

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.174 of 1992

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Mahabir Prasad Son of late Ram Singaran Singh, Resident of Village
Bhatauli, P.S. Nawanagar, District Bhojpur.

... .. Appellant/s

Versus

- 1.1. Mostt. Dhamuniya Devi W/o Sri Bhagwan Singh, Resident of Village Babu Ganj English, P.O. Bisikala, P.S. Sikaraul, District Buxar.
- 1.2. Bikarma Singh Son of late Bhagwan Singh, Resident of Village Babu Ganj English, P.O. Bisikala, P.S. Sikaraul, District Buxar.
- 1.3. Raj Kishore Singh alias Bucha Singh, Son of late Bhagwan Singh, Resident of Village Babu Ganj English, P.O. Bisikala, P.S. Sikaraul, District Buxar.
- 1.4. Chandradeo Singh S/o Late Bhagwan Singh, Resident of Village Babu Ganj English, P.O. Bisikala, P.S. Sikaraul, District Buxar.
2. Lallan Singh Son of late Babu Ram Singh, Resident of Village Bhatauli, P.S. Nawanagar, District Bhojpur, at present District Buxar.

... .. Respondent/s

=====
with

SECOND APPEAL No. 175 of 1992

- =====
1.1. Vijay Kumar Singh Son of Late Girja Singh, Resident of Village Bhatauli, P.S. Nawanager, Dist. Buxar.
1.2. Ishwer Singh Son of late Girja Singh, Resident of Village Bhatauli, P.S. Nawanager, Dist. Buxar.

... .. Appellant/s

Versus

- 1.1. Mostt. Dhanmuniya Devi W/o Late Bhagwan Singh, Resident of Village Babuganj, P.O. Bisikalo, P.S. Sikaraul, District - Buxar.
- 1.2. Bikram Singh Son of late Bhagwan Singh, Resident of Village Babuganj, P.O. Bisikalo, P.S. Sikaraul, District - Buxar.
- 1.3. Raj Kishore Singh alias Bucha Singh, Son of Late Bhagwan Singh, Resident of Village Babuganj, P.O. Bisikalo, P.S. Sikaraul, District - Buxar.
- 1.4. Chandradeo Singh Son of late Bhagwan Singh, Resident of Village Babuganj, P.O. Bisikalo, P.S. Sikaraul, District - Buxar.
2. Sri Lallan Singh Son of late Babu Ram Singh, Resident of Village Bhatauli, P.S. Nawanager, Dist. Bhojpur at present Dist. Buxar.

... .. Respondent/s

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Appearance :

(In SECOND APPEAL No. 174 of 1992)

For the Appellant/s : Mr. Din Bandhu Singh, Advocate

Mr. Satya Deo Kumar, Advocate

For the Respondent/s : Mr. Yogendra Pd. Sinha, Advocate

(In SECOND APPEAL No. 175 of 1992)

For the Appellant/s : Mr. Din Bandhu Singh, Advocate



For the Respondent/s : Mr. Satyadeo Kumar, Advocate
Mr. Yogendra Pd. Sinha, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT**

Date: 17-02-2026

Heard Mr. Din Bandhu Singh, learned counsel for the appellant assisted by Mr. Satyadeo Kumar and Mr. Yogendra Prasad, learned counsel for the respondents in both the appeals.

2. Both Second Appeal have been filed under Section 100 of the Code of Civil Procedure (hereinafter read as “CPC”) by the appellant/respondent/plaintiffs against the judgment dated 16.04.1992 and decree dated 20.04.1992 passed by learned Additional District Judge, Buxar, whereby and where under the learned Appellate Court in Title Appeal Nos. 04 of 1978 and 05 of 1978 set asides the judgment and decree dated 17.12.1977 passed in Title Suit Nos. 32 of 1968 and 30 of 1968 by learned Munsif-I, Buxar.

3. Following, substantial questions of law have been formulated for determination: -

(i). Whether the appellate Court could have framed issue for decision of the appeal which does not arise out of pleadings and the decision arrived at by the appellate Court can be sustained?

(ii) Whether when there is no pleading as to how the suit was maintainable and issue



regarding maintainability have been framed and decided by the appellate Court setting aside the Judgment and decree of the trial Court without assigning other reason on merit and evidence?

4. The respondents herein were the appellants/defendants before the learned appellate Court and learned trial Court and the appellants here in were respondents/plaintiffs. The appellants/respondents/plaintiffs filed Title Suit Nos. 32 of 1968 and 30 of 1968 for Specific Performance of Contract which was decreed *vide* judgment and decree dated 17.12.1977 passed by learned Munsif, Buxar. Being aggrieved, the respondents/appellants/defendants filed Title Appeal No. 04 of 1978 and 05 of 1978 which was allowed by the Additional District Judge, Buxar, *vide* judgment dated 16.04.1992 and decree dated 20.04.1992. Hence, the present Second Appeal has been filed by the appellants/respondents/plaintiffs.

5. In order to gauge the matter in its correct perspective, it is necessary to briefly re-state what the suit entails. The appellants/respondents/plaintiffs filed Title Suit No. 32 of 1968 and 30 of 1968 for Specific Performance of Contract in respect to the lands appertaining to C.S. Khata No. 75 and described in Schedule I of both the plaint for a direction



to the defendant to execute the sale deed in favour of the plaintiffs on receipt of the balance consideration money and in the event of non-execution the same should be executed through the process of the Court.

6. The case of the plaintiffs was that defendant was in need of money and entered into an agreement to sale of schedule I property of the plaint for a consideration of Rs. 5,000/- and executed an agreement for sale on 10.04.1966 after taking Rs. 500/- as advance and agreed to pay the rest Rs. 4500/- at the time of execution of the deed. Therefore, the plaintiffs prayed for the decree for specific performance of contract for sale. The defendant has denied having entered into any agreement for sale nor he has taken Rs. 500/- as an advance for the execution of the sale deed. According to the defendant, he was in need of the money to purchase a land in village Babuganj English and for that purpose he had taken a loan of Rs. 500/- from the plaintiffs and executed a hand note which has been forged as an agreement to sale in collusion with the scribe. The defendant has approached the plaintiffs several times to repay the loan, but the plaintiffs have neither accepted the repayment of loan nor returned the hand note. Further, according to the defendant, the schedule I land of the plaint is



valued not less than Rs. 8,000/- and the defendant had no intention to sell the same.

7. The learned Trial Court, on the basis of the pleadings of the parties, framed issues and took up the issue nos. 1 and 5 at first.

8. Issue Nos. 1 & 5 was whether the suit framed is maintainable and that whether the suit abated in view of Section 4(c) of the Bihar Consolidation of holdings and prevention of Fragmentation Act? The lawyer for the defendant argued that the suit had abated under Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act. This section typically moves land-related disputes out of civil court and into the jurisdiction of consolidation officers. The trial Court rejected the defendant's argument and allowed the suit to proceed for specific performance of contract, not a suit for the "correction of records" or a "declaration of rights/interests in land" and further clarified that Section 4(c) only applies to three specific types of proceedings:

- a) *Correction of records.*
- b) *Declaration of rights or interests in any land.*
- c) *Adjudication of any other right for which proceedings can be taken under the Act.*

9. Issue no. 4 was whether the defendant entered



into agreement for sale? The learned trial Court noted that the endorsement Ext 5 which is the deed of agreement for sale, is in the defendant's own hand mark making it clear that the money was an advance for the sale of land, which makes the plea of the defendant false. The plaintiffs produced an arbitration agreement Ext 2 and award Ext 1. While the suit wasn't specifically to enforce the arbitration, the Court found these documents strengthened the plaintiff's case. The defendant filed several petitions Ext B series to show enmity, but the trial Court found most were filed *post litem motam*. Crucially, in these earlier petitions, the defendant failed to mention his claim that he signed a blank paper, leading the trial Court to view that story as an afterthought. Further the plaintiff's six witnesses, including the plaintiffs, testified that the defendant took the Rs. 500/- advance for the land sale. The defendant produced seven witnesses. However, the trial Court found the key witnesses DW-1 and 2 unreliable due to previous enmity with the plaintiff as he was an accused in a murder case involving a witness's uncle. The trial Court found it unbelievable that these enemies would have been present at the plaintiff's house during the transaction. The trial Court dismissed the defendant's version as a cooked-up story for the



purpose of litigation. The trial Court highlighted that the defendant had already sold almost all his other land in village Bhatauli, except for the suit lands.

10. Issue No. 2 and 6 was that whether the plaintiffs have valid cause of action for the suit and whether the plaintiffs are entitled to any relief, if so to what relief? The learned trial Court noted that the plaintiffs have valid cause of action for the suit and the plaintiffs are entitled for decree of specific performance of contract for sale and thus, directed the defendant to execute the sale deed in favor of the plaintiffs after receiving Rs. 4,500/- and obtaining permission from the consolidation authority, if necessary, within three months failing which the plaintiffs shall be entitled to get it registered through the process of the Court.

11. Defendant being aggrieved by the impugned judgment and decree passed in Title Suit No. 32 of 1968 and 30 of 1969 filed title appeal before the learned Additional District Judge, Buxar wherein learned appellate Court held that respondents/plaintiffs in both the appeal have failed to comply with the mandatory requirement of Form 47 of Appendix I of CPC and Section 16(c) of the Specific Relief Act. Because these legal provisions are mandatory, the court ruled that the



plaintiffs were not entitled to a decree for the specific performance of a contract for sale. The appellate Court allowed both the appeal stating that the trial Court erred in both law and fact by granting the initial decree and ordered both appeals filed against the original judgment and allowed on contest. The trial Court judgments and decrees in favor of the plaintiffs were set aside with no order as to cost.

12. Learned counsel for the appellants/respondents/plaintiffs in both the appeal submits that admittedly mere perusal of the judgment of appellate Court reveals that the learned appellate Court while delivering his judgment have not framed any issue in appeal against the mandate of law. Similarly, clause (c) of Section 16 (1) of the Specific Relief Act lays down:

“16. Specific performance of a contract cannot be enforced in favour of a person- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him.....”

12.i. He further submits that appellants/respondents/plaintiffs pleaded in their plaint that he was ready to pay the rest consideration money and money is ready with him and to this effect several times made request to the



respondents/appellants/defendants therefore the judgment of appeal have no leg to stand and that it is against the law. So, there is no application of Section 16 (1) (c) of the Specific Relief Act and the trial Court rightly says that the suit of the appellants/respondents/plaintiffs is maintainable and the claim sought by the appellants/respondents/plaintiffs is in accordance with the mandate of Specific Relief Act and rightly allowed the suit of the appellants/respondents/plaintiffs. So far substantial questions of law formulated by this court is concerned the appellants submits that the Respondents/Appellants/Defendants in Title Suit No. 32 of 1968 has not averted any statement by way of pleading, from non-compliance of provision of Section 16 (1) (c) of the Specific Relief Act. Therefore, the learned Additional District Judge travel beyond the pleadings of the parties which is against the mandate of the law. It is not open to Appellate Court to considered a plea not pleaded by the party and give a judgment. Admittedly this plea was not pleaded by the respondents/appellants/defendants.

12.ii. Learned counsel for the appellants/respondents/plaintiffs relied upon the judgment rendered by the Hon'ble Supreme Court in *Union of India v. Ibrahim Uddin & Anr.* reported in *(2012) 8 SCC 148* wherein it was held in para



26, 41, 57, 62 and 63 that:

“26. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).

41. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/in-executable and is liable to be ignored.

57. There may be exceptional



circumstances where the High Court is compelled to interfere, notwithstanding the limitation imposed by the wording of Section 100 CPC. It may be necessary to do so for the reason that after all the purpose of the establishment of courts of justice is to render justice between the parties, though the High Court is bound to act with circumspection while exercising such jurisdiction. In second appeal the court frames the substantial question of law at the time of admission of the appeal and the Court is required to answer all the said questions unless the appeal is finally decided on one or two of those questions or the court comes to the conclusion that the question(s) framed could not be the substantial question(s) of law. There is no prohibition in law to frame the additional substantial question of law if the need so arises at the time of the final hearing of the appeal.

62. *This Court while dealing with an issue in Kalyan Singh Chouhan v. C.P. Joshi, AIR 2011 SC 1127, after placing reliance on a very large number of its earlier judgments including Messrs. Trojan & Co. v. RM.N.N. Nagappa Chettiar, AIR 1953 SC 235; Om Prakash Gupta v. Ranbir B. Goyal, AIR 2002 SC 665; Ishwar Dutt v. Land Acquisition Collector & Anr., AIR 2005 SC 3165; and State of Maharashtra v. M/s. Hindustan Construction Company Ltd., AIR 2010 SC 1299, held that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of the*



*pleadings in that respect. No party can be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon. 63. In **Bachhaj Nahar v. Nilima Mandal & Ors., AIR 2009 SC 1103**, this court held that a case not specifically pleaded can be considered by the court unless the pleadings in substance contain the necessary averments to make out a particular case and issue has been framed on the point. In absence of pleadings, the court cannot make out a case not pleaded, *Suo motu*.*

Therefore, in view of the above, there is nothing on record to show that Maratha Government had made a gift to the ancestors of the plaintiff. The claim of the plaintiff to get a title by virtue of the Will cannot be taken note of being not based on pleadings. Even this Will is dated 1.3.1929, affidavits filed by the plaintiff/respondent no.1 before this Court reveal that on 26.3.2012 he was 80 years of age. The date of Will is 1.3.1929. So, it appears that the Will had been executed prior to the birth of the plaintiff/respondent no.1. In such a fact-situation, it could not have been taken into consideration without proper scrutiny of facts and, that too, without any pleading. In the plaint, the plaintiff for the reasons, best known to him, did not even make reference to the Will. In absence of any factual foundation of the case, based on Will, the first



appellate Court committed a grave error taking into consideration the said Will. More so, the Will had not been proved as required under Section 68 of the Evidence Act.”

12.iii. He further relied upon the judgment rendered by the Hon'ble Supreme Court in ***Kedar Nath Motani and others. V. Prahlad Rai and others*** reported in ***AIR 1960 SC 213*** and upon ***T. D. Gopalan v. Commissioner of Hindu Religious and Charitable Endowments, Madras*** reported in ***AIR 1972 SC 1716***, wherein it was held in para 9 that:

“9. The High Court next proceeded to reproduce a summary of the statement of each of the witnesses produced by the defendants. No attempt whatsoever was made to discuss the reasons which the learned District Judge had given for not accepting their evidence except for a general observation here and there that nothing had been suggested in the cross-examination of a particular witness as to why he should have made a false statement. We apprehend that the uniform practice in the matter of appreciation of evidence has been that if the trial court has given cogent and detailed reasons for not accepting the testimony of a witness the appellate court in all fairness to it ought to deal with those reasons before proceeding to form a contrary opinion about accepting the testimony which has been rejected by the trial court. We are, therefore, not in a position to know on what grounds the High Court disagreed with the reasons which



prevailed with the learned District Judge for not relying on the evidence of the witnesses produced by the defendants.”

12.iv. He further submits that so far second question of Substantial question of law is concerned in this regard appellants submits that there is no pleading on behalf of respondents regarding the maintainability of the suit relating to Section 16 (1) (c) of the Specific Relief Act rather the plea on the maintainability were barred by limitation, waiver, estoppels and acquiescence and cause of action which the trial Court negated the same and held that suit is maintainable in all practical purpose, the Exhibit-2 of the appellants/ respondents/plaintiffs clearly comes under the ambit of Specific Relief Act and the same was executed by the respondents/appellants/defendant in favour of appellants/ respondents/plaintiffs. From the above narration it is crystal clear that the Judgement and Decree passed by Additional District Judge, Buxar is/are fit to be set aside.

13. Learned counsel for the respondents/ appellants/defendant in both the appeal submits that the decree in both the suits were assailed on the ground that both the suits were not in conformity with form 47 of Appendix of 1st Schedule of the CPC and against the mandatory provision of Section 16 (c) of the Specific Relief Act and it was obligatory



on the part of the appellants/respondents/plaintiffs of both the suit not only to aver in the plaint, but also to prove by evidence that there were always been ready and willing to perform their part of agreement. As per section 16 (c) of the specific relief Act, requirement is that there must have been an averment to this effect in the plaint that the appellants/respondents/plaintiffs was always ready & willing to perform his part of contract, but there is no pleading/averment in the plaint that the appellants/respondents/plaintiffs were always ready & willing to perform their part of contract.

13.i. He further submits that from plain reading of the plaint it would appear that the appellants/respondents/plaintiffs only stated that the respondents/appellants/defendants Babu Ram Singh was in necessary of money and he entered into an agreement for sale of Schedule I property for a consideration of Rs. 5,000/- and executed an agreement for sale on 10.04.1966 after taking Rs. 500/- as advance towards the consideration amount and on request did not execute sale deed so, both the plaintiffs who are brother filed separate two Title Suit for a specific performance of the contract. In proof of their case the plaintiffs were examined but they also did not State that they were ready & willing to



perform their part of contract, but in spite of that the learned Munsif decreed the Suit which has been set aside by the Appellate Court.

13.ii. He further contends that on the point of readiness and willingness, the co-ordinate bench of this Court in *Nawal Kishore v. Smt. Kauleshwari Devi and Anr.* reported in *AIR 1986 Patna 301* has clearly laid down that there ought to be an averment in the plaint regarding readiness & willingness on the part of the plaintiff to perform his part of contract. It has been laid down in the said judgment that there must be a specific statement under Section 16 (1) (c) of the Specific Relief Act regarding readiness and willingness. The Hon'ble Supreme court in *AIR 1990 SC 662* has also laid down that if the plaintiff brought a suit for specific performance of contract for conveyance and in his plaint did not make a statement regarding readiness & willingness to perform his part of contract the plaintiff is not entitled to get a decree under the Specific Relief Act. The learned Appellate Court considered the legal position and came to the conclusion that since there was no averment in the plaint nor in evidence of the plaintiffs that they were ready & willing to perform their part of contract.

13.iii. He further submits that on behalf of the



learned counsel appearing for appellant only submitted that the appellate Court cannot make out a third case and as such the finding recorded by the learned appellate Court is bad and fit to be set aside by this Hon'ble Court. This submission of the learned counsel appearing on behalf of the appellants is not correct, since the present suit is under specific performance of contract and not a general suit for declaration of Title or for confirmation of possession/recovery of possession rather in a suit for specific performance of contract, mandatory provision has been laid down under specific relief Act, regarding there must be averment in the plaint and the plaintiffs were ever ready and willing to perform their part of contract. In the case of *Mahmood Khan and Anr. v. Ayub Khan and others* reported in *1978 Allahabad Page 463* it has also been laid down that compliance of requirement of Section 16 (C) of Specific Relief Act, was mandatory even though the defendant had not raised to that effect in the written statement though there was no issue. It was observed that the mandate of the statute required that the plaintiffs must aver in the plaint and must give proof of the fact that he was and has been ready and willing to perform his part of contract. As it appears from the pleading of both the suit there is no averment of tender of the



balance consideration money before demanding of execution of sale deed. No notice was served before filing of the suit. In the case *Rajendra Prasad Rai and Anr. v. Rajdeva Rai and Anr.* reported in *AIR 1974 Allahabad 294* it has been specifically laid down that there should have been notice to the defendant before filing of the suit and depositing the balance of consideration money.

13.iv. He further submits that in the present suit the judgment was delivered on 17.12.1977 and Appeal before appellate Court was preferred on 17.01.1971, but the balance amount as per direction of the trial court was not deposited within the stipulated period. In *Nawal Kishore v. Smt. Kauleshwari Devi and Anr. (Supra)*, it has clearly been laid down that the plaintiff ought to have been ready and willing throughout to perform his part of contract, but the plaintiff even the date of judgment after one month did not perform their part of contract and failed to deposit the balance amount in the court within the time specified in the trial court judgment and as such the learned appellate Court set aside the judgment and decree of the trial Court due to non-compliance of from 47 of Appendix 1 of the CPC and Section 16 (1) (C) of the specific relief Act, which is mandatory in a suit for specific



performance of contract.

13.v. He lastly contends that the judgment and decree passed by the Appellate Court does not require interference in any way as the appellate Court had right to decide the Appeal even if issue is not framed, but in this case, issue was from that the suit is not maintainable and the learned appellate Court rightly passed the order in setting aside the judgment & decree of the trial Court and the present Second Appeal be accordingly dismissed.

14. On meticulous examination of the materials on record, impugned judgments and as well as averments made by the learned counsels for the respective parties, it is apparent that so far question of readiness and willingness to perform part of the contract by adducing cogent evidence, acceptable evidence has not been placed on record to prove plaintiff's readiness and willingness. It is a settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, they were ready and willing to perform their part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. This crucial fact has to be determined by considering all circumstances, including availability of funds



and mere statement or averment in plaint of readiness and willingness would not suffice.

15. The observations made by the Hon'ble Supreme Court in ***Ouseph Varghese v. Joseph Aley*** reported in ***(1969) 2 SCC 539***. In paragraph 9 of the said judgment the Hon'ble Supreme Court observed that:

“.....A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the First Schedule in the Civil Procedure Code. In a suit for specific performance, it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint or at any subsequent stage of the suit the plaintiff has taken those pleas.”

In making these observations the Supreme Court relied on an earlier decision reported in ***AIR 1968 SC 1355, Prem Rai v. The D.L.F. Housing and Construction (P.) Ltd.*** wherein it was observed in paragraph 5:

“There is also another reason for holding that the appellant has made out no cause of action with regard to the relief of specific performance of the contract. It is



well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract. In the present case, no such averment is made in the plaint.”

16. The Hon'ble Supreme Court in the case of ***Vijay Kumar & Ors. v. Om Prakash*** reported in **2018 SCC Online SC 1913** had held that in order to obtain a decree for specific performance, the plaintiff has to prove his readiness and willingness to perform his part of the contract and the readiness and willingness has to be shown throughout and has to be established by the plaintiff. It was further held that the relief for specific performance is purely discretionary. As it has been pointed out by the learned counsel by the appellants/respondents/plaintiffs that they have been and are still ready and willing to specifically perform their part of the contract, though the second paragraph of Form No. 47 of the First Schedule of the CPC was averred by the plaintiffs in the plaint, the plaintiffs made no averment in the plaint as required in paragraph 3 of Form No. 47 regarding specific performance. In the instant case, there is no documentary evidence to show that the plaintiffs ever showed his willingness to perform his part of the contract and there is nothing to show that the plaintiffs ever sent any notice to the respondents/



appellants/defendants to that effect.

17. The Hon'ble Apex Court in the case of ***Beerreddy Dasaratha Rami Reddy Vs. Manjunath*** reported in, has held that mere omission to frame issue doesn't vitiate the trial. The Hon'ble Apex Court has held that "*omission to frame an issue as required under Order XIV Rule 1 of the Code of Civil Procedure, 1908 doesn't vitiate the trial where the parties go to trial fully knowing the rival case and led evidence in support of their respective contentions to refute contentions of the other side.*"

18. The Hon'ble Supreme Court in the decision reported in ***Civil Appeal Nos. 7254 to 7256 of 2002*** reported in ***(2011) 12 SCC 18: AIR 2011 SC 3234***, has observed as follows:

"Now there is galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of the property in the year 1975 and now as also steep in-crease in the value of the immovable properties between then and now,"

It has also been observed in the judgment, that the steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser



does not take steps to complete the sale within the agreed period and the vendor has not been responsible for any delay or non-performance.

19. Further, under Section 20 of the Specific Relief Act. the specific performance is a discretionary remedy. The Court is not bound to decree specific performance merely because it is lawful to do so. It can be seen from section that the discretion of the Court is not arbitrary but sound and reasonable guided by the judicial principles and capable of correction by a Court of Appeal. The cases in which the Court may properly exercise discretion not to decree specific performance has been enumerated in sub-section (2) of Section 20 of the Specific Relief Act. They are

(i) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not avoidable, gives the plaintiff an unfair advantage over the defendant; or
(ii) where the performance of the contract would involve some hardship on the defendant which he did not foresee. whereas its non-performance would involve no such hardship on the plaintiff;
(iii) where the defendants entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Under the Specific Relief Act, the Court exercises equitable



jurisdiction. Section 20 of the Act makes it clear that the jurisdiction to decree specific performance is discretionary and there is no obligation on the part of the Court to grant the relief sought merely because it is lawful to do so.

20. The relief of specific performance is an extraordinary equitable remedy that compels a party to execute the terms and conditions of the contract according to the precise terms agreed upon between them or to execute it substantially, so that in the given set of circumstance, complete justice will be done between the parties. Since, this relief is given exercising the equity jurisdiction the conduct of the plaintiff should be fair. So far as this case is concerned, considering the conduct of the plaintiff and the defendants, interest of parties under the agreement, it would not be in the interest of justice to grant the relief of specific performance. The galloping raise in price with leaps and bounds should also be considered. Under such circumstances granting of relief of specific performance would put the defendants into undue hardship and put the plaintiff under an unfair advantage and therefore, the grant of specific performance would not be in the interest of justice. Hence, the refusal of the relief of specific performance by the appellate Court is justified.



21. In light of the discussions made above, submission made by both the parties, relevant provision of law and the principal laid down by the Hon'ble Supreme Court in different cases, this Court hereby decides the substantial question of law in favor of the respondents/appellants/defendants and do not find any flaw/ legal error/perversity or patent illegality in the findings of Appellate Court in law. In view of the above discussions and findings, the judgment dated 16.04.1992 and decree dated 20.04.1992 of the Appellate Court in Title Appeal Nos. 04 of 1978 and 05 of 1978 is hereby affirmed.

22. Accordingly, this Second Appeal No. 174 of 1992 and 175 of 1992 stands dismissed. There shall be no order as to costs. Pending interlocutory application(s), if any, shall stand disposed of.

23. Let the trial Court and appellate Court records be transmitted to the concerned Court forthwith.

(Ramesh Chand Malviya, J)

Mayank/-

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| AFR/NAFR | AFR |
| CAV DATE | 05.02.2026 |
| Uploading Date | 17.02.2026 |
| Transmission Date | NA |

