in coming to the conclusion that 7th defendant is a not bonafide purchaser and granted the relief of specific performance.

6. Being aggrieved by the judgment and decree of the Trial Court, an appeal is filed in R.A.No.143/2018 before the First Appellate Court. The First Appellate Court having considered the grounds urged in the appeal memo, formulated the point for consideration as below:

POINTS

- 1) *Whether the plaintiff proves that she was ever ready and willing to perform her part of contract?*
- 2) *Whether defendant No.7 proves that, he is a bonafide purchaser of item No.3 of the plaint schedule property for valuable consideration without notice of the Agreement of Sale in favour of the plaintiff ?*

3) *Whether the findings of the Trial Court are perverse, capricious accused require interference by this Court ?*

4) *What Order ?*

7. The First Appellate Court having re-assessed both oral and documentary evidence, answered the point No.1 as negative in coming to the conclusion that plaintiff was not ready and willing to perform her part of contract and on the other hand, answered point No.2 as affirmative in coming to the conclusion that defendant No.7 is a bonafide purchaser of item No.3 of the plaint schedule property for a valuable consideration without notice of the agreement of sale in favour of the plaintiff and answered the point No.3 as affirmative in coming to the conclusion that Trial Court judgment is perverse, capricious and it requires interference.

8. Being aggrieved by the reversal of finding of the Trial Court, the present second appeal is filed before this

Court. The main contention of the counsel appearing for the appellant/plaintiff in this case is that the First Appellate Court committed an error in appreciating both oral and documentary evidence and fails to consider the document of Ex.P.1- registered sale agreement and the same has been reflected in the encumbrance certificates at Ex.P.5 to P7 and the respondent No.7/defendant No.7 knowingly well colluding with defendant Nos.1 to 3 created the illegal sale deeds with an intention to deprive the right of the plaintiff and the said fact has been properly considered by the Trial Court, but the Appellate Court committed an error. It is the specific case of the plaintiff that on investigation, she came to know about illegal sale deeds are executed as per Ex.P.2 to Ex.P.4 and on verification with the Sub-Registrar office, she came to know about the fraudulent act of defendant Nos.1 to 3, during the subsistence of sale agreement, three sale deeds are executed on 06.08.2010, 27.11.2010 and 04.02.2012 i.e., immediately after the

execution of the sale agreement and the same has not been considered by the First Appellate Court and the observation made by the First Appellate Court that notice is mandatory before filing the suit is not correct and when the plaintiff came to know about the fraudulent act of execution of sale deeds in favour of defendant Nos.5 to 7, she was forced to file a suit and no need to issue any notice since already sale deeds are executed in favour of third parties i.e., defendant Nos.5 to 7 and the same is not properly appreciated by the First Appellate Court.

9. The counsel also would vehemently contend that even there was no any sale agreement prior to execution of sale deeds Ex.P.2 to Ex.P.4 in favour of defendant Nos.5 to 7 and hence indicated substantial question of law to be framed in the second appeal. This Court, while admitting the second appeal, framed the following substantive question of law:

- 1) *Whether the First Appellate Court justified in reversing the Judgment & Decree of the Trial Court?*
- 2) *Whether the First Appellate Court justified in concluding that plaintiff is not entitled for the relief of specific performance by observing that Ex.P.5 to 7 Encumbrance Certificates are not public notice and plaintiff has failed to issue notice before filing the suit?*
- 3) *Whether the First Appellate Court justified in concluding that 7th defendant is the bonafide purchaser ignoring the entries made in Ex.P.5 to 7?*

10. The counsel appearing for the appellant in his argument brought to notice of this Court that part sale consideration of Rs.2,00,500/- was paid on the date of sale agreement i.e., on 17.02.2010 and remaining amount was paid at the time of registration of the document. The counsel would contend the defendant No.1 is the partnership firm and defendant Nos.2 and 3 are the partners and defendant No.4 is the power of attorney

holder of defendant Nos.1 to 3. The counsel would contend that in the agreement no time is stipulated for completion of sale transaction and the very reasoning of the First Appellate Court is erroneous that the appellant was not ready and willing to perform her part of contract and there was no any condition to make any payment and the same is payable at the time of registration and apart from that fails to take note of the fact that within a span of 6 months, first sale deed was executed on the date of sale agreement that too in the month of August-2010. It is also the contention that though defendant No.5 filed the written statement did not choose to enter into the witness box and also counsel would submits that defendant Nos.5 and 6 have not filed any appeal against the judgment and decree of the Trial Court and only defendant No.7 has filed the appeal, but, Trial Court set aside the entire judgment even in the absence of any appeal by defendant Nos.5 and 6. The counsel also brought to notice of this Court that before

executing the sale deeds at Ex.P.2 to Ex.P.4, there was no any sale agreement and hence it is clear that the very intention of the defendants in order to deprive the right of the plaintiff, directly executed the sale deed. The counsel also vehemently contend that the admission on the part of D.W.1 is very clear that before purchasing the property, he has not made any enquiry and even did not obtain encumbrance certificate and when the sale agreement is registered, ought to have enquired before purchasing the property and the principle of caveat emptor is applicable to the case on hand.

11. The counsel in support of his argument relied upon the judgment of the Apex Court reported in **AIR 1994 Supreme Court 1200** in case of **Smt.Kaulashwari Devi and another V/s Nawal.K.Kishore and another** wherein Apex Court held in this judgment that raising of new plea and permissibility in a case of decree for specific performance based on plea of unwillingness to perform

contract on part of Vendee raised by the purchaser pendente lite and Vendee instead of depositing balance amount with Vendor in the Court and procuring sale deed within the period prescribed by Trial Court, denial of specific performance based on new plea is not sustainable. The counsel brought to notice of this Court discussion made in paragraph No.8 of the judgment that the first defendant has not chosen to file an appeal against the decree of the Trial Court. Even the second appeal is filed only by the second defendant. The second defendant cannot claim any right of his own. He is bound by the decree passed against the first defendant. An observation is made that the contention for the first time was urged at the time of hearing of the second appeal and once it is held that the plaintiff did pay the amount and obtained the sale deed within the period prescribed by the Trial Court, the main ground upon which the High Court had dismissed his suit becomes untenable.

12. The counsel also relied upon the judgment reported in **(2000) 2 Supreme Court Cases 428** in case of ***Ram Awadh(Dead) By Lrs. & Ors. Vs Achhaibar Dubey & Anr.*** and brought to notice of this Court the discussion in paragraph No.3 wherein case of 'Jugraj Singh' was extracted.

13. Per contra, the counsel appearing for the respondents in his argument would vehemently contend that the First Appellate Court rightly comes to the conclusion that the plaintiff was not ready and willing to perform his part of contract and he kept quite and rightly comes to the conclusion that that she was not ready and willing and though counsel contend that in paragraph No.8 of the plaint has pleaded that he wrote the letters to the defendants after the sale agreement, but categorically admitted in the cross-examination that no such letters are written and hence, it is clear that she was not ready and willing to perform her part of contract. The counsel also

would vehemently contend that no notice was issued before filing of suit and the same is also taken note of by the First Appellate Court and hence contend that the Appellate Court has not committed any error and it does not require any interference.

14. The counsel in support of his argument he relies upon judgment reported in **2021 SCC Online SC 365** in a case of **Kadupugotla Varalakshmi V/s Vudagiri Venkata Rao and Others** and brought to notice of this Court paragraph Nos.7 and 8 wherein an observation is made that the judgment of 'Jugraj Singh' case is erroneous referring the constitutional bench judgment.

15. The counsel also relied upon the judgment of Supreme Court reported in **(2000) 2 SCC 428** in case of **Ram Awadh(Dead) By Lrs. & Ors. Vs Achhaibar Dubey & Anr.** and the same judgment is also relied upon by the counsel appearing for the appellant and brought to notice of this Court, the discussion made in paragraph No.6. The

obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof and counsel referring these two judgments would also vehemently contend that even if the executants of the sale agreement did not contest the matter subsequent purchaser can raise the said contention.

16. The counsel also relied upon the judgment of this Court reported in ***AIR Online 2024 KAR 1766*** in case of ***Bylamurthy late Siddappa V/s M.G.Gangalakshamma*** wherein also this Court referring Section 16(c) made an observation that no effort was made from date of sale agreement till filing of suit except making additional payment and notice was given after 5 years of execution of sale agreement and hence, held that not entitled for the relief of specific performance.

17. The counsel also brought to notice of this Court the Judgment of the Apex Court reported in ***AIR Online***

2019 SC 1072 in case of **Ritu Saxena V/s J.S.Grover** wherein also discussion was made with regard to Section 20 readiness and willingness, self-serving statement without any proof of financial resources cannot be relied upon to consider that appellant was ready and willing to perform her part of contract and brought to notice of this Court paragraph Nos.15 and 16 of the judgment.

18. The counsel also relied upon the judgment reported in **AIR 2022 Supreme Court 3361** in case of **U.N.Krishnamurthy(Since deceased) Thr Lrs' V/s A.M.Krishnamurthy** wherein also discussion was made with regard to Section 16(c) and an observation is made that acceptable evidence not placed on record to prove his readiness and willingness, plaintiff not entitled for the relief of specific performance and brought to notice of this Court paragraph Nos.47 and 48. The plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree.

19. The counsel also relied upon the judgment reported in ***AIR 2024 Supreme Court 3242*** in case of ***Pydi Ramana alias Rumulu V/s Davarasety Manmadha Rao*** wherein also Section 16(c) is discussed in detail and brought to notice of this Court paragraph Nos.11 and 12 with regard to the readiness and willingness to perform the contract. The counsel referring these judgments would vehemently contend that even subsequent purchaser also can raise the issue of readiness and willingness and unless plaintiff proves that he was always ready, question of granting the specific performance does not arise. Hence, prayed the Court to dismiss the appeal.

20. Having heard the learned counsel for the appellant and the learned counsel for the respondents and in consideration of the substantive question of law framed by this Court which have been referred above, this Court has to analyze the material available on record.

21. It is the specific case of the plaintiff that she had entered into an agreement of sale with defendant Nos.1 to 3 on 17.02.2010. It is important to note that sale agreement is marked as Ex.P.1 and the same is a registered sale agreement. It is important to note that specific case of the plaintiff that out of sale consideration of Rs.8,02,000/- an amount of Rs.2,00,500/- was paid as earnest money. It is the case of the plaintiff that she was always ready and willing to perform her part of contract. It is also the specific case of plaintiff before the Trial Court in the suit that she was always ready and willing to perform her part of contract and also in the paragraph No.4 of the plaint, the silent features of agreement of sale dated 17.02.2010 has been narrated. Having considered the contents of the document of Ex.P.1, it is clear that sale consideration is Rs.8,02,000/- and on the date of execution of the registered sale agreement, an amount of

Rs.2,00,500/- was paid and remaining amount was payable at the time of registration of the sale deed.

22. It is also important to note that no time stipulation is made for execution of the sale deed and in the plaint, it is narrated that the assurance given by the defendant Nos.1 to 3 that soon after certain formalities are completed, they would immediately execute the sale deed. It is also important to note that defendant Nos.1 to 3 assured that schedule property is free from encumbrances, attachments or any charge and in paragraph No.5, specific averment is made that she is always ready and willing to perform her part of contract and plaintiff repeatedly requested defendant Nos.1 to 3 to execute the registered sale deed conveying the suit schedule properties in her favour by receiving the balance consideration, but defendant Nos.1 to 3 assured the plaintiff that they would execute registered deed of sale conveying the suit schedule properties in favour of the plaintiff and believing the words,

the plaintiff kept quiet, but defendant Nos.1 to 3 conveniently dodged the execution of the sale deed under the one pretext or the other by giving false impression that they would execute the sale deed but, when the plaintiff doubted the very conduct of the defendants, did not respond and immediately made an enquiry in the office of the Sub-registrar and came to know that the defendants Nos.1 to 4 have executed the sale deed in favour of defendant Nos.5 to 7. Hence, filed the suit immediately.

23. It is important to note that when these pleadings are made in the plaint that original owners of the property i.e., defendant Nos.1 to 3 have not filed their written statement and contested the same, but defendant No.7 only took the contention that plaintiff was not ready and willing, but on perusal of material available on record, in the evidence of P.W.1, he also categorically deposed before the Court that he went and met the defendant No.2 who is having authorization to deal with the matter and requested

5-6 times to execute the sale deed, but he did not come forward to execute the sale deed and he categorically made the submission that he met him 5-6 times, but in the cross-examination though the defendant took the contention that plaintiff was not ready and willing, but the evidence of P.W.1 was not denied and that answer was even extracted in the cross-examination by the defendant No.7 and when the P.W.1 has given such evidence, even did not put any question that she did not met Prathap Reddy 5-6 times, but only answer elicited from the cross examination that she has not sent any letters and no doubt the counsel appearing for the respondent brought to notice of this Court in paragraph No.8, it is stated that they have written letter, but that will not take away the case of the plaintiff regarding readiness and willingness is concerned since the readiness and willingness is elicited by the counsel for defendant No.7 during cross-examination and not denied the same.

24. It is also important to note that sale agreement came into existence on 17.02.2010 and First Appellate Court fails to take note of the very conduct of defendant Nos.1 to 3 executing the sale deed in favour of defendant Nos.5 to 7 within a span of even not completion of 6 months of the said agreement, first sale deed was executed in the month of August-2010 itself, then another sale agreement executed in favour of defendant No.7 on 27.11.2010 and another sale deed in the year 2012 suppressing the earlier agreement. But, the evidence of plaintiff is very specific that when the plaintiff approached the defendants, they assured that they are going to execute the sale deed, but they did not come forward and the plaintiff immediately having doubted the conduct of the defendants, went and enquired in the Sub-Registrar Office, then came to know about the registration of these three sale deeds and the said pleadings is not denied and nothing is elicited in the cross-examination. The Court while

considering the material on record, ought to have taken note of fraudulent act of defendant Nos.1 to 3 executing the sale deed in favour of defendant Nos.5 to 7 within a span of 6 months i.e., 17.02.2010 is the sale agreement and first sale deed was executed on 06.08.2010 and question of readiness and willingness does not arise when the sale agreement does not stipulate any time is the essence of the contract and the same is lost sight by the First Appellate Court.

25. It is also important to note that while granting the relief of specific performance and rejecting the same, Court has to take note of conduct of the parties. In the case on hand, no denial of execution of sale agreement dated 17.02.2010 by the defendant Nos.1 to 4. Apart from that even subsequent purchaser, defendant Nos.5 to 7 not denies the execution of sale agreement and also the document of Ex.P.5 to Ex.P.7 encumbrance certificates which is very clear that encumbrance certificates are

standing in the name of the plaintiff that there was a sale agreement in favour of the plaintiff. The First Appellate Court also committed an error in coming to the conclusion that defendant No.7 is the bonafide purchaser and the said finding is erroneous against the admission on the part of D.W.1 and D.W.1 categorically admits in the cross-examination that he is claiming right in respect of only one of the site and categorically admitted that he is not having any acquaintance with the plaintiff and even after filing of the suit also, he did not made any enquiry and even did not look into the documents which have been filed by the plaintiff and no effort was made to look into the document and this admission at paragraph No.2 was extracted in the judgment of the Trial Court. It is also important to note that the Trial Court even extracted the admission on the part of the defendant which is elicited in paragraph No.3 of the cross-examination and he came to know that property is for sale which is noticed in the paper, but he is not having that

paper, but he had informed his counsel about the said publication and before purchasing the property he has not given any application to the defendant No.1. Further, he categorically admits that he obtained the sale deed directly without any sale agreement and this fact is also lost sight by the First Appellate Court that there was no any sale agreement in favour of defendant Nos.5 to 7. Apart from that though he contend that he had paid the sale consideration of Rs.8,00,000/-, but all the sale deeds including the sale deed of D.W.1, sale consideration is shown as Rs.2,25,800/- and the said amount was paid by way of cash, but he claims that remaining amount was paid by way of Cheque, but nothing is placed on record and though he claims that before purchasing the property he verified the documents, but nothing is placed on record with regard to the same and categorically admits that he did not obtain encumbrance certificate before purchasing of the 3rd item of the suit schedule property, but Appellate Court

magnified the admission that he enquired with the defendant No.1 about the encumbrance, but they replied that no problem, but, the person who sells the property if any enquiry is made with him, normally he would makes such statement. But, First Appellate Court taken this answer and highlighted the same while reversing the finding of the Trial Court and when he categorically admits that he did not obtain any encumbrance certificate prior to purchasing of the property ought to have taken note of the said fact into consideration. The Trial Court has given the reasoning that no such enquiry was made before purchasing the property and also taken note of the fact that directly obtained the sale deed and when this type of transaction was taken place, i.e., subsequent to the sale agreement, it is nothing but a collusive act of the defendant Nos.1 to 7 in creating of documents with an intention to prevent the legal right of the plaintiff who entered into an agreement and the sale agreement is also registered and

the same is also reflected in Ex.P.5 to Ex.P.7. All these factors were not taken note of by the First Appellate Court and lost sight of all these factors into consideration and even payment of consideration only by way of cash and the consideration is lesser the amount of sale consideration mentioned in the agreement of plaintiff.

26. It is also important to note that within a span of 6 months, first sale deed was registered and subsequently two registered sale deeds are executed. When the plaintiff specifically pleaded in the plaint that when the defendants did not come forward to execute the sale deed on her request and when she enquired and verified with the Sub-registrar office, then she came to know about the creation of three sale deeds in favour of defendant Nos.5 to 7 and then filed the suit. The First Appellate Court committed an error in reversing the finding in entirety of the judgment of the Trial Court. It is important to note that the defendant No.6 who had purchased one of the scheduled property, he

did not come forward to contest the suit and also he did not file any written statement, he was placed ex-parte. It is important to note that defendant No.5 though filed the written statement, he did not step into the witness box. It is important to note that defendant Nos.5 and 6 have not challenged the judgment and decree of the Trial Court and only defendant No.7 had challenged the decree. But, the Appellate Court lost sight that there was no any challenge by defendant Nos.5 and 6 in respect of two items of the scheduled property. But, only considering the appeal filed by the defendant No.7, reversed the judgment of the Trial Court in entirety, the same is also an erroneous approach. The First Appellate Court committed an error in considering both oral and documentary evidence placed on record and finding of the First Appellate Court is perverse and capricious and not the finding of the Trial Court is perverse and capricious as observed. The Trial Court even extracted the admission on the part of D.W.1 while passing the

judgment and granting the relief of specific performance. The very approach of the Appellate Court is erroneous and perverse since the material available on record was not considered in a proper perspective instead of answered the point No.1 erroneously in coming to the conclusion that plaintiff was not ready and willing to perform her part of contract. The specific case and evidence of the plaintiff-P.W.1 is very clear that she had approached the defendant No.2 to execute the sale deed 5 to 6 times and the same is elicited from the mouth of P.W.1 by the counsel for defendant No.7 in the cross-examination and after the answer given by the plaintiff-P.W.1 in the cross-examination, even did not suggest that never approached the defendant and inspite of it the Appellate Court answered the point No.1 as negative in coming to the conclusion that not ready. The question of expecting the Court that readiness of plaintiff within a span of 6 months when the time is not stipulated for the execution of the sale

deed is also erroneous and when the time is not the essence of the contract, fails to take note of conduct of defendant Nos.1 to 7 in selling the very same property which was agreed in favour of the plaintiff within a span of 6 months and thereafter subsequently executed the sale deed in respect of other 2 items. When the plaintiff came to know about the same, filed the suit immediately. It is also very clear that under Article 54 of Limitation Act, suit ought to have been filed within 3 years from the date of refusal, but, in the case on hand, when the plaintiff came to know about there were 3 sale deeds, He had immediately filed the suit.

27. The Appellate Court also committed an error in making an observation that no notice was issued before filing of suit for specific performance and no need to give any notice and Court has to take note of facts of each case and circumstances and in the case on hand when the sale already made in favour of defendant Nos.5 to 7, question of

issuing the notice against the defendant Nos.1 to 3 does not arise for execution of sale deed. The same is also unwanted since third party right has already been created by the defendant Nos.1 to 3 in favour of defendant Nos.5 to 7 and no meaning in issuing of notice and filing of the suit. When the plaintiff came to know about the sale was made and filed the suit, that itself is clear that plaintiff is ready and willing to have the sale deed in favour of her and the same is also lost sight of by the First Appellate Court. The First Appellate Court also fails to take note of Ex.P.2 to Ex.P.4 wherein sale consideration is only Rs.2,25,800/- in Ex.P.2, in Ex.P.3 sale consideration is Rs.2,29,600/- and in Ex.P.4 sale consideration is Rs.2,28,000/- and the same is less than the sale consideration mentioned in the sale agreement. The very agreement of sale in favour of the plaintiff is for Rs.8,02,000/-. Hence, it is very clear that lesser amount is shown in Ex.P.2 to Ex.P.4 with an intention to defraud the plaintiff. Apart from that though D.W.1

claims that he made the payment through Cheque, nothing is placed on record and no documentary evidence is also placed on record by the defendant No.7 except oral testimony before the Court that he paid the balance amount by way of cheque and First Appellate Court accepted the evidence of D.W.1 and fails to consider the both oral and documentary evidence available on record and committed an error. Hence, the very approach of the First Appellate Court is erroneous.

28. The principles laid in the judgments is concerned, no dispute. The Apex Court in the judgment referred by the counsel for respondents, comes to the conclusion that judgment of 'Jugraj Singh' case is erroneous and no dispute with regard to the principles laid down in the judgments referred by the counsel for respondents is concerned regarding subsequent purchaser also can take up the contention of readiness and willingness, but in the fact and circumstances of each case also to be taken note of

while applying the principles laid down in the judgments referred by the counsel for respondents. This Court already pointed out that when the sale agreement was executed on 17.02.2010 and immediately within a span of 6 months, when the time stipulation was not there in the agreement, created a document dated 06.08.2010 and subsequently on 27.11.2010 and 04.02.2012. Hence, it is clear that it is nothing but collusive act between the defendant Nos.1 to 7 and not cancelled the earlier registered sale agreement and even subsequent purchasers also not verified the records and there is a clear admission on the part of D.W.1 i.e., defendant No.7 that he did not obtain any encumbrance certificate and encumbrance certificates at Ex.P.5 to Ex.P.7 are very clear that a sale agreement is created in favour of the plaintiff on 17.02.2010 and hence the principles caveat emptor is also applicable to the case on hand. When such being the case First Appellate Court committed an error in answering point No.2 that 7th defendant is bonafide

purchaser having not noticed the earlier sale agreement and ought to have verified before purchasing the property directly through a sale deed and the fact that no sale agreements prior to these 3 sale deeds and hence this conduct is very clear that it is a collusive creation of document by the defendant Nos.1 to 4 with the defendant Nos.5 to 7 and when no such enquiry was made and no effort was made to know about the encumbrance of the property, the First Appellate Court committed an error in coming to the conclusion that defendant No.7 is a bonafide purchaser. The First Appellate Court fails to take note of conduct of the parties that sale deeds are executed directly. This Court has already pointed out that defendant Nos.5 and 6 have not filed any appeal as against the judgment and decree of the Trial Court, but only the defendant No.7 had filed the appeal and the same was allowed erroneously and hence the very approach of the First Appellate Court is erroneous and the principles laid down in the judgment

relied upon by the counsel appearing for the respondents referred supra will not come to the aid of the respondents having considered the material on record and each case facts and circumstances has to be looked into. Hence, I answered the substantive question of law accordingly that First Appellate Court not justified in reversing the judgment and decree and the Appellate Court also committed an error in coming to the conclusion that plaintiff is not entitled for the relief of specific performance without observing the document at Ex.P.5 to Ex.P.7 that there was an encumbrance certificate and also committed an error in coming to the conclusion that plaintiff has failed to issue notice prior to filing of the suit and the same is not warranted in the case on hand. The approach of the Appellate Court is also erroneous that defendant No.7 is the bonafide purchaser and hence answered all the substantive question of law as negative and Appellate Court not justified in reversing the finding.

29. In view of the discussions made above, I pass the following:

ORDER

- i) Second appeal is ***allowed***.
- ii) The judgment and decree passed in R.A.No.143/2018 dated 21.09.2020 by the First Appellate Court is set-aside. Consequently, the judgment and decree passed in O.S.No.158/2013 dated 16.03.2018 by the Trial Court is restored for the relief of specific performance.

Sd/-
(H.P. SANDESH)
JUDGE

RHS