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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
PANKAJ MITHAL; J., PRASHANT KUMAR MISHRA; J.
CIVIL APPEAL NO. 7840 OF 2023; MAY 17, 2024
RAJESH KUMAR *versus* **ANAND KUMAR & ORS.**

Negotiable Instruments Act, 1881; Section 138 – Maintainability of suit – Criminal law can be set in motion by anyone, even by a stranger or legal heir. A complaint under Section 138, preferred by the Power of Attorney Holder is held maintainable and also that such Power of Attorney Holder can depose as complainant. *(Para 11)*

Specific Relief Act, 1963; Section 12 – Admissibility of deposition of a Power of Attorney Holder – Power of Attorney Holder cannot depose for principal in respect of matters of which only principal can have personal knowledge and in respect of which the principal is liable to be cross-examined – It is necessary for the plaintiff to step into the witness box and depose the said fact and subject himself to cross-examination on that issue. Held, the plaintiff/appellant has failed to enter into the witness box and subject himself to cross-examination, he has not been able to prove the prerequisites of Section 12 of the Specific Relief Act, 1963. *(Para 9, 12 & 13)*

Limitation – Suit of specific performance preferred on the last date of limitation – Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring time limits stipulated in the agreement. The courts will also frown upon suits which are not filed immediately after the breach/refusal. Held, the suit having been preferred after a long delay, the plaintiff is not entitled for specific performance. *(Para 16 & 18)*

K.S. Vidyanadam vs. Vairavan, (1997) 3 SCC 1; Azhar Sultana vs. B. Rajamani & Ors., (2009) 17 SCC 27; Saradamani Kandappan vs. S. Rajalakshmi & Ors., (2011) 12 SCC 18; Atma Ram vs. Charanjit Singh, (2020) 3 SCC 311; referred.

For Appellant(s) M/S. Aura & Co., AOR Mr. Dhruv Agrawal, Sr. Adv. Mr. Yashish Chandra, Adv. Mr. Nishit Agrawal, AOR Mr. Kushagra Pandey, Adv. Mr. Harsh Bansal, Adv. Ms. Kanishka Mittal, Adv.

For Respondent(s) Mr. Gagan Gupta, Sr. Adv. Mr. Rahul Gupta, AOR

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

The appellant/plaintiff has called in question the judgment rendered by the High Court of Madhya Pradesh dated 01.09.2016 in First Appeal No. 340 of 2003 allowing the appeal preferred by the respondent nos. 1 to 3/defendant nos. 12 to 14 thereby setting aside the judgment and decree dated 25.04.2003 passed by the Trial Court in Civil Suit No. 38-A of 2000.

2. The facts of the case briefly stated, are that the appellant/plaintiff entered into an agreement to sell with respondent no. 4 (acting as Power of Attorney holder of respondents/defendant nos. 2 to 11) for purchase of land admeasuring 145.60 acres bearing Khasra No. 214 to 233 (except Khasra No. 225) and Khasra Nos. 67/1 to 212 situated at village Khirsau, Tehsil Sihora, District Jabalpur, M.P for sale consideration at the rate of Rs. 3,000/- per acre, totalling Rs. 4,41,000/-. The appellant/plaintiff paid earnest money of Rs. 41,000/- on the date of agreement to sell and the balance amount was to

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be paid on the date of registration of the sale deed which was to be done within six months from the date of agreement.

2.1 On 22.05.1996, the appellant/plaintiff paid an additional amount of Rs. 20,000/- for which an endorsement was made on the backside of the agreement. Further amount of Rs. 40,000/- was paid on 30.06.1996 which too was endorsed on the backside of the agreement. On 26.12.1996, another agreement was executed between the appellant/plaintiff and the Power of Attorney Holder extending the execution of the sale deed till 31.03.1997, remaining terms being the same. The date was further extended to 31.05.1997 vide entry made in the subsequent agreement dated 26.12.1996. Another entry was made on 23.04.1997 mentioning that the agreement to sell shall come to an end on 31.05.1997.

2.2 However, the respondent/defendant no. 1 being the Power of Attorney Holder of respondents/defendant nos. 2 to 11 executed the sale deed of the suit land on 14.05.1997 in favour of respondent nos. 1 to 3/defendant nos. 12 to 14 even though the said respondents were aware of the earlier sale agreement and its extensions. The sale deed dated 14.05.1997 was executed behind the back of the appellant/plaintiff which came to his notice subsequently on which a legal notice was sent on 30.05.1997 calling upon the respondents/defendant nos. 1 to 11 to be present in the Registrar's office at Sihora on 31.05.1997 to carry out the formalities for execution of the sale deed. Despite receipt of this notice, the respondents/defendant nos. 1 to 11 did not attend the Registrar Office. On 31.05.1997, the appellant/plaintiff was informed by the subRegistrar that the suit land has been sold in favour of respondent nos. 1 to 3/defendant nos. 12 to 14.

2.3 According to the appellant/plaintiff, he is in possession of the suit land, therefore, he objected to the application dated 20.08.1997 moved by the respondents/defendant nos. 12 to 14 for mutation of their names. The Gram Panchayat assured the appellant/plaintiff in its meeting dated 06.12.1997 that defendant nos. 12 to 14 will execute a sale deed in favour of the appellant/plaintiff, therefore, legal action was not initiated. The present suit was filed on 19.06.2000.

2.4 The respondents/defendants in joint written statement averred that the suit land is in possession of the respondent nos. 1 to 3/defendant nos. 12 to 14 being the *bona fide* purchasers for value paid vide registered sale deed dated 14.05.1997. It was pleaded that the respondents/defendants were not aware of any agreement to sell between the appellant/plaintiff and respondent nos. 1 to 11 and that the suit is barred by limitation. It was also pleaded that time was the essence of the contract and the sale deed was to be executed within six months from the date of the agreement and that the appellant/plaintiff did not have sufficient funds with him for payment of the sale consideration and the advance amount of Rs. 40,000/- was also returned to the appellant/plaintiff through one Subhash Chandra Bansal. The respondents/defendant nos. 2A to 2F filed their separate joint written statement stating that their late father Raghvendra Kumar Bakshi has never executed or agreed to execute the sale agreement. Similar was the plea in the written statement filed by the respondent/defendant no. 5.

2.5 The Trial Court decreed the suit upon finding that the agreement to sell has been executed between the appellant/plaintiff and defendant no. 1 as a Power of Attorney Holder of defendant nos. 2 to 11. Non-examination of the appellant/plaintiff as a witness was held not having any adverse impact on plaintiff's case. The Trial Court also found that the time allowed for execution of sale deed was extended twice and he had also paid earnest money, therefore, the appellant/plaintiff was ready and willing to perform his part of the contract and the suit is not barred by limitation. Since the extended time for

registration of sale deed was till 31.05.1997 and the suit was to be filed on or before 30.05.2000. However, on the said date, the Court was closed for summer vacation which ended on 18.06.2000 and the suit was filed on 19.06.2000. Therefore, the suit was within limitation, having been filed on the last date of limitation.

2.6 In appeal preferred by the respondent nos. 1 to 3/defendant nos. 12 to 14, the High Court has passed the impugned judgment allowing the appeal to set aside the judgment and decree of the Trial Court consequently dismissing the appellant/plaintiff's suit. Hence this appeal.

3. Mr. Dhruv Agrawal, learned senior counsel appearing for the appellant would submit that the High Court has committed serious error of law and fact by setting aside the well reasoned judgment and decree passed by the Trial Court. According to him, the execution of sale agreement by defendant no. 1 as a Power of Attorney Holder of Defendant Nos. 2 to 11 having been duly proved and the appellant/plaintiff having paid the earnest money and filing the suit within time, the First Appellate Court ought not to have set aside the judgment of the Trial Court. It is further submitted that the High Court is not correct in holding that the defendant nos. 2 to 11 had not signed the agreement because defendant no. 1 was their Power of Attorney Holder. The High Court has also erred in holding that Power of Attorney Holder cannot depose in a civil suit on behalf of the plaintiff. According to him, non-appearance of the appellant/plaintiff as a witness would not have any adverse impact in a suit of this nature and that the readiness and willingness can be proved by the Attorney Holder.

4. *Per contra*, Mr. Gagan Gupta, learned senior counsel for the respondents/defendants would submit that the agreement dated 26.09.1995 is *void ab initio* because it was not executed by all the owners of the suit land. It was then argued that in a suit for specific performance non-appearance of plaintiff as a witness is fatal to his case because it is he who has to plead and prove the readiness and willingness. He would submit that the High Court has rightly set aside the judgment and decree of the Trial Court which is based on perverse finding and incorrect application of settled legal principles.

5. The High Court has non-suited the appellant/plaintiff on two counts. *Firstly*, that defendant no. 1 is not the sole owner of the property which was the coparcenary property and the other coparceners did not sign the initial agreement and *secondly*, that the appellant/plaintiff having failed to appear in the witness box, the testimony of his Power of Attorney Holder cannot be read as statement of the plaintiff in a civil suit of this nature.

6. Admittedly, the initial agreement dated 26.09.1995 was executed by Defendant no. 1-Gajay Bahadur Bakshi. It is the case of the appellant/plaintiff that Gajay Bahadur Bakshi was the Power of Attorney Holder of Defendant nos. 2 to 11, the other co-owners/coparceners of the suit property. However, the agreement itself no where states that Gajay Bahadur Bakshi has executed the agreement as Attorney Holder of Defendant nos. 2 to 11. On the contrary, it is mentioned in the agreement that Gajay Bahadur Bakshi would be responsible for getting the sale deed executed and registered by all the coowners or co-khatedars at the time of registration. Neither the names of all the co-owners/coparceners/co-khatedars are mentioned in the agreement, thus, the High Court is right in finding that all the co-owners have not signed the agreement. The subsequent endorsement of receipt of additional amount of Rs. 40,000/- is also not signed by all the co-parceners. The same is the condition with the 3rd agreement dated 26.12.1996 and the extension endorsement dated 27.03.1997 and 23.04.1997. Significantly, the so-called power of attorney pleaded in the plaint through which the defendant nos. 2 to 11 authorised

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defendant no. 1 to execute the agreement, have not been produced and proved in the Trial Court. Thus, neither in the agreement nor in course of trial the power of attorney is proved by tendering the same in evidence. Hence, in the absence of evidence, the High Court rightly held that the agreement is not signed by all the co-owners.

7. In the matter of ***Shanmughasundaram & Ors. Vs. Diravia Nadar (dead) by Lrs. & Anr.***[1], this Court has held that in the event all the co-sharers of the property have not executed the sale agreement, a suit for specific performance cannot be decreed. The following is held in paras 29,30 & 31:

"29. The facts in present case are distinguishable. Admittedly, the property has been jointly inherited by two brothers and three sisters. As heirs under the Hindu Succession Act, they inherited the property as co-owners. In the absence of partition between them, the two brothers together had undivided share in the property, and they could not have agreed for sale of the entire property. They were competent to execute agreement to the extent only of their undivided share in the property. In the event of sale of such undivided share, the vendee would be required to file a suit for partition to work out his right in the property. The left out three sisters as co-owners having undivided share in the whole property, the two brothers are incompetent to abide by the award.

30. Learned counsel makes a reference to Section 12 of the Specific Relief Act, 1963 and submits that the arbitration agreement and consequent award should be allowed to be enforced to the extent of share of two brothers leaving the vendee to work out his right, if necessary, in case the sisters object to the sale, by a suit in accordance with Section 12 of the Specific Relief Act.

31. Section 12 of the Specific Relief Act, in our considered opinion, would be of no assistance in the situation obtaining here. In the absence of sisters being parties to the agreement, the vendee can at best obtain undivided interest of two brothers in the property. Section 12 of the Specific Relief Act cannot be invoked by the vendee to obtain sale of undivided share of the two brothers with a right to force partition on the sisters who were not parties to the agreement of sale. Such a relief under Section 12 cannot be obtained by a vendee, on purchase of an undivided share of the property of some of the co-owners, against other co-owners who were not parties to the sale agreement."

8. Undisputedly, in the present case, the plaintiff failed to appear in the witness box. Instead, his Power of Attorney Holder – Parmod Khare has got himself examined as PW-1. This witness was examined on 05.09.2002 and the power of attorney was executed on 26.08.2002. It is not a case where the suit itself was filed by a Power of Attorney Holder. He appeared subsequently only for recording his evidence as the Special Power of Attorney Holder of the plaintiff. The legal position as to when the deposition of a Power of Attorney Holder can be read in evidence has been dealt with by this Court in several decisions.

9. In ***Janki Vashdeo Bhojwani & Anr. vs. Indusind Bank Ltd. & Ors.***[2], it is held that a Power of Attorney Holder cannot depose for principal in respect of matters of which only principal can have personal knowledge and in respect of which the principal is liable to be cross-examined. It is also held that if the principal to the suit does not appear in the witness box, a presumption would arise that the case set up by him is not correct. This Court has discussed the legal position in the following words in paras 13 to 22:

"13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in

[1] AIR 2005 SC 1836
[2] (2005) 2 SCC 217

respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

14. Having regard to the directions in the order of remand by which this Court placed the burden of proving on the appellants that they have a share in the property, it was obligatory on the part of the appellants to have entered the box and discharged the burden. Instead, they allowed Mr Bhojwani to represent them and the Tribunal erred in allowing the power-of-attorney holder to enter the box and depose instead of the appellants. Thus, the appellants have failed to establish that they have any independent source of income and they had contributed for the purchase of the property from their own independent income. We accordingly hold that the Tribunal has erred in holding that they have a share and are co-owners of the property in question. The finding recorded by the Tribunal in this respect is set aside.

15. Apart from what has been stated, this Court in the case of Vidhyadhar v. Manikrao [(1999) 3 SCC 573] observed at SCC pp. 583-84, para 17 that:

"17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct…."

16. In civil dispute the conduct of the parties is material. The appellants have not approached the Court with clean hands. From the conduct of the parties it is apparent that it was a ploy to salvage the property from sale in the execution of decree.

17. On the question of power of attorney, the High Courts have divergent views. In the case of Shambhu Dutt Shastri v. State of Rajasthan [(1986) 2 WLN 713 (Raj)] it was held that a general power-of-attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in the witness box on behalf of himself. To appear in a witness box is altogether a different act. A general power-ofattorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

18. The aforesaid judgment was quoted with approval in the case of Ram Prasad v. Hari Narain [AIR 1998 Raj 185 : (1998) 3 Cur CC 183] . It was held that the word "acts" used in Rule 2 of Order 3 CPC does not include the act of power-ofattorney holder to appear as a witness on behalf of a party. Power-of-attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but he cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of CPC.

19. In the case of Pradeep Mohanbay (Dr.) v. Minguel Carlos Dias [(2000) 1 Bom LR 908] the Goa Bench of the Bombay High Court held that a power of attorney can file a complaint under Section 138 but cannot depose on behalf of the complainant. He can only appear as a witness.

20. However, in the case of Humberto Luis v. Floriano Armando Luis [(2002) 2 Bom CR 754] on which reliance has been placed by the Tribunal in the present case, the High Court took a dissenting view and held that the provisions contained in Order 3 Rule 2 CPC cannot be construed to disentitle the power-of-attorney holder to depose on behalf of his principal. The High Court further held that the word "act" appearing in Order 3 Rule 2 CPC takes within its sweep "depose". We are unable to agree with this view taken by the Bombay High Court in Floriano Armando [(2002) 2 Bom CR 754] .

21. We hold that the view taken by the Rajasthan High Court in the case of Shambhu Dutt Shastri [(1986) 2 WLN 713 (Raj)] followed and reiterated in the case of Ram Prasad [AIR 1998 Raj 185 : (1998) 3 Cur CC 183] is the correct view. The view taken in the case of Floriano Armando Luis [(2002) 2 Bom CR 754] cannot be said to have laid down a correct law and is accordingly overruled.

22. In the view that we have taken, we hold that the appellants have failed to discharge the burden that they have contributed towards the purchase of property at 38, Koregaon Park, Pune from any independent source of income and failed to prove that they were co-owners of the property at 38, Koregaon Park, Pune. This being the core question, on this score alone, the appeal is liable to be dismissed."

10. Thereafter, in ***Man Kaur vs. Hartar Singh Sangha***[3], this Court referred to its earlier decisions including ***Janki Vashdeo Bhojwani*** (supra) and concluded thus in paras 17 & 18:

"17. To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered into by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross-examination on that issue. A plaintiff cannot obviously examine in his place, his attorney-holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore a third party who has no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney-holder of the person concerned.

18. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney-holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney-holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders.

[3] 2010 (10) SCC 512

(e) Where the entire transaction has been conducted through a particular attorney-holder, the principal has to examine that attorney-holder to prove the transaction, and not a different or subsequent attorney-holder.

(f) Where different attorney-holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his "state of mind" or "conduct", normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his "bona fide" need and a purchaser seeking specific performance who has to show his "readiness and willingness" fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or "readiness and willingness". Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

11. In a more recent judgment of this Court in the matter of ***A.C. Narayanan vs. State of Maharashtra & Anr.***[4]**,** this Court again considered the earlier judgments, particularly, ***Janki Vashdeo Bhojwani*** (supra) and having noticed that **Janki Vashdeo Bhojwani** relates to Power of Attorney Holder under CPC whereas in the matter of (**A.C. Narayanan**) the Court was concerned with a criminal case. It was observed that since criminal law can be set in motion by anyone, even by a stranger or legal heir, a complaint under Section 138 of the Negotiable Instruments Act, 1881 preferred by the Power of Attorney Holder is held maintainable and also that such Power of Attorney Holder can depose as complainant.

12. Having noticed the three judgments of this Court in ***Janki Vashdeo Bhojwani*** *(supra)***, *Man Kaur*** *(supra)* **& *A.C. Narayanan*** *(supra),* we are of the view that in view of Section 12 of the Specific Relief Act, 1963, in a suit for specific performance wherein the plaintiff is required to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, a Power of Attorney Holder is not entitled to depose in place and instead of the plaintiff (principal). In other words, if the Power of Attorney Holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the act done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined. If a plaintiff, in a suit for specific performance is required to prove that he was always ready and willing to perform his part of the contract, it is necessary for him to step into the witness box and depose the said fact and subject himself to cross-examination on that issue. A plaintiff cannot examine in his place, his attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness. The term 'readiness and willingness' refers to the state of mind and conduct of the purchaser, as also his capacity and preparedness, one without the other being not sufficient. Therefore, a third party having no personal knowledge about the transaction cannot give evidence about the readiness and willingness.

[4] (2014) 11 SCC 790

13. In the light of above settled legal position, we are of the view that in the instant case, the plaintiff/appellant has failed to enter into the witness box and subject himself to cross-examination, he has not been able to prove the prerequisites of Section 12 of the Specific Relief Act,1963 and more so, when the original agreement contained a definite time for registration of sale deed which was later on extended but the suit was filed on the last date of limitation calculated on the basis of the last extended time.

14. The effect of filing a suit for specific performance after long delay, may be at the fag end of period of limitation fell for consideration before this Court in ***K.S. Vidyanadam vs. Vairavan***[5] wherein this Court held thus in para 10:

"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani [(1993) 1 SCC 519]: (SCC p. 528, para 25)………………"

15. In ***Azhar Sultana vs. B. Rajamani & Ors.***[6], this Court held thus in para 28:

"28. ……….The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard-and-fast law can be laid down therefor. The conduct of the parties in this behalf would also assume significance."

16. In ***Saradamani Kandappan vs. S. Rajalakshmi & Ors.***[7], this Court held that every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring time limits stipulated in the agreement. The courts will also frown upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for one or two years to file a suit and obtain specific performance.

17. In ***Atma Ram vs. Charanjit Singh***[8], this Court has observed in para 9 thus:

"9. ……..No explanation was forthcoming from the petitioner for the long delay of three years, in filing the suit (on 13-10-1999) after issuing a legal notice on 12-11-1996. The conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12-11-1996 claiming readiness and willingness, but who institutes a suit only on 13-10-1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance."

18. In the case in hand, the plaintiff entered into an agreement with only one of the co-owners and thereafter sought extensions for execution of the sale deed but did not prefer

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[5] (1997) 3 SCC 1
[6] (2009) 17 SCC 27
[7] (2011) 12 SCC 18
[8] (2020) 3 SCC 311

any suit though he was aware of the sale deed dated 14.05.1997 executed in favour of defendant nos. 12 to 14 and sent a legal notice on 30.05.1997 and even objected to the subsequent purchasers' application for mutation of their names in the revenue records on 20.08.1997 and refers to a meeting of the Gram Panchayat dated 06.12.1997, yet the suit was preferred, on 09.05.2000 on the last date of limitation. Thus, on the strength of observations made by this Court in ***K.S. Vidyanadam*** *(supra),* ***Azhar Sultana*** *(supra),* ***Saradamani Kandappan*** *(supra)* & ***Atma Ram*** *(supra),* the suit having been preferred after a long delay, the plaintiff is not entitled for specific performance on this ground also.

19. For the foregoing, we uphold the judgment and decree dated 01.09.2016 passed in FA No. 340 of 2003 by the High Court. The appeal lacks substance and is hereby dismissed. The parties shall bear their own costs.

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