V. PECHIMUTHU

v.

GOWRAMMAL

AUGUST 1, 2001

[V.N. KHARE AND RUMA PAL, JJ.]

Specific Relief Act, 1963: Sections 16 and 20.

Specific Performance—Suit for—Sale of immovable property—Agreement for—Owner sold his immovable property to purchaser—Purchaser agreed to sell property back to owner after 5 years for a certain sum—Owner willing to perform his part of the contract and asked seller to re-convey the property—Suit filed for specific performance—Trial court decreed the suit—First appellate court confirmed the decree—However, High Court, in second appeal, reversed the concurrent findings of fact by holding that the re-purchase agreement was a privilege or concession; and that the agreement was not an ordinary agreement—Correctness of—Held: There is no distinction between an agreement to re-purchase and an ordinary agreement of purchase—The agreement still remains an agreement for sale of immovable property and must be governed by the same law relating to ordinary agreement—Owner is entitled to specific performance of agreement—Hence, High Court erred in reversing the decree of specific performance.

Specific Performance—Decree for—Rise in price of suit property—Relevancy of—Held, while granting decree of specific performance for the first time rise in price of suit property may be a relevant factor in denying the relief—But when the decree is passed by the trial court and affirmed by first appellate court such a factor is not relevant in second appeal.

Code of Civil Procedure, 1908:

Section 100—Second Appeal—Concurrent findings of fact—Reversal of—In second appeal—On a point not raised at any stage of the proceedings—Correctness of—Held, High Court should not have permitted raising of an inconsistent argument at the stage of the second appeal—Hence, setting aside of concurrent findings of fact not justified—Contract Act, 1872:

Contracts—Agreement with option to re-purchase and ordinary

A *agreement—Distinction between—Owner sold property to purchaser—Subsequently, purchaser agreed to sell property back to owner for a certain sum—Held, subsequent agreement is an ordinary agreement and is governed by the same law relating to ordinary agreement.*

Words and Phrases:

B

"Privilege" and "concession"—Meaning of.

The appellant was the owner of a certain immovable property, which was sold to the respondent. By a subsequent agreement the respondent agreed to sell the property back to the appellant after 5 years for a certain sum. After

C **the expiry of five years the appellant made repeated demands on the respondent asking her to re-convey the property in terms of the agreement. The appellant also expressed his readiness and willingness to perform his part of the contract. But there was no response from the respondent.**

Thereafter the appellant filed a suit for specific performance under the

D **Specific Performance Act, 1963, which was decreed. The first appellate court affirmed the decree with certain modifications. But the High Court, in second appeal under Section 100 of the Code of Civil Procedure, 1908 reversed the concurrent findings of fact on a construction of the plaint that the right of re-conveyance was a concession or a privilege granted to the original owner**

E **and that, therefore, not only must the terms of such an agreement be strictly construed against the appellant, but also unlike "ordinary" agreements for sale, time would be of the essence of the contract. It was also held that the appellant claiming re-conveyance had to strictly perform the agreement before the right would be enforced and that the appellant had not come to the Court with clean hands. Hence this appeal.**

F

The following question arose before this Court:-

Whether the High Court was justified in setting aside a concurrent finding of fact with the limits prescribed by Section 100 of the Code of Civil Procedure, 1963?

G

Allowing the appeal, the Court

HELD: 1.1. It is not a general principle of law that every agreement of sale by which the original owner agrees to buy back the property is a privilege or a concession granted to such owner. A privilege has been defined as a

H **particular and peculiar benefit or advantage enjoyed by a person, and a**

concession as a form of privilege. An option to purchase or repurchase is such privilege or concession. [208-A] A

K. Simarathmull **v.** *Nanjalingaiah Gowder,* **AIR (1963) SC 1182, relied on.**

Shanmugham Pillai **v.** *Annalakshmi Ammal,* **AIR (1950) FC 38;** *Hasam Nurani Malak* **v.** *Mohan Singh,* **AIR (1974) Bom. 136 and** *S. Sankaran* **v.** *N. G. Radhakrishnan,* **(1994) 2 L.W. 642, referred to.** B

Black's Law Dictionary, 6th Edn, **referred to.**

1.2. An option by its very nature is dependent entirely on the volition of the person granted the option. He may or may not exercise cannot be compelled by the person granting the option. It is because of this one-sidedness or "unilaterality" as it were that the right is strictly construed and "an option for the renewal of a lease, or for the purchase or repurchase of property, must in all cases be exercised strictly within the time limited for the purpose, otherwise it will lapse." [208-B-C] C D

Halsbury's Laws of England, 3rd Edn. Vol. 3 Art. 281, p. 165, **referred to.**

1.3. The right of the appellant to re-conveyance of the property has none of the characteristics of an option. [209-F] E

Shanmugham Pillai **v.** *Annalakshmi,* **AIR (1950) FC 38 and** *K. Simarathmull* **v.** *Nanjalingaiah Gowder,* **AIR (1963) SC 1182, referred to.**

2.1. An agreement for sale and purchase simpliciter, on the other hand is a reciprocal arrangement imposing obligations and benefits on both the parties and is enforceable at the instance of either. The interpretation of such a contract would be governed by the laws of contract relating to the performance of reciprocal promises. [208-D] F

2.2. Whether an agreement is an option to purchase or an "ordinary" agreement would depend on the interpretation of its provisions. Sometimes the option is expressly and in terms granted. In others the right may be implicit. Thus when an agreement provides that the right to obtain sale is subject to the fulfilment of certain conditions by the purchaser, the agreement would in effect be an option to purchase, as the right to purchase would only accrue upon the voluntary performance of the conditions specified by the owner. The vendor cannot compel the performance of the conditions by the purchaser and G H

A then ask for the contract to be specifically performed. [208-E-F]

2.3. The mere fact than an agreement for sale is described as a re-conveyance does not by itself mean that it is an option to repurchase nor does it in any way alter the substance of the deed, it merely records a historical fact—that the property which is to be sold was being purchased by the person B who used to be the owner. No logical distinction can be drawn between an agreement to re-purchase and an ordinary agreement of purchase just because the vendor happens to be the original purchaser and the purchaser happens to be the original vendor. The agreement remains an agreement for sale of immovable property and must be governed by the same provisions of law. C [210-D-E]

3. The fact that the appellant had not come to the Court with clean hands was not an issue raised by the respondent at my stage nor does any argument appear to have been advanced in this regard by the respondent before the Trial Court or the first appellate court at all. Furthermore, the D first appellate court had not, as wrongly stated by the High Court, held that the claims of the appellant were false. The District Judge, which was the final court of fact, expressly refused to go into the question of payment of the balance consideration by the respondent under the sale deed because he held, rightly so, that in the suit for specific performance the court was not concerned with whether any consideration had been paid under the original sale deed E executed by the appellant in favour of the respondent. [212-D-F]

Kommisetti Venkata Subbarayya v. *Karamsetti Venkateswarlu,* AIR (1971) AP 279 and *Buchiraju* v. *Sri Ranga Satyanarayana,* AIR (1967) AP 69, referred to.

F 4. The High Court erred in disturbing the concurrent findings of fact merely on a construction of the plaint on a point not raised by the respondent at any stage of the proceedings. The High Court should not, in the circumstances, have permitted the respondent to raise an inconsistent argument at the stage of second appeal. [211-B; 211-E]

G *Syed Dastagir* v. *T.R. Gopalakrishna Setty,* [1999] 6 SCC 337 and *Motilal Jain* v. *Ramdasi Devi,* AIR (2000) SC 2048, referred to.

5. Where the Court is considering whether or not to grant a decree for specific performance for the first time, the rise in the price of the land agreed H to be conveyed might be a relevant factor in denying the relief of specific

performance. But in this case, the decree for specific performance has already been passed by the trial Court and affirmed by the first appellate Court. The only question before this Court is whether the High Court was correct in reversing the decree of specific performance. Therefore, rise in the price of the land is not a relevant factor. [212-H; 213-A]

K.S. Vidyanadam **v.** *Vairavan.* **[1997] 3 SCC 1, held inapplicable.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 336 of 1997.

From the Judgment and Order dated 29.1.96 of the Madras High Court in S.A. No. 1997 of 1982.

K. Ram Kumar and B. Sridhar for the Appellant.

R. Sundaravardan, R.N. Keshwani, Sanjay Kunur and Ramlal Roy for the Respondent.

The Judgment of the Court was delivered by

RUMA PAL, J. This appeal impugns an order passed by the High Court in second appeal. The High Court set aside a decree for specific performance granted to the appellant by both the Trial and the First Appellate Court. The issue is whether the High Court was justified in setting aside a concurrent finding of fact within the limits prescribed by Section 100 of the Civil Procedure Code.

Let us consider the facts.

The appellant was the owner of certain property. The property was tenanted and mortgaged. By a deed dated 2nd May 1973, the appellant sold the property to the respondent for a sum of Rs. 20,000. Out of this amount a sum of Rs. 15,005 was to be paid by the respondent to the mortgagee of the property to clear the appellant's mortgage debt. The sale deed recorded that the balance amount of Rs. 4,995 was received by the appellant from the respondent for re-payment of advance rent made by the tenants of the property to enable the respondent to get vacant possession.

On 4th May 1973, a separate agreement was entered into between the appellant and the respondent by which the respondent agreed to sell the property back to the appellant after the 5th year from the date of the execution

A of the agreement and before the expiry of the 6th year for the sum of Rs. 19,990. Rs. 20,000 less an amount of Rs. 10 paid by the appellant to the respondent by way of an advance.) This is the agreement which is the subject matter of the litigation before us and is referred to hereafter as 'the agreement'. Both the sale deed and the agreement were registered on 13th June 1973.

B After the sale, the respondent took possession of the property and has been in possession of the property since then. It is the appellant's case that after 5 years, the appellant made repeated demands in person and through mediators calling upon the respondent to execute the sale deed at the appellant's expense after receiving the entire amount of Rs. 19,990. The C respondent refused to do so. Ultimately, the appellant sent a notice through his lawyer on the 6th February 1979 asking the respondent to send a reply within three days from the date of the receipt of the notice specifying the date on which the respondent would execute the sale deed at the Sub Registrars Office after receiving the consideration of Rs. 19,990 and to deliver possession of the property in the same condition in which it was sold. The notice was D received by the respondent on 7th February 1979. On 16th February 1979, the respondent replied refuting the demand of the appellant and claiming an amount higher than Rs. 20,000 as she had paid a further sum of Rs. 1448 to the mortgagee over and above the sum that she was liable to pay under the sale deed and had also incurred expenses of Rs. 700 in connection with the E litigation with the mortgagee. According to the respondent, she had also paid a further sum of Rs. 3,000 to the respondent and that, therefore, the appellant was bound to give up his right to a re-conveyance of the property.

In March, 1979 the appellant filed a suit claiming specific performance of the agreement. While narrating the facts in the plaint, the appellant also F stated that the respondent did not in fact pay the appellant the sum of Rs. 4,995 as stated in the sale deed. A sum of Rs. 2,500 had been paid by the respondent directly to the tenant of the property but the balance amount of Rs. 2495 was never paid to the appellant. The appellant also claimed that he had to pay a sum of Rs. 2,000 to the mortgagee because the respondent had G defaulted in clearing the mortgagee's dues in time. The appellant further stated that he was always ready and willing to perform his part of the agreement ever since the date stipulated for re-conveyance of the property, namely, 3.5.1978 and had been making repeated demands on the respondent in person and through mediators to execute the sale deed at the expense of the appellant after receiving the entire amount of Rs. 19,990. The claim set H up by the respondent in the respondent's letter dated 15th February 1979 was

denied and it was reiterated that the appellant was always ready and willing to perform his part of the agreement dated 4th May 1973 and that he was ready to pay the balance amount of sale consideration of Rs. 19,990 and the expenses for effecting the sale to the appellant even on the date of the filing of the suit. The appellant claimed mesne profits in respect of the respondent's continued possession of the suit property after 3rd May 1978 as also credit for the amount of Rs. 2,000 alleged to have been paid by the appellant to the mortgagee and a sum of Rs. 3,000 towards the expenses which would be incurred by the appellant for repairing the suit properties. The readiness and willingness of the appellant to perform the agreement dated 4th May 1973 was again reiterated in paragraph 11 of the plaint. The appellant has ultimately prayed for a decree:-

> 'directing the defendant to execute a sale deed in respect of the suit properties in favour of the plaintiff at the plaintiff's expense for a consideration of Rs. 20,000 after receiving the balance of sale consideration (as determined by this Hon'ble Court) from the plaintiff within a specified date and if the defendant fails to execute the sale deed as aforesaid directing the sale deed as aforesaid to be executed by the Court on behalf of the defendant'.

In her written statement, the respondent did not deny the execution of the agreement but did deny that the appellant was entitled to any credit for any sum at all. On the other hand according to the respondent a sum of Rs. 3,000 was payable by the appellant, a claim for which a suit has been filed and decree obtained. The respondent also claimed that she had to pay a further amount of Rs. 1448.75 to the mortgagee and had to spend Rs. 3,000 to put the suit property into a good condition, as well as make payment for incidental and legal expenses totaling Rs. 700. It was stated that the appellant had orally agreed to give up his right of re-conveyance for Rs. 30,000 and as the respondent had paid Rs. 30,648 to or on account of the appellant, the appellant was not entitled to enforce his right of re-conveyance. The respondent disputed that the appellant was ready and willing to pay or deposit the sum of Rs. 20,000 and called upon the appellant to do so to prove his *bonafides*. According to the written statement, there was no question of the respondent paying any mesne profits.

> "On the other hand the plaintiff is bound to deposit and pay Rs. 27,648 (exclusive of pronote debt) for the re-conveyance which claim in act (fact) he must give up as per the oral agreement between the plaintiff and this defendant as already stated this written statement."

A (sic).

The suit was decreed in favour of the appellant on 28th July 1981. It appears that the respondent had jettisoned the case of an oral agreement at the trial. The Learned Subordinate Judge also rejected the appellant's case in the plaint in so far as he had claimed credit for the various sums which he B alleged that the respondent had failed to pay under the sale deed. However, it was held by the learned Subordinate Judge that the appellant was entitled to specific performance of the second agreement upon payment of a sum of Rs. 23,448.75 to the respondent. The Subordinate Judge to that extent accepted the respondent's claim that the respondent had, apart from the original amount of Rs. 20,000, paid a further sum of Rs. 3,448.75 to the appellant or on the C appellant's account which could be added to the cost of re-conveyance. By the decree the appellant was required to deposit the amount of Rs. 23,448.75 on or before 7th May 1981 in order to avail of the benefit of the decree. The appellant deposited the amount of Rs. 23,448.75 in the court of the Subordinate Judge within the time stipulated.

D Both the appellant and the respondent preferred appeals against the decision of the Subordinate Judge. The appeals were heard analogously. Before the District Judge, it was contended by the appellant that he was liable to pay only Rs. 12,495 after taking credit for the amounts not paid by the respondent under the sale deed or expenses incurred by him. The respondent on the other E hand contended that the appellant was not entitled to a decree for specific performance and that the Subordinate Judge should have held that the appellant was liable to pay a further sum of Rs. 3,000 allegedly spent by the respondent in making various improvements to the suit property. The District Judge formulated the points for consideration as follows:

F (i) Whether the plaintiff is entitled to the relief of specific performance?

(ii) What is the sale consideration payable by the plaintiff for the execution of the re-conveyance deed?

G The District Judge held that the parties were bound by the terms of the agreement which was a registered document and which had not been varied or altered in any manner. He noted that in terms of the agreement, the appellant had served notice upon the respondent to specify the date and time on which the respondent would come and execute the sale at the concerned Sub Registrar's office, after receiving the consideration of Rs. 19,990 and deliver H possession of the properties to the appellant. It was noted that in the notice

the appellant had not claimed that he was liable to pay anything less than what he had contracted for under the agreement. The District Judge also held that the respondent was not entitled to anything more than the amount of consideration fixed under the agreement and that as the respondent had undertaken to discharge the mortgage debt she was not entitled to claim any excess payment that may have been made to the mortgagee. In any case, the respondent had neither made any counter claim or set off in the suit nor paid any Court fees in respect of such claim. The District Judge also rejected the case of the respondent that she had paid a sum of Rs. 4495 to the tenants of the property. In the circumstances, the District Judge directed the appellant to deposit a sum of Rs. 19,990 for specific performance of the agreement and held that the respondent was not entitled to claim any other amount from the appellant. The decree of the Subordinate Judge was accordingly affirmed with these modifications.

The respondent impugned the decision of the District Judge by way of second appeal before the High Court. The learned Single Judge formulated the following question as being a substantial question of law:

> "Whether on the facts and in the circumstances of the case, the decree for specific performance is sustainable?"

The learned Judge reversed the concurrent finding of the Trial Court and the first appellate Court and held on a construction of the plaint that the right of re-conveyance was a concession or a privilege granted to the original owner and that therefore not only must the terms of such agreement be strictly construed against him, but also unlike "ordinary" agreements for sale, time would be of the essence of the contract. It was held that such an owner claiming re-conveyance had to strictly perform the argument before the right could be enforced. Since, according to the High Court, the appellant had wanted a settlement of accounts before the performance of the agreement, the intention of the appellant was not to implement the agreement in terms thereof and as such he was not entitled to specific performance. The Learned Single Judge referred to the following decisions in support of his conclusions, (1) *Shanmugam Pillai* v. *Annalakshmi Ammal,* AIR (1950) FC 38, (2) K. *Simrathmull* v. *Nanjalingaiah Gowder* AIR (1963) SC 1182, (3) *Hasam Nurani Malak* v. *Mohan Singh and Anr.,* AIR (1974) Bom. 136 (4) *S. Sankaran (dead) and 4 Ors.* v. *N.G. Radhakrishnan,* (1994) 2 L.W. 642 .

The conclusion of the High Court is unsustainable in law and contrary to the facts. The learned Judge erred in holding that it is a general principle

A of law that every agreement of sale by which the original owner agrees to buy back the property is a privilege or concession granted to such owner. A privilege has been defined as a particular and peculiar benefit or advantage enjoyed by a person, and a concession as a form of privilege. An option to purchase or repurchase has been held[1] to be such a privilege or concession. [See: *Shanmugham Pillai* v. *Annalakshmi*, AIR (1950) FC 38; *K. Simarathmull* v. *Nanjalingaiah Gowder*, AIR (1963) SC 1182. This is because an option by its very nature is dependent entirely on the volition of the person granted the option. He may or may not exercise it. Its exercise cannot be compelled by the person granting the option. It is because of this one sidedness or "unilaterality", as it were, that the right is strictly construed and"[a]n option for the renewal of a lease, or for the purchase or repurchase of property, must in all cases be exercised strictly within the time limited for the purpose, otherwise it will lapse" (Halsbury's Laws of England, 3rd Edn. Vol.3 Art. 281, p. 165).

An agreement for sale and purchase simpliciter , on the other hand, is a reciprocal arrangement imposing obligations and benefits on both parties and is enforceable at the instance of either. The interpretation of such a contract would be governed by the laws of contract relating to the performance of reciprocal promises.

Whether an agreement is an option to purchase or an "ordinary" agreement would depend on the interpretation of its provisions. Sometimes the option is expressly and in terms granted. In others the right may be implicit. Thus when an agreement provides that the right to obtain a sale is subject to the fulfillment of certain conditions by the purchaser, the agreement would in effect be an option to purchase, as the right to purchase would only accrue upon the voluntary performance of the conditions specified by the owner. The vendor cannot compel the performance of the conditions by the purchaser and then ask for the contract to be specifically performed.

Thus in *Shanmugam Pillai* v. *Annalakshmi*, AIR (1950) FC 38, the terms of the agreement provided that the mortgagee/vendor would re-sell the land to the owners subject to the conditions (i) that the owner would pay Rs. 31,500 as the sale price as well as all expenses in connection with the re-sale (ii) that the agreement could be enforced upto 30th April 1943 and that time was of the essence of the agreement and (iii) that the owner should pay the instalments under the lease punctually failing which the agreement for re-

1. Blacks Law Dictionary, 6th Edn.

conveyance would stand cancelled. These provisions were construed and the Court came to the conclusion that the original vendor had in fact been granted an option of re-purchase and it was not an ordinary contract for transfer of land. The Court came to this conclusion on two grounds (i) the right to purchase was subject to payment of instalments under a lease, and was a conditional right and (ii) the fixation of an outer time limit for exercise of the right gave the original owner the option to re-purchase upon payment of the sale consideration within the specified time. It was not in dispute not only that the purchaser had failed to pay the instalments, under the lease but had also allowed the time limit to lapse. It was in this context that the Court said:

> "It is well settled that, when a person stipulates for a right in the nature of a concession or privilege on fulfilment of certain conditions, with a proviso that in case of default the stipulation should be void, the right cannot be enforced if the conditions are not fulfilled according to the terms of the contract".

Similarly, this Court in *K. Simrathmull* v. *Nanjalingiah Gowder,* AIR (1963) SC 1182 construed and followed Shanmugam Pillai, and the majority view that:

> ".... where under an agreement an option to a vendor is reserved for repurchasing the property sold by him the option is in the nature of a concession or privilege and may be exercised on strict fulfilment of the conditions on the fulfilment of which it is made exercisable."
>
> (Emphasis supplied)

In the case before us, the right of the appellant to re-conveyance of the property has none of the characteristics of an option. The relevant extract of the agreement reads: (where the respondent is referred to in the first and the appellant in the second person).

> "On 2.5.1973 I have purchased the property described hereunder by virtue of the sale deed dated 2.5.1973 from you for a consideration of Rs. 20,000 (Rupees twenty thousand only) and I have been in possession and enjoyment of the same and whereas you must get the sale registered in your favour at your costs after the fifth year from this date onwards, i.e., 3.5.1978 and before the expiry of the sixth year, i.e. 3.5.1979 and you will have to pay the sale consideration of Rs. 20,000 (Rupees twenty thousand only) less the advance amount of Rs. 10 (Rupees ten only) received by me on this day. *I will not*

A *receive any sale consideration further before 3.5.1979.* Whereas I desire and agree to sell the under mentioned property to you at the cost of Rs. 20,000 to you and I hereby received a sum of Rs. 10 as an advance of sale consideration from you."

It is to be noted firstly that the appellant could not, even if he were B ready and able to, buy back the property before 3.5.79 because it was made clear that the respondent would not accept any sale consideration before that date. The time limit in this case was really for the benefit of the respondent allowing five years un-interupted user of the land without threat of re-purchase by the appellant. Secondly, the clause does not provide that if the sale C consideration were not paid before 3rd May 1979 the appellant would lose his right to buy the property. Time was not stated to be of the essence of the contract. Thirdly, either of the parties could enforce the contract as it stood after five years. The agreement in question therefore was an "ordinary" agreement for sale.

D To sum up: the mere fact that an agreement for sale is described as a re-conveyance does not by itself mean that it is an option to repurchase nor does it in any way alter the substance of the deed. It merely records a historical fact – that the property which is to be sold was being purchased by the person who used to be the owner. No logical distinction can be drawn between an agreement to re-purchase and an ordinary agreement of purchase E just because the vendor happens to be the original purchaser and the purchaser happens to be the original vendor. The agreement remains an agreement for sale of immovable property and must be governed by the same provisions of law.

Coming to the facts of the case, there is no dispute that the appellant F sent a legal notice to the respondent offering to pay the entire amount of Rs. 19,990 to the respondent well within the period specified in the agreement. The suit was also filed before 3rd May 1979. Nothing further remained to be done by the appellant under the agreement. As far as the deposit of the balance consideration was concerned under Explanation (1) to Section 16 (c)[2] of the Specific Relief Act, 1963 the appellant could wait for an order of G the Court to do so. That is what he did. Both the Trial Court and the first appellate Court on a consideration of all the evidence therefore rightly came

2. Explanation—For the purposes of clause 16(c)—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendent or to deposit in court any money except when H so directed by the court;

to the conclusion that the appellant was ready and willing to perform his obligations under the agreement and was entitled to specific performance of it.

The second error committed by High Court was in disturbing the concurrent finding of fact merely on a construction of the plaint on a point not raised by the respondent at any stage of the proceedings. It was not the respondent's case either in the written statement nor before the Trial Court or the first appellate Court that the appellant was not entitled to specific performance only because he had allegedly claimed a variation in the consideration price. On the other hand it was the respondent who had all along claimed such a variation . When the appellant called upon the respondent prior to the institution of the suit to re-convey the property on payment of Rs. 19,990, it was the respondent's case that the appellant was liable to pay a larger sum to the respondent than the amount mentioned in the agreement. This stand was repeated by the respondent in her written statement and also on first appeal. The respondent had herself put in issue the amount of sale consideration payable under the agreement. Having done that, she could not turn around and contend that it was the appellant who was asking for a variation of the agreement. In fact the first appellate Court found that the claim for various credits had been raised by the appellant for the first time only after the respondent had claimed monies over and above the sale consideration of the agreement for re-conveying the property. The High Court should not in the circumstances have permitted the respondent to raise an inconsistent argument at the stage of the second appeal.

Thirdly, it is well settled

> ".....In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. (*Syed*

A *Dastagir* v. *T.R. Gopalakrishna Setty,* [1999] 6 SCC 337 at 341) [See also *Motilal Jain* v. *Ramdasi Devi,* AIR 2000 SC 2408.]

In the case before us, the appellant has proved the agreement made and the parties were not at issue as to its existence. The appellant had expressed his readiness and willingness to perform the agreement by paying the B consideration fixed not once but repeatedly in several paragraphs of the plaint. The High Court erred in overlooking the fact that the appellant had never said that the consideration for re-conveyance under the agreement was less than what was stated. Conceding that, the appellant had merely claimed credit for certain amounts. This could not mean that he was seeking a variation C in the agreement itself.

The second reason given by the High Court for denying the appellant the relief of specific performance was under Section 20 of the Specific Relief Act, 1963. Relying upon *Kommisetti Venkata Subbarayya* v. *Karamsetti Venkateswarlu and Ors.,* AIR (1971) A.P. 279 and *Buchiraju* v. *Sri Ranga* D *Satyanarayana,* AIR (1967) AP 69 the High Court held that the appellant had not come to the Court with clean hands since he had falsely claimed that he had not received any amount under the first deed of sale from the respondent. The appellant's suit was accordingly dismissed. This again was not an issue raised by the respondent at any stage nor does any argument appear to have been advanced in this regard by the respondent before the Trial Court or the E first appellate Court at all. Furthermore, the first appellate Court had not, as wrongly stated by the High Court, held that the claims of the appellant were false. The District Judge, which was the final Court of fact, expressly refused to go into the question of payment of the balance consideration by the respondent under the sale deed because he held, and in our view rightly so, F that in the suit for specific performance the Court was not concerned with whether any consideration had been paid under the original sale deed executed by the appellant in favour of the respondent. The decisions noticed by the High Court in this connection were accordingly wholly inapposite.

Counsel for the respondent finally urged that specific performance should G not be granted to the appellant now because the price of land had risen astronomically in the last few years and it would do injustice to the respondent to compel her to re-convey property at prices fixed in 1978.

The argument is specious. Where the Court is considering whether or not to grant a decree for specific performance for the first time, the rise in H the price of the land agreed to be conveyed may be a relevant factor in

denying the relief of specific performance. [See *K.S. Vidyanadam and Ors.* v. *Vairavan,* [1997] 3 SCC 1]. But in this case, the decree for specific performance has already been passed by the trial Court and affirmed by the first appellate Court. The only question before us is whether the High Court in second appeal was correct in reversing the decree. Consequently the principle enunciated in *K.S. Vidyanadam* (supra) will not apply. A B

For the foregoing reasons, the appeal is allowed. We set aside the judgment of the High Court and uphold the decision of the first appellate Court but there will be no order as to costs.

V.S.S. Appeal allowed. C