

In the Court of the 1st Additional Chief Judge: City Civil Court:
Secunderabad.

Present: Sri P. Durga Prasad, B.Sc. B.L.,
1st Additional Chief Judge

Monday the 17th day of January, 2005.

O.S.No. 18 of 2004.
(Old O.S.N. 1743 of 2003)

Between:

1. Gurudev Siddha Peeth
a Public Charitable Trust Registered
under the Bombay Public Trust Act,
with its office at No.1, Ganeshpuri,
represented by its authorised Executive
Sri Satish Modi s/o Sri Manilal C. Modi,
aged: 50 years, carrying on business
at 1-10- 72/2/3, Begumpet, Secunderabad-500 016.
2. Sri Satish Modi
s/o Sri Manilal C. Modi, aged: 50 years,
carrying on business at 1-10-72/2/3, Begumpet,
Secunderabad- 500 016. ..plaintiffs.

and

H.P. Construction Private Limited
represented by its Director G.S. Prakash Rao,
s/o G. Shankaraiah, aged: 50 years,
having its registered office at 1-4-879/72/A,
Gandhinagar, Hyderabad - 500 380. ..Defendant.

This suit is coming on this day for hearing before me
in the presence of Sri C. Balagopal, Advocate for the plaintiffs
and Sri R. Chandrasekhar Reddy, Advocate for the defendant and
this Court delivered the following:-

J U D G M E N T

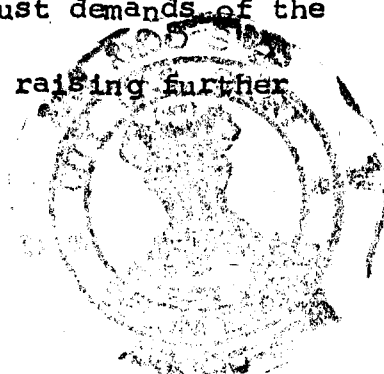
is a

This/suit filed for delivery of vacant possession
of the suit schedule property and for permanent injunction
restraining the defendant and its men from making any
construction over the suit & schedule property.

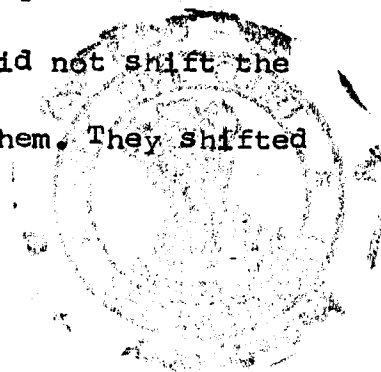
2. According to the plaintiffs, the 1st plaintiff is
the sole, absolute and exclusive owner of the workshop
premises bearing No.187/3 & 4/8, admeasuring 2,331 sq. yds.,
equivalent to 1949 sq. metres, situated at Karbala Maidan,
Mahatma Gandhi Road, Ranigunj, Secunderabad. Originally,



suit schedule property and after obtaining possession of the same, the defendant did not perform any of the terms of the agreement. The plaintiffs in order to fulfill, their obligations, have applied for and obtained necessary permission from all the authorities for the fulfillment of the terms of agreement. However, the defendant has not performed its part of the contract. As per the terms of the agreement, as stated above, the balance of sale consideration of Rs.58,85,000/- has to be paid by 18.12.1993 i.e within a period of 12 months from the date of delivery of possession of the suit property. As the balance of sale consideration was not paid within the stipulated period, the defendant became liable to pay interest at 1% per mensem w.e.f. 18.12.1993 in advance for every quarter. The defendant also failed to pay the interest accumulated even by 26.2.1994. Thereupon the 2nd plaintiff was constrained to address a letter calling upon the defendant to fulfill its obligations and pay interest due. Surprisingly, the defendant issued an undated reply raising untenable pleas and contentions contrary to the agreement. The plaintiffs denied all the adverse allegations contained therein. To avoid unnecessary controversy, the 2nd plaintiff addressed a letter dt. 2.3.1994 reminding the defendant of its obligations. The defendant without complying with the just demands of the plaintiffs, issued a reply dt. 31.3.1994, raising further



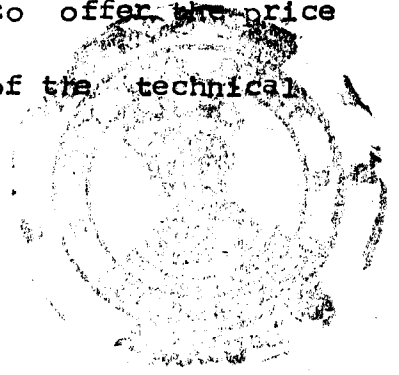
5. The defendant has filed written statement denying the allegations made in the plaint and according to them, the plaintiffs entered into an agreement with the defendant and the plaintiffs jointly offered to sell the schedule property to them and the defendant agreed to purchase the same for a total consideration of Rs.70,85,000/- after due negotiations. The defendant has entered into an agreement with the plaintiffs on 18.12.1992 and by that date the defendant paid a sum of Rs.3.00 lakh as advance on 30.11.1992. Subsequently, a further sum of Rs.9.00 lakhs was to be paid on the date of formal handing over of the possession to the defendant. and accordingly, the said sum of Rs.9.00 lakhs was paid by way of advance in part performance of the agreement of sale on 18.12.1992. Thus, a total sum of Rs.12.00 lakh was paid by the defendant to the plaintiff N_o.1 as advance in part performance of the agreement of sale. Thus, the allegation that the sum of Rs.12.00 lakh paid as earnest money is false. The formal possession was handed over to the defendant by the plaintiffs in pursuance of the agreement of sale dt. 8.12.1992. The complete physical possession of the suit schedule property was not delivered on the date of agreement and the plaintiff N_o.2 was in occupation of 90% of the portion of the premises and he undertook to vacate and shift the materials and structures lying thereon at the time of formal handing over of the possession on 18.12.1992. However, they did not shift the materials and structures as assured by them. They shifted



of funds by entering into agreements of sale, they cannot be able to pay the same to the plaintiffs. In the absence of minimum requirements, the prospective purchaser would not have come forward to purchase the property. Immediately, upon excavation, the defendant encountered the drainage pipes and further progress was hampered. This fact was brought to the notice of the plaintiffs immediately, but the plaintiffs have not taken any action in that regard.

8. Thus, on account of the delay on the part of the plaintiffs in furnishing the basic requirements, the main work could not be commenced as needed by the parties at the time of agreement dt. 18.12.1992. Subsequently, the construction activity came to a stand-still on account of repeated hindrances created by the plaintiffs and also repeated threats of cancellation of agreement. This was resorted to by the plaintiffs notwithstanding the fact that a huge amount of Rs.12.00 lakh was already paid by the defendant for part performance of the agreement of sale and a further sum of more than Rs.6.00 lakh was invested for excavation and also in getting necessary experts for obtaining necessary opinions for dewatering.

9. At the time when the property was sought to be given for development, nobody prepared to offer the price that was offered by the defendant in view of the technical

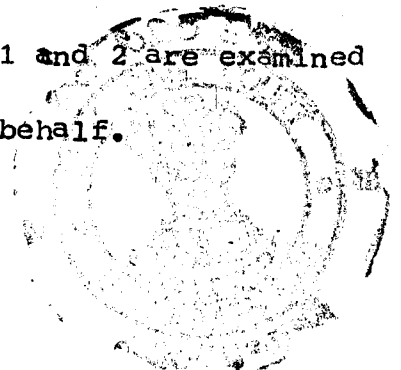


as such the defendant did not take any immediate steps in this matter. As the plaintiff N^o.2 again backed out and as such the written statement is being filed on behalf of the defendant. The defendant is ready and willing to perform its part of obligation in the agreement of sale. The defendant is unable to carry out the further work in view of the suit filed by the plaintiffs and reluctant attitude of the plaintiffs. The defendant reserves its right to seek appropriate remedy against the plaintiffs by way of separate proceedings, if deemed necessary. Hence, the suit is not maintainable in law or on facts and the same is liable to be dismissed in limine.

11. On the above pleadings the following issues are framed.

1. Whether the plaintiffs are entitled for ^{an} direction that the defendant to vacate and deliver vacant and peaceful possession of the plaint schedule property as prayed for ?
2. Whether the plaintiffs are entitled for permanent injunction in respect of the suit schedule property as prayed for ?
3. Whether the suit is not maintainable for the reasons stated by the defendant in his written statement ?
4. To what relief ?

12. On behalf of the plaintiffs, the 2nd plaintiff is examined as P.W.1 and examined P.Ws 2 to 4 on his behalf and got marked Ex.A.1 to Ex.A.19 and Ex.X.1 to Ex X.16 on their behalf. On behalf of the defendant, D .Ws 1 and 2 are examined and got marked Ex B.1 to Ex.B.24 on their behalf.



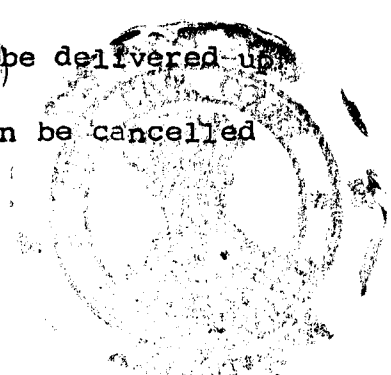
(b) Where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

17. Therefore, under those two circumstances, the contract can be rescinded.

18. The defendant's counsel mainly relied upon that the rescission can be made as the contract is terminable by the plaintiff. Since it is not the case of the defendant that the agreement of sale is a voidable agreement.

As per Ex.B.2 there is no clause in the said agreement that the agreement can be terminated at the instance of the plaintiff. But, as per Clause 10, the agreement ipso facto stands cancelled due to non-compliance of certain conditions by the defendant. Therefore, the above said Section 27 of the Specific Relief Act is not applicable to the present facts of the case, as such there is no need for the plaintiff to file a suit for rescission of the contract.

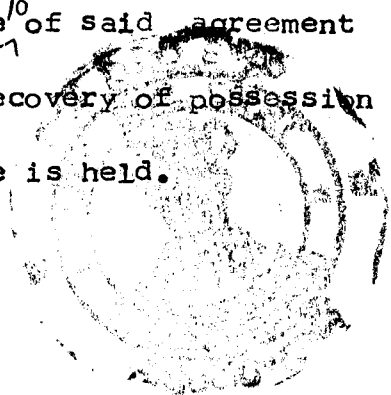
19. The next contention of the defendant's counsel is that the plaintiffs ought to have filed the suit for cancellation of the agreement of sale. Section 31 of the Specific Relief Act deals when cancellation may be ordered. As per the said Section 31, "Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable, and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled". Therefore, the agreement can be cancelled



agreement shall ipso facto stand cancelled, In such event of cancellation, the consequences stated in Clause 10 below shall follow. Therefore, in the present case, the plaintiffs pleaded that since the defendant has not paid the balance of sale consideration or interest contemplated under Clause 3 of the said agreement Ex.B.2, the said agreement stands canceled, as such they are entitled to seek possession under clause 10 of the said agreement. Clause 10 of the said agreement Ex.B.2 read as under:-

" Until full and final payment is made, the Vendee nor persons claiming through the Vendee shall have any right over the property. In particular, it is agreed that in the event of any cancellation or termination of this Agreement, the Vendee and all persons claiming by/through or under the Vendee shall vacate the said property and hand back occupation to the Vendor/ consenting party who shall be entitled in law to take back the same, notwithstanding any dispute that may have arise"

21. Therefore, in view of Clause 10 of agreement under Ex.B.2, & since the defendant has not paid the balance of sale consideration or interest as contemplated in Clause 3 of Ex.B.2 the plaintiffs are entitled to seek delivery of possession. Thus, the plaintiffs are entitled to seek for delivery of possession under Clause¹⁰ of said agreement of sale Ex.B.2, as such the suit for recovery of possession is maintainable, Accordingly, the issue is held.



for payment of interest at different rates for different periods and the agreement also provides for cancellation of agreement, in case of default of payment of balance of sale consideration within the time stipulated or interest accrued thereon. The defendants have not denied about the said fact, but according to them, there are obligations on the part of the plaintiffs and in view of the failure of the obligations on the part of the plaintiffs, the defendant * could not proceed with the construction and unless and until they raise the construction to a certain level, they cannot sell the flats to the third parties and get the consideration so that they can make the payment to the plaintiffs.

23. According to the defendant, the agreement * is not a simple sale but it is a sale -cum-development agreement, as per the clauses mentioned therein. The plaintiffs counsel has relied upon Clause No.3 of Ex.B.2, agreement of sale. As per clause No.3 of Ex.B.2, the Vendee agrees to pay the total sale consideration within period of 12 months from the date of the agreement. However, in the event of any delay beyond the agreed period of 12 months, the vendee shall pay interest at 1% per mensem on the remaining sale consideration payable quarterly in advance, This grace period with interest at 1% per mensem shall be for a period of 22 months from the date of agreement. In the event of



on the said property shall also become vested in the Vendor/ Consenting party free of cost/charge. In such event of termination/cancellation, the Vendor/ Consenting Party shall be at liberty to deal with the said property in such manner as they may deem fit and the Vendee shall not have any objection thereto."

Therefore, on termination of agreement of sale the Vendor is entitled for take back the possession.

25. The main contention of the defendant is that there are reciprocal promises to be fulfilled by either party in the agreement, as such unless and until the plaintiffs fulfil their promises, the defendant need not pay the balance of sale consideration. According to the defendant, the plaintiffs have not fulfilled the Clause Nos. 4, 5, 6 & 7 of Ex.B.2, and in support of his contention he relied upon Sec.51, 52 & 54 of Indian Contract Act. Admittedly, the defendant has paid an advance amount of Rs.12.00lakh under the agreement and the balance of sale consideration is Rs.58,85,000/- and there are reciprocal promises on the part of both the parties, but the terms of payment of balance of sale consideration as contemplated under Clause No.3 are not depending upon the performance of obligations on the part of the plaintiffs.

26. Under Sec.51 of Indian Contract Act" When a contract



of obligation u/s 51 of the Indian Contract Act.

27. The next contention of the defendant is that Ex.B.2 is a sale-cum-development agreement and not a simple agreement of sale. The defendant's counsel contends that all the clauses in the agreement of sale, Ex.B.2, are to be harmoniously read to arrive at the nature of the document and in support of his contention he relied upon a decision rendered in "Provash Chandra Dalui and another vs. Biswanath Banerjee and another", reported in "AIR 1989 Supreme Court 1834".

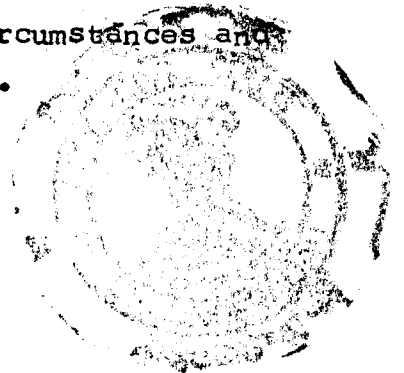
Wherein the Hon'ble Supreme Court held that:-

"The best interpretation of a contract is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties. It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected "ex antecedentibus et consequentibus"; every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if it is possible. In construing a contract the Court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly."

28. The other decision relied upon by the defendant's counsel is rendered in "Achintya Kumar Saha Vs. M/s Nanee Printers and others" reported in "AIR 2004 Supreme Court 1591"

Wherein the Hon'ble Supreme Court held that:-

"To ascertain intention surrounding circumstances and conduct of parties can be examined."



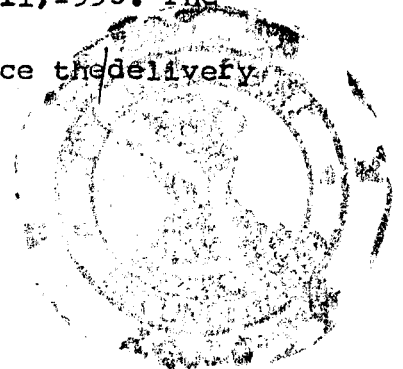
rate of interest and the interest thereon to be spent on the objects of the Trust. In pursuance of the said order, the contesting party had entered into an Agreement with the Vendor on 29.6.2 1991 and whereas the V_endee approached the consenting Party for purchase of the schedule property for a sum of Rs.70,85,000/- and the Consenting Party has agreed for the same and requested the Vendor to nominate the Vendee in his place for entering into this Agreement and at the request of the Consenting Party the Vendor has also agreed to join in execution of this Agreement of sale. Therefore, from the preamble it is evident that the intentions of the parties to sell away the schedule property and receive the sale consideration and invest the same in any nationalised bank for the purpose of fulfilling the objects of the trust.

30. D.Ws 1 & 2 in their corss-examination admitted that the plaintiffs have nothing to do with the construction of the complex by way of direction either for men or for material and they also admitted that the plaintiffs have nothing to do with the profits or losses accruing from the Vendor and the clause Nos. 14 & 15 in Ex.B.2 are onl_y intending for the benefit of the defendant to make constructions and receive the sale consideration from the intending purchasers evenduring the pendency of the completion of the sale transaction. Therefore, the said cla_use_s mentioned in Ex.B.2 are only for



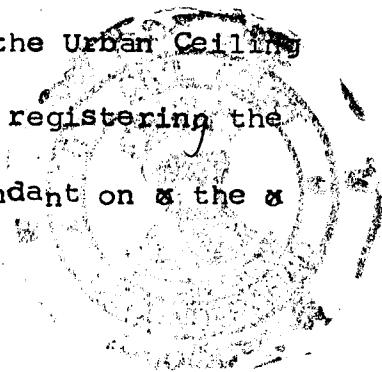
plaintiffs have lifted the material belonged to the 2nd plaintiff from the schedule property only in the month of April, 1992 as such the complete vacant possession of the schedule property was delivered to him only in the month of April, 1993.

32. As per Ex.B.1, the 2nd plaintiff has issued a certificate stating that they are in the process of shifting the material and structures from the workshop bearing No.5-4-187/3 & 4/8, situated at Karbala Maidan, Ranigunj, Secunderabad and that they hope to complete the shifting of the same on or before the end of the month. According to the defendant, they have not shifted the material as mentioned in Ex.B.1. There is no dispute with regard to delivery of the possession under Ex.B.2 on 18.12.1992 to the defendant. The contention of the defendant is that the complete vacant possession of the property as contemplated under Clause No.1 of Ex.B.2 was not delivered to them on the date of agreement. & P.W.1ⁱⁿ his evidence has admitted that the items belonged to him were removed from the schedule property by the end of April, 1993. Therefore, it is evident that the items belonged to the 2nd plaintiff were removed from the schedule property by the end of April, 1993. Thus, the delivery of complete vacant possession to the defendant was only in the month of April, 1993. The contention of the defendant's counsel is, since the delivery



part of the plaintiffs, the plaintiffs have pleaded that they have obtained the Income-tax permission on 16.3.1993 and Urban Land Ceiling permission on 16.9.1993. The defendant's counsel contends that the permission obtained from the Income Tax is not for sale of the schedule property. The plaintiffs in support of their contention ~~x~~ about their obtaining of the Income-tax permission have filed Ex.A.2 & Ex.B A.3. Ex.A.2 is the Order U/s 269 UL(1) of Income Tax Act of 1961 dt. 16.3.1993. Wherein the appropriate authority has no objection to transfer the property indicated as per the terms of the agreement dt. 18.12.1992 and as per the statement filed in Form 37-I and it was verified that ^{the} no objection certificate applies only to the transferor and transferee whose names are specified herein. Therefore, from the above it is evident that the Income tax Authority has issued no objection certificate for transfer of the property under agreement of sale. Under Ex.A.3, both the parties were informed that the Income tax department has no objection for the transfer of the property as mentioned in Ex.A.2. Therefore, as per Ex.A.2 & Ex.A.3 ~~it~~ it is clear that the plaintiffs have obtained no objection certificate from the Income-tax Department for transfer of the schedule property.

34. With regard to obtaining Urban Ceiling permission, the plaintiffs have pleaded that they have obtained ULC permission on 16.9.1993 and according to them the Urban Ceiling permission is only required for the purpose of registering the sale deed in favour of the defendant. The defendant on ~~the~~ the ~~x~~



itself admitted about the furnishing of the Urban Land Ceiling Certificate on 16.9.1993 by the plaintiffs. The contention of the defendant is that because of non-furnishing of the Urban Land Ceiling Certificate till 16.9.1993, he could not obtain the conversion of land usage. But the HUDA has initiated the process for according permission for change of land usage even much prior to 16.9.1993.

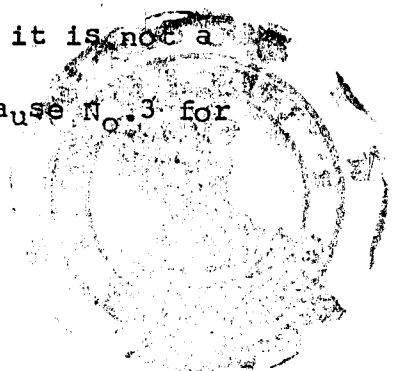
35. Ex.X.8 is the letter of the Hyderabad Urban Development Authority to the plaintiff No.2 dt. 21.7.1993. Wherein they have asked the plaintiff No.2 to furnish the following documents so as to enable them to examine the matter and send suitable reply to the Government with regard to conversion of the land usage. Wherein they have not requested to furnish the ULC Certificate. Under Ex.X.9 the HUDA has addressed a letter to the Municipal Administration and Urban Development Department, Government of A.P. making proposal for conversion of the land usage from Light Industrial Zone to Residential cum-commercial Zone for construction of complex in the suit schedule property on 21.8.1993. Under Ex.X.11 the HUDA has addressed a letter to the plaintiff No.2 for payment of development charges and processing charges.

36. The defendant's counsel contends that they were not informed about the payment of development charges and processing charges by the plaintiff No.2, as such they are not aware of the said communication, as such they could not make the payment. Under Ex.X.15, the HUDA has informed the plaintiff No.2 that the



with an Urban Land ceiling clearance certificate or as the case may be an affidavit referred to in Sec.388 for accruing sanction for making construction. But the defendant has not produced any document to show that they have made an application for sanction of permission and the commissioner of MCH has demanded them to produce the ULC clearance certificate. But, as already observed above, under Ex.A.9 the defendant themselves admitted the ULC certificate was furnished to them by the plaintiffs on 16.9.1993. Thus, there are no latches on the part of the plaintiffs in obtaining the Income Tax clearance or ULC Certificate.

37. The defendant's counsel contends that immediately after taking complete possession of the schedule property in the month of April, 1993 they started excavation of the land in the first week of May, 1993 and completed the same by the end of May, 1993 and they could not proceed with further construction in view of not complying with the Clause Nos. 4, 5, 6 & 7 of Ex.B.2 by the plaintiffs. Under Clause 4 of Ex.B.2. the plaintiffs have obtained consent from the northern neighbour with regard to common passage of 20 ft. Under Clause No.6 the consenting party has to remove the structures on the sum existing in the suit schedule property. According to the defendant, the plaintiffs have not complied with the said Clauses. The plaintiff's counsel contends that even though they have not complied with the clause-No.6, it is not a condition precedent for complying with the Clause No.3 for

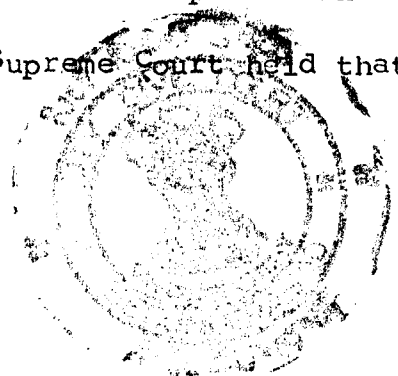


after taking possession of the property they have made excavation of the suit schedule property and get ready for making the constructions, but in view of the lapses on the part of the plaintiffs, they could not proceed further in construction. The plaintiffs' counsel contends that since the defendant is not ready and willing to perform their part of obligation under Ex.B.2 i.e. with regard to payment of balance of sale consideration, they are not ready and willing to perform their part of obligation, as such the defendant is not entitled to protect his possession U/S 53 of T.P.Act. The defendant in support of their contention that they are entitled for protection U/S 53(A) of T.P.Act have relied upon the following decisions.

i) The decision rendered in "Somireddy Veeraiiah Vs. Nagabandi Ranganaikulu and others". reported in 1967 (2) An W.R. 133" Wherein the Single Judge of the Hon'ble High Court of A.P. held that:-

"The defence of part performance as embodied in Section 53-A requires four conditions to be satisfied. One of them being that the transferee should in part performance of the contract have taken possession of the property or any part thereof or the transferee being already in possession should have continued in possession in part performance of the contract and should have done some in furtherance of the contract;

ii) The next decision relied upon by the defendant's counsel is rendered in "Nathulal Vs. Phoolchand" reported in "1970 (2) SCR 854" wherein the Hon'ble Supreme Court held that:-



- 3) in writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
- 4) the transferee must in part performance of the contract take possession of the property, or of any part thereof;
- 5) the transferee must have done some act in furtherance of the contract; and
- 6) the transferee must have performed or be willing to perform his part of the contract".

41. By relying upon the above said decisions the contention of the defendant's counsel is that the defendant is always ready and willing to perform his contract, as such they are entitled to protect their possession U/s 53-A of T.P.Act. On the other hand, the plaintiffs' counsel contends that since the defendant is not willing to perform their part of contract, they are not entitled for protection. In support of their contentions they relied upon the following decisions.

1) " Jawahar Lal Wadhwa and another Vs. Haripada Chakraborty" reported in "AIR 1989 SC 606". Wherein the Hon'ble Supreme Court has held that:-

" Stoppage of paying the monthly instalments by the Vendee, who is in possession of the premises, is not entitled to claim protection U/S 53-A of T.P.Act".

2) The next decision relied upon by the plaintiffs' counsel is rendered in " M/s Jacobs Private Ltd., Vs. Thomas Jacob" , reported in "AIR 1995 Kerala 249". Wherein the Hon'ble High Court of Kerala held that:-



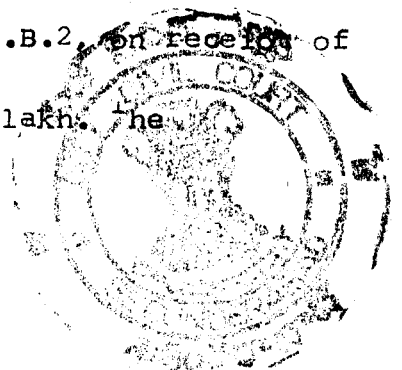
vi) The transferee has performed or is willing to perform his part of the contract. If the aforesaid conditions are fulfilled, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of that property. For safeguarding the possession of the transferee under the provision, the transferee should have performed or is willing to perform his part of the contract. It is only then the transferee is entitled to defend his possession of the property which came into his possession under the agreement of sale."

4) The next decision relied upon by the plaintiffs' counsel is rendered in "Moparthi Sarojini Devi Vs. Kavuru Ramchandra Prasad and others", reported in "2002(3) ALD 253". Wherein the Hon'ble High Court of A.P. held that:-

"U/s 53-A the plea of part performance cannot be availed by the vendee when the vendee was not ready and willing to perform his part of contract."

42. Therefore, as per the decisions relied upon by both the plaintiffs' counsel and the defendant's counsel, the Hon'ble Supreme Court has laid down that in order to acquire protection U/s 53-A of T.P. Act the transferee should have performed or willing to perform his part of contract. In view of the above said legal propositions, it is to be considered whether in the present case, the defendant has performed or willing to perform his part of the contract.

43. In the present case, admittedly, there is no dispute with regard to delivery of possession of the schedule property to the defendant by the plaintiffs under Ex.B.2, on receipt of the advance sale consideration of Rs.12.00 lakh. The



own benefit i.e. developing the property and selling the flats to the prospective purchasers and receiving the consideration. Admittedly, the defendant has not made any payment of the balance of sale consideration or interest as contemplated under Clause 3 of Ex.B.2 subsequent to the execution of agreement of sale. The plaintiff's counsel contends that the defendant has not even expressed his willingness to make the payment of the balance of sale consideration, as such the defendant is not entitled for protection U/s 53(A) of T.P.Act.

44. The plaintiff have issued a notice on 26.2.1994 to the defendant under Ex.A.8 bringing them to their notice about the payment of schedule contemplated under Clause No.3 of Ex.B.2 and requested them to make arrangement for payment of Rs.1,76,550/- towards the interest due by that date. The defendant gave a reply under Ex.A.9 to the plaintiff No.2 complaining that the plaintiff No.2 has not complied certain conditions under Ex.B.2 and they have not expressed their willingness to make any payment of the balance of sale consideration or interest as contemplated under Ex.B.2. The plaintiffs gave a reply to Ex.A.9 under Ex.A.10 on 28.3.1994 demanding once again to make the payment of balance of sale consideration and interest stating that their contention that the suit schedule premises is waterlogged is nothing to do with the payment of amount. Thereupon the defendant



defendant to vacate * and deliver vacant possession of the
plaint schedule property as prayed for. Accordingly, the
issue is held.

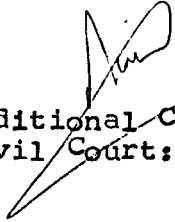
46. Issue No.2:

The plaintiffs have pleaded for a permanent
injunction restraining the defendant and its men from making
any construction in the suit schedule property. Admittedly
the defendant has not made any construction over the suit
schedule property as on today. In view of the finding in
Issue No.1 that the plaintiffs are entitled for recovery
of vacant possession of the schedule property, the defendant
is not entitled to make any construction over the schedule
property, as such the plaintiffs are entitled for an
injunction restraining the defendant from making the construction
over the schedule property. Accordingly, the issue is held.

47. Issue No.4:

In the result, the suit is decreed with costs
as prayed for. The defendant is directed to deliver vacant
possession of the suit schedule property within 2 months
from today.

Dictated to the Steno-typist, transcribed by him,
corrected and pronounced by me in the open Court on this the
17th day of January, 2005.


I Additional Chief Judge
City Civil Court: Secundeabad.



- Ex.B.14 Photograph with negative.
Ex.B.15 Photograph with negative.
Ex.B.16 photograph with negative.
Ex.B.17 Photograph with negative.
Ex.B.18 Photograph with negative.
Ex.B.19 Photograph with negative.
Ex.B.20 photograph with negative.
Ex.B.21 Photograph with negative.
Ex.B.22 Photograph with negative.
Ex.B.23 Photograph with negative.
Ex.B.24 dt. 7-12-02 G.P.A. executed by G.S.P.Rao, Director of Defendant in favour of J. Maruthi.

Documents of 'X' Series:

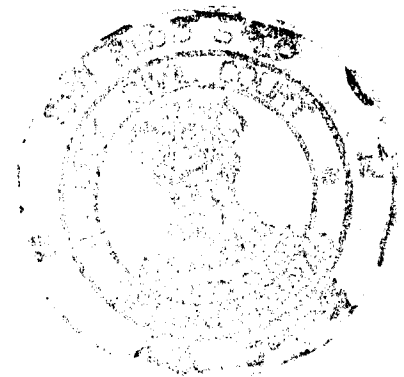
- Ex.X.1 dt. 29-9-2001 report.
Ex.X.2 dt. 28.4.94 Registration extract of sale deed.
Ex.X.3 Dt. 28.4.95 Registration extract of sale deed.
Ex.X.4 dt. 8.12.94 Registration extract of sale deed.
Ex.X.5 dt. 8.12.94 Registration extract of sale deed.
Ex.X.6 dt. 8.12.94 Registration extract of sale deed.
Ex.X.7 dt. 9.12.94 Registration extract of sale deed.
Ex.X.8 dt. 21.7.93 letter from HUDA. to S. Kish Modi.
Ex.X.9 dt. 21.8.93 letter from HUDA.
Ex.X.10 conditions for modification to plan.
Ex.X.11 dt. 19.5.94 letter from HUDA to plaintiff.
Ex.X.12 dt. 28.6.94 letter from Govt. to HUDA.
Ex.X.13 dt. 24.5.94 Letter addressed by 2nd plaintiff to Principal Secretary Municipal Administration and Urban Development.
Ex.X.14 dt. 20.10.94 letter to Principal Secretary to Government of A.P.
Ex.A.15 dt. 31.9.00 letter from HUDA to the 2nd plaintiff.
Ex.A.16 dt. 31.5.00 letter addressed to Principal Secretary to Government by HUDA.

Additional Chief Judge
City Civil Court, Secunderabad.

Digitized by E. S. Rao, Secunderabad

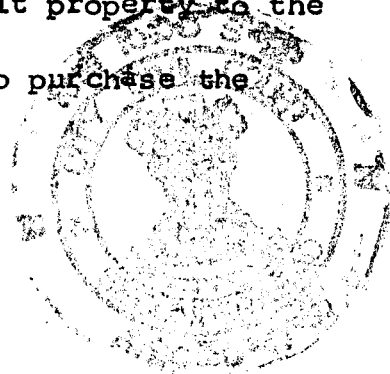
S. Superintendent.

T.by:VR.
R.by: M.C.by: [Signature]



the 2nd plaintiff was the owner of the suit schedule property having purchased the same along with other properties through two registered sale deeds dt. 18.5.1961 and 19.9.1969. Subsequently, the 2nd plaintiff settled the schedule property in favour of Sri Gurudev Ashram, by a registered deed of settlement dt. 16.10.1971. Subsequently, the said Gurudev Ashram which was a Charitable Trust and Sri Mukteshwar Trust, another Charitable Trust, were amalgamated and named as Gurudev Siddha Peeth, the 1st plaintiff herein. Thus, the 1st plaintiff has become the owner of the schedule property. Thereafter, the 1st plaintiff has applied for and obtained necessary permission from the Charity Commissioner, Maharashtra State, Bombay, for the sale of its properties held by the 1st plaintiff in Hyderabad. The 2nd plaintiff herein offered to purchase the whole property under an agreement dt. 29.6.1991.

3. While the matter stood thus, the defendant approached the 2nd plaintiff with an offer to purchase the schedule property for a total consideration of Rs.70,85,000/- . After due negotiations, the plaintiffs and the defendant entered into an agreement dt. 18.12.1992. By the date of said agreement, the defendant paid a sum of Rs.12.00 lakhs as advance and earnest money. At the request of the defendant and in pursuance of the terms of the said agreement, the plaintiff delivered possession of the suit property to the defendant on 18.12.1992. Having agreed to purchase the



demands and pleas totally in variance to the spirit and terms of the agreement dt. 18.12.1992.

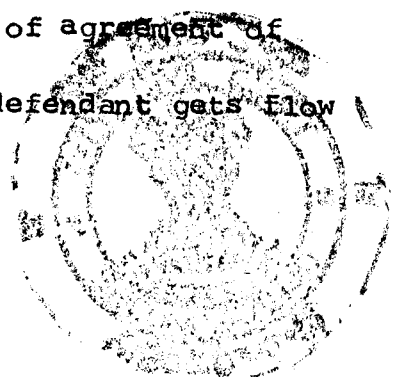
4. Thereafter, the plaintiffs tried to settle the dispute amicably, but all such efforts were in vain. The defendant addressed a letter dt. 16.8.1994 raising all untenable pleas and proposing totally new terms in variance to and contradictory to the original terms of the agreement. The plaintiffs replied by their letter dt.1.9. 1994 to the defendant putting it on notice to the original terms of the agreement. The defendant issued a belated further reply again raising untenable pleas. From the above correspondence exchanged between the parties, the defendant is neither capable nor willing to adhere to the terms of the agreement. In pursuance of Clause No.10 of the agreement, the defendant has committed breach of terms and the agreement stands cancelled. Therefore, the defendant is liable to restore the possession of the suit schedule property to the plaintiffs and the advance paid by the defendant stands forfeited. As the defendant has not redelivered possession of the suit property, the plaintiffs are entitled to claim the relief of possession. The defendant, so far, has not commenced any construction. As the agreement stands cancelled, the defendant is not entitled to carry out any construction in the suit schedule property. Hence, the plaintiffs are also entitled to claim the relief of permanent injunction. Hence, the suit.



only by the end of April, 1993.

6. As per clause No. 7 of the agreement of sale., the plaintiffs have to obtain clearance from Urban Land Ceiling authorities and Income Tax authorities, but they have not obtained the same. The plaintiffs could obtain the Income tax clearance only in the month of March, 1993 and ULC Certificate was obtained and furnished only on 16.9.1993. The suit schedule property falls under ' Light Industrial Zone ' as per Zoning Regulations and required change of land use to commercial cum residential and only on approval of change of land use by HUDA, the defendant can obtain permission for construction. Even for according sanction for change of land use, clearance, of ULC being essential, HUDA did not entertain the defendants application at all.

7. During September, 1993, the entire area was water logged due to rains. The plaintiff No. 2 is having properties adjoining the suit schedule site i.e. Soham Mansion and SN Modhi Commercial Complex. The drainage pipes in respect of these buildings are passing through the suit schedule site. This fact was never brought to the notice of the defendant either at the time of agreement or immediately thereto . The defendant made all arrangements and started excavation work for the cellar in May, 1993, itself and completed by the end of May, 1993 in anticipation of sanction from the concerned public authorities in order to avoid delay in execution of the works. The agreement is under the nature of agreement of sale cum development, wherein unless the defendant gets flow



problems involved. However, after the defendant commenced the work and made it a ~~va~~ viable project, the plaintiffs became greedy and wanted to somehow prevent the defendant from further developing the property and thereby cancel the agreement on some pretext or the other. There was also all round development in the adjoining locality, including formation of Necklace Road. All these factors contributed in plaintiffs turning hostile and the present suit is nothing but a culmination of the mala fide intent on the part of the plaintiffs.

10. The plaintiffs, instead of making necessary clearance to enable the defendant to carry out the work, resorted to only unnecessary correspondence and threats. The time is not the essence of contract and in the event of delay the agreement contemplates payment of interest for delayed period. However, this interest is payable only in case the defendant commits breach. In the instant case, it is the plaintiffs who have committed breach, as such they are not entitled to take advantage of their own wrong. There is no cancellation of the agreement, much less, a valid cancellation. The agreement is still subsisting and the defendant is entitled to continue in possession of the suit schedule property. Thus, the plaintiffs are not entitled for recovery of possession. Subsequent to filing of the suit also, some negotiations have been going on between the defendant and plaintiff No. 2



13. Since the Issue No.3 is with regard to maintainability of suit, the same is decided at the first instance.

14. ISSUE No.3:-

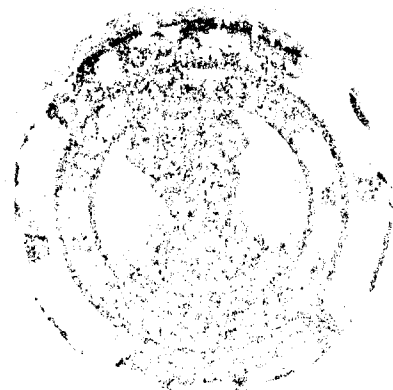
The defendant has pleaded in their written statement that the suit with the prayer for the delivery of possession is not maintainability as the agreement is still subsisting.

15. During the course of agreements, the defendant's counsel has pleaded that the agreement of sale dt. 18.12.1992 cannot be terminated and as such the plaintiffs ought to have filed the suit for recession of contract U/s 27 of Specific Relief Act or filed a suit for cancellation of agreement of sale U/s 31 of Specific Relief Act. The plaintiffs' counsel contended that Sec.27 or Sec. 31 of the Specific Relief Act are not applicable to the present facts of the case and as per Clause 10 of agreement of sale under Ex.B.2. the agreement was cancelled ipso facto due to the non-payment of balance of sale consideration and interest by the defendant as contemplated in Clause No.3 of the said agreement.

16. Section 27 of the Specific Relief Act of 1963 deals with Rescission of Contracts. Under the said Section 27.

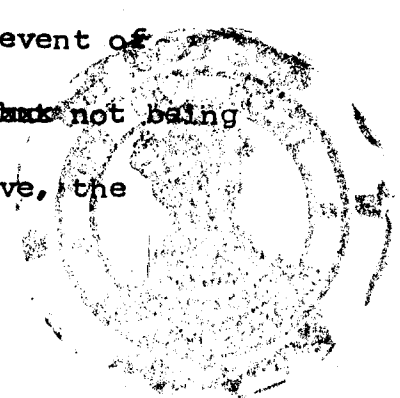
" Any person interested in a contract may sue to have it rescinded and such rescission may be adjudged by the Court in any of the following cases, namely:-

- (a) Where the contract is voidable or terminable by the plaintiff:



only when the instrument is void or voidable. But, it is not case of the defendant that the present agreement under Ex.B.2 is avoid or voidable agreement. Under the contract Act, a void contract under these sections is one in which the consideration or object is unlawful, or when there is no consideration at all or is one in restraint of marriage or in restraint of trade or in restraint of legal proceedings or an agreement which is uncertain or one which is a wager. But the suit agreement of sale under Ex.B.2 does not come under any of these categories. Thus, the agreement under Ex.B.2 cannot be said to be a void agreement. Therefore, Section 31 of Specific Relief Act is not applicable to the present facts of the case.

20. The next contention of the defendant's counsel is that the plaintiffs ought to have filed a suit for specific performance of agreement for enforcement of Clause 10 of Ex.B.2. Ex.B.2 is the agreement entered into between the plaintiffs and the defendant with regard to the suit schedule property. As per Clause 3 of the said agreement of sale contemplates the payment of balance of sale consideration and in default with regard to payment of interest and the period for payment of the balance of the sale consideration and it is also mentioned in the said clause that in the event of non-payment of interest for any two quarters on their due dates, the agreement shall ipso facto stand cancelled. Further it was mentioned that in the event of the entire principal amount or any part thereof not being paid within 30 days of the due date mentioned above, the



22. Issue No.1:-

The plaintiff's counsel contends that since the defendant has not fulfilled the Clause No.3 of Ex.B.2, agreement of sale, is making the payment of balance of sale consideration or the interest, the agreement shall stand cancelled and the plaintiffs are entitled for recovery of possession as per Clause No.10 of the said Ex.B.2, agreement of sale,

The defendant's counsel contends that since there are reciprocal obligations on either side, the question of cancellation of agreement on either side, the question of cancellation of agreement does not arise and the plaintiffs themselves have not complied the obligations on their part as mentioned in Clause Nos. 4, 5, 6 & 7 of Ex.B.2, agreement of sale. The defendant's counsel further pleaded that Ex.B.2 is not a simple agreement of sale and it is the sale-cum-development agreement, as such the question of cancellation of said agreement does not arise. The defendant's counsel further pleaded that since the defendant is always ready and willing to perform their part of obligation under Ex.B.2, they are entitled to protection U/s 53-A of T.P. Act. as such the plaintiffs are not entitled for recovery of possession. The plaintiff's counsel has pleaded that as per agreement of sale. Ex.B.2, a time frame is fixed for payment of balance of sale consideration and also provides



further delay in clearing of the balance, the same shall carry interest at 11/2 % per mensum payable quarterly in advance.

At any cost, the Vendee shall clear all the said amount within a period of 38 months from the date of the Agreement.

The interest stipulated above shall be payable every 3 months in advance i.e. for 12 months free of interest; for 10 months on interest at 12% p.a. and for 16 months on interest at 18% p.a. In the event of non-payment of interest for any two quarters on their due dates, this agreement shall ipso facto stand cancelled. Further, in the event of the entire principal amount or any part thereof not being paid within 30 days of the due date mentioned above, this agreement shall ipso facto stand cancelled. In such event of cancellation, the consequences stated in Clause N^o.10 below shall follow.

24. Clause No.10 of Ex.B.2 reads as under:-

" It is further agreed that till full and final payment is made, the Vendee nor persons claiming through the Vendee shall have any right over the property, In particular, it is agreed that in the event of any cancellation or termination of this agreement, the Vendee and all persons claiming by through or under the Vendee shall vacate the said property and hand back occupation to the Vendor/consenting Party who shall be entitled in law to take back the same. not withstanding any dispute that may have arisen. It is further agreed that the structures if any then standing

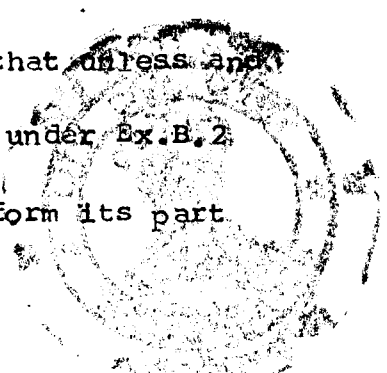


consists of reciprocal promises to be ~~at~~ simultaneously performed. no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise".

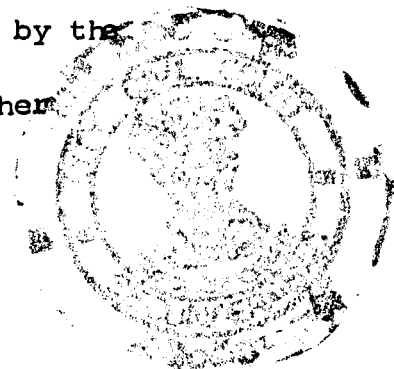
Section 52 of Indian Contract Act deals with order of performance of reciprocal promises. As per the said Section. "Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the Contract, they shall be performed in that Order which the nature of the transaction requires"

In the present case, admittedly there are reciprocal promises to be performed by both the plaintiffs and defendant. Under Clause 3 of Ex.B.2, the obligation is on the defendant to make the balance of sale consideration under a time schedule and also payment of interest in case of default.

The other conditions to be complied by the plaintiffs under Clause Nos. 4, 5, ⁶ & 7 and ^{they are} ~~these are~~ not inter-depending upon the performance of the clause No.3 by the defendant. Moreover, no time limit was fixed for performing the obligations on the part of the plaintiffs. Since it is an agreement of sale, the obligation is on the part of the defendant to make the payment of balance of sale consideration as contemplated U/s 52 of the Indian Contract Act, as there is no order prescribed in Ex.B.2 for performance of reciprocal promises on either side. Therefore, the defendant cannot be permitted to contend that ~~unless and~~ until the plaintiffs perform their obligation under Ex.B.2 agreement of sale, the defendant need not perform its part.

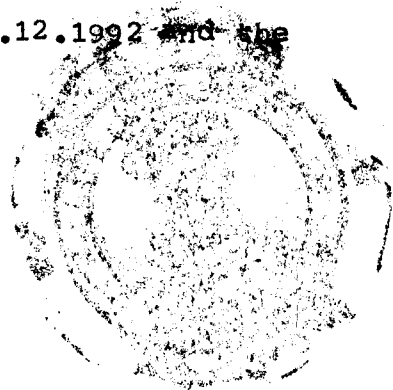


29. Therefore, as per the above said decisions, in order to ascertain the nature of the document, the entire document has to be looked into and the intention of the parties to be ascertained from the said instrument. In the present case, admittedly, Ex.B.2 is the agreement of sale and according to the defendant, it is sale-cum-development agreement. The defendant's counsel in support of his contention, relied upon Clause Nos. 14, & 15 of Ex.B.2. Under clause No.14, the Vendee shall be entitled to not only develop the property by raising constructions over the schedule land by removing the old structures, if any, but also shall be entitled to do the booking and receive advance of the portions of the building constructed by the Vendee from the intending purchasers. As per Clause 15, on receipt of the agreed consideration the Vendor and the consenting party shall execute an irrevocable Power of Attorney in favour of the Vendee to enable the Vendee to execute sale deeds in respect of the portions of the building on their behalf & as well as on behalf of the Vendee in favour of the nominees of the Vendee. As per the preamble of Ex.B.2 it is evident that the plaintiffs No.1 & 2 obtained permission from the Charity Commissioner for the purpose of selling away the suit schedule properties and invest the amounts on long term fixed deposits in any scheduled bank or co-operative Bank approved by the Government or in public securities earning higher



the benefit of the defendant and not for the benefit of the plaintiffs. As already observed above, by developing the property by making construction the plaintiffs are not going to get any benefit out of it as they have agreed to sell away the property for a fixed consideration. Thus, it cannot be said to be an agreement of sale-cum-development as contended by the defendant.

31. The next contention of the defendant's counsel is that since the plaintiffs have not fulfilled their obligations under Ex.B.2, they could not develop the property and collect the sale consideration from the third parties so as to enable them to make the payment to the plaintiffs. But, no such clause is mentioned in the agreement of sale. Even if it is accepted that the plaintiffs have to perform their part of obligation under Clause Nos. 4, 5, 6 and 7, the non-performance of the said clauses does not affect the payment schedule contemplated in Clause No.3 of Ex.B.2 as it was not a condition precedent for making the payment of balance of sale consideration by the defendant. According to the plaintiffs, the defendant has not taken any steps for development of the property inspite of taking the possession of the property on the date of agreement on 18.12.1992. The defendant's counsel contends that the vacant possession of the property was not delivered to him on 18.12.1992 and the



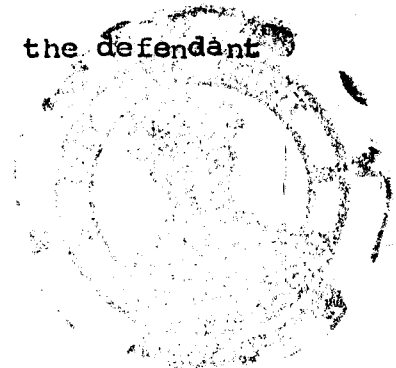
of the property was made only in the month of April, 1993, he is liable to make payment of balance of sale consideration and the ~~time~~ time for payment of the balance of sale consideration shall be reckoned from that date. But clause No. 3 of Ex. B. 2 contemplates the payment of total sale consideration within a period of 12 months from the ~~date~~ date of agreement and in the event of delay the vendee shall pay interest at 1% per mensem on the remaining sale consideration payable totally in advance and the said interest is to be paid for a period of 22 months and in the event of further delay, further interest @ 1 1/2 % interest shall be paid per mensem quarterly. Even if the contention of the defendant is accepted that since the delivery of the vacant possession was made in the month of April, 1993, the defendant has to make payment of balance of sale consideration within 12 months from that date.

Admittedly, the defendant has not made any payment of the balance of sale consideration till today. The suit was filed on 3.10.1994 i.e. after expiry of 12 months even from the date of April, 1993. Since the defendant has not paid any part of the balance of sale consideration or interest contemplated under Clause No. 3 of Ex. B. 2, it is clear that the defendant has violated the payment schedule as contemplated in Clause 3 of Ex. B. 2.

33. With regard to performance of the obligation on the



other hand has pleaded that the said Urban Ceiling permission is required for the purpose of obtaining sanction from the MCH for making the construction and also for conversion of the land use from light industrial zone to commercial zone. The plaintiffs' counsel contends that the obligation of obtaining conversion of the use of land from light industrial zone to commercial cum residential zone is on the Vendee and there is no obligation on this part to obtain the same. As per Clause No. 8 of Ex. B. 2. the Vendor and the consenting party shall co-operate with the Vendee for getting change of land from Light Industrial Zone to Commercial-cum-Residential Zone and in obtaining permission from the concerned authorities for construction of a building in the name of the Vendor. however, at the expense of the Vendee. Thus, as per the said clause, the Vendee has to get change of land usage and the Vendor and consenting Party has to cooperate with him. The plaintiffs in support of their contention have relied upon Ex. A. 9, letter addressed by the defendant to the plaintiff No. 2 which is a reply given by the defendant to the plaintiff's letter dt. 26.2.1994 and 7.3.1994. Wherein it was mentioned that the Urban Land Ceiling Certificate could be obtained and furnished it to him on 16.9.1993 only. Without ULC Certificate, the HUDA officials refused to process it further and this thing was brought to their notice to him and his agent Mr Bedi, number of times. Thus as per the Ex. A. 9, the defendant



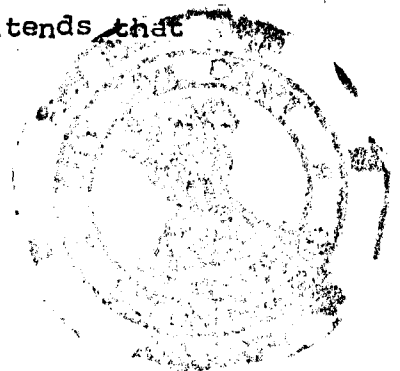
Government has withdrawn all the draft variations issued before 31.3.1999 as the applicants have not paid the required development charges. The defendant's counsel contends that since they are not aware of Ex.X.11, they could not make the payment of the said development charges and processing charges for obtaining the land conversion and the plaintiffs could not produce any document to show about the informing of the said communication to the defendant. The plaintiffs' counsel mainly relied upon Ex.A.9 and contends that the defendants are aware of the said process and their agent Bedi is looking after the matter. In Ex.A.9 it was mentioned that the HUDA authorities have refused to process the application for want of ULC Certificate and the same was brought to the notice of the plaintiff No.2 by him and his agent Mr.Bedi. Therefore, Mr.Bedi the agent of the defendant is looking after the matter with the HUDA for the conversion of the land usage. Therefore, it cannot be said that they are not aware of the deposit of processing fees and development charges. However, it is not on the part of the plaintiffs to obtain the same. The defendant's counsel has further pleaded that in view of the non-obtaining ULC certificate by the plaintiffs, they could not obtain the necessary permission for making the construction and in support of his contention he relied upon Sec.429 (2) of HMC Act. U/s 429 of HMC Act. the Commissioner may require a person to furnish a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together



payment of the balance of sale consideration and does not prevent the defendant from developing the property.

In any case, the defendant has not made the payment of balance of sale consideration or interest as contemplated under Clause N^o.3 of Ex.B.2 and the contention of the defendant that unless the property is developed by them after performance of the obligations on the part of the plaintiffs, they could not make the payment of the balance of sale consideration, does not hold good as there is no such a clause in the said agreement of sale under Ex.B.2. If such is the intention of the parties, there should have been a clause to the effect that only after the development of the property by the Vendee, the defendant has to make the payment of the balance of sale consideration. In the absence of the same, it cannot be said that unless the property is developed, the defendant need not make the payment of balance of sale consideration under Ex.B.2.

38. The next contention of the defendant's counsel is that they are ready and willing to perform the part of their obligation under Ex.B.2 and they are in possession of the property in part performance of the agreement of sale, they are entitled for protection U/s 53(A) of T.P.Act. Admittedly the suit property was delivered to the defendant on 18.12.1992 on receipt of the advance of sale consideration of Rs.12.00 lakh. The defendant's counsel contends that



"u/s. 53 A the transferee must have performed or is willing to perform his part of contract in order to take protection u/s 53A of T.P. Act "

39. In the above said decision, the Hon'ble Supreme Court has laid down the conditions necessary for making out a defence of part performance to an action in ejectment by the owner are:-

- i) That the transferor has contracted to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;
- ii) that the transferee has, in part performance of the contract, taken possession of the property or any part, thereof, or the transferee, being already in possession continues in possession in part performance of the contract;
- iii) that the transferee has done some act in furtherance of the contract; and
- iv) that the transferee has performed or is willing to perform his part of the contract.

40. The next decision relied upon by the defendant counsel is rendered in " Shrimant Shamrao Suryavanshi and another Vs. Prahajad Bhairoba Suryavanshi (dead) by L.Rs and others" reported in "AIR 2002 SC 960". In the above said decision also relied upon the conditions required for taking a defence or protect his possession under Sec. 53-A of the Act. The said conditions are:-

- " 1) There must be a contract to transfer for consideration any immovable property;
- 2) the contract must be in writing, signed by the transferor, or by someone on his behalf;

" Sec.53A makes it clear by employing the word "then" after laying down the prerequisites that a transferee seek refuge under it only after satisfying the prerequisites. In other words, the bar envisaged in the section against enforcement of the transferor's right can be exercised only on compliance with the postulates. Willingness to perform the roles ascribed to a party in a contract is primarily a mental disposition. However, such willingness in the context of Section 53A of the T.P.Act must be absolute and unconditional. If willingness is studded with a condition, it is in fact no more than an offer and cannot be termed as willingness. Where the Vendee company expresses its willingness to pay the amount provided the plaintiff clears his income-tax arrears, there is no complete willingness but a conditional willingness or partial willingness which is not sufficient to arm the company with the shield provided by Section 53-A of the T.P.Act."

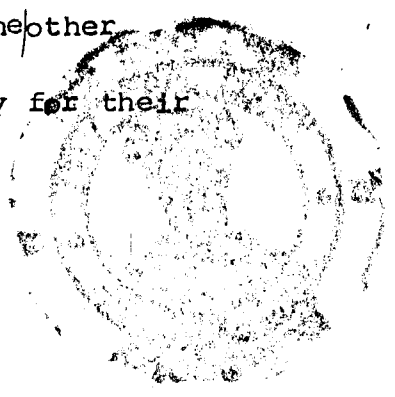
3) The next decision relied upon by the plaintiffs' counsel is rendered in " K.Venkata Rao and others Vs. Sunkara Venkatrao", reported in " 1998 (6) ALT 40" .Wherein the Single Judge of Hon'ble High Court of A.P. has held that:-

" The necessary conditions for the application of Section 53-A of Transfer of Property Act are:-

- 1) There is a contract to transfer immovable property for consideration;
- ii) The contract is signed by or on behalf of transferor;
- iii) The terms can be ascertained with reasonable certainty from the document;
- iv) The transferee is put in possession or if he is already in possession, continues in possession;
- v) The transferee has done some act in furtherance of the contract; and



contention of the defendant's counsel is that they are always ready and willing to perform their part of contract and in view of the laches on the part of the plaintiffs, they could not complete the development work, as such they are entitled for protection U/s 53(A) of T.P.Act. As per the agreement of Ex.B.2, the first obligation casts on the part of the defendant vendee has to make payment of the balance of sale consideration within 12 months from the date of agreement and the time schedule mentioned therein and the vendee was permitted to enter into the property for the purpose of development work and the vendee was permitted to develop the property by raising constructions over the schedule property and also book the flats to the intending purchasers and receive the consideration. The vendee shall bear all the expenses including the stamp duty and registration charges for execution of the registered sale deed. Thus, in order to seek protection U/s 53(A) of T.P.Act. the defendant has to establish its performing the part of the obligations or willing to perform the obligations under Ex.B.2. According to them, they have performed the obligation of developing the property by making the site ready for construction by excavating the earth, but the main obligation on the part of the defendant under Ex.B.2 is to make the payment of balance of sale consideration in pursuance of the agreement of sale and the other obligations on the part of the defendant are only for their



again gave a reply under Ex.A.11 on 31.3.1994 setting of different pleas for their inability to develop the property. Ex.A.12 is another letter dt. 16.8.1994 addressed by the defendant to the plaintiffs about the reasons for not developing the property due to the lapses on the part of the plaintiffs. But the defendant has not expressed their willingness to perform their part of obligation under Clause No.3 of Ex.B.2. Thus, from the above correspondence it is evident that the defendant has never expressed their willingness to perform their part of contract by making the payment of balance of sale consideration or the interest as contemplated under Clause No.3 of Ex.B.2. Thus, the defendant is not entitled for protection under Section 53(A) of T.P.Act to protect their possession over the schedule property.

45. The other decisions relied upon by the defendant's counsel reported in 1964(2) SCR 495, AIR 1975 Delhi 137, 1993(1) SCC 519 and 1998 (4) SCC 539. relating to the Specific Performance of agreement of sale, are not applicable to the present facts of the case as it is not a case for specific performance agreement of sale. Thus, from the above discussions, I hold that the defendant has not complied with Clause No.3 of Ex.B.2 and as per the Clause 10, the plaintiffs are entitled for recovery of possession of the schedule property. Hence, the plaintiffs are entitled for a direction to the



Appendix of Evidence
Witnesses Examined

For Plaintiffs:

P.W.1 Satish Modi
P.W.2 R.S.Ramchander Murthy
P.W.3 Soham Modi.
P.W.4 Syed Ziauddin.

For Defendant

D.W.1 J.Maruthi
D.W.2 G.S.prakash Rao

documents Marked:

For Plaintiffs:

Ex.A.1 Dt 18-12-92 Letter evidencing the delivery of the possession of property.

Ex.A.2 Copy of Income Tax clearance certificate

Ex.A.3 Dt. 16-3-93 Letter enclosed to A.2

Ex.A.4 Dt. 2-2-03 Copy of the letter addressed to U.L.C. authorities

Ex.A.5 dt. 19-5-94 letter.

Ex.A.6 Dt. 27-4-94 Copy of notification.

Ex.A.7 Dt. 27-3-95 letter.

Ex.A.8 Dt. 26-2-94 office copy of letter.

Ex.A.9 Undated reply in original.

Ex.A.10 Dt. 28-3-94 Office copy of the rejoinder.

Ex.A.11 Dt. 31.3.94 reply given by the defendant.

Ex.A.12 Dt. 16-8-94 letter.

Ex.A.13 Dt. 12-9-04 letter.

Ex.A.14 Dt. 26-9-94 letter.

Ex.A.15 Dt. 19-9-01 Certificate.

Ex.A.16 Photograph.

Ex.A.17 Photograph.

Ex.A.18 photograph.

Ex.A.19 Photograph.

For Defendant:

Ex. B.1 Dt. 18.12.92 Notice.

Ex.B.2 dt. 18.12.92 Original agreement.

Ex.B.3 Phtograph.

Ex.B.4 photograph.

Ex.B.5 dt. 13.11.92 receipt.

Ex.B.6 dt. 18.12.92 receipt.

Ex.B.7 dt. 18.12.92 letter.

Ex.B.8 Photograph with negative.

Ex.B.9 Photograph with negative.

Ex.B.10 Photograph with negative.

Ex.B.11 Photograph with negative.

Ex.B.12 Photograph with negative.

Ex.B.13 photograph with negative.



1

Chief Clerk of the Addition

Chief Judge, U. S. C. Sec. 84d

Chief Clerk of the Addition

Stamps	282/05
C. A. H.	151/05
Proctor	2512/05
E. O.	2512/05 88/-
Chapman	2512/05
Ward	2512/05
Wade	
Wesley	

[Handwritten signature]
 25/12/05
 Chief Clerk of the Addition

