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ZARINA SIDDIQUI

v.

A. RAMALINGAM ALIAS R. AMARNATHAN

(Civil Appeal No. 9947 of 2014)

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OCTOBER 29, 2014

[M. Y. EQBAL AND SHIVA KIRTI SINGH, JJ.]

Specific Relief Act, 1963 – s. 20 – Specific performance of agreement – First defendant-owner of 1/3rd undivided share in the property appointed his brother-second respondent as power of attorney holder – Plaintiff’s case that second respondent entered into an agreement to sell the said property to the plaintiff for certain amount – Payment of the entire consideration amount by the plaintiff, however, failure of defendants to execute sale deed in favour of plaintiff –

C *Suit for specific performance by plaintiff – Written statement by both the defendants – Defendant no. 1 pleading that the power of attorney was given for limited purpose and denied agreement to sell in favour of plaintiff as also payment of*

D *advance consideration; and that the value of the property was much more than the price agreed between the parties –*

E *Second defendant pleading that sale agreement was obtained by the plaintiff by playing fraud – Suit for specific performance allowed by trial court, however, dismissed by*

F *the High Court – On appeal, held: Necessary ingredient has to be proved and established by the plaintiff so that discretion to grant relief of specific performance would be exercised judiciously in favour of the plaintiff – If a party to a lis does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has*

G *inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of law – On the facts of the case, in view of the conduct of the defendants and considering the phenomenal increase in price during the*

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period the matter remained pending in different courts, order passed by the trial court upheld and that of the High Court set aside, with the condition that the plaintiff would pay additional amount to the first defendant. A

Allowing the appeal, the Court

HELD: 1.1 The remedy for specific performance is an equitable remedy. The Court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that Court's discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and mislead the Court then such discretion should not be exercised by refusing to grant specific performance. [Para 25, 34][470-G-H; 471-A; 476-A-B] B
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1.2 Efflux of time and escalation of price of the property by itself cannot be a valid ground to deny the relief of specific performance. But the Court in its discretion may impose reasonable conditions including payment of additional amount to the vendor. The plaintiff is not to be denied specific performance only on account of phenomenal increase of price during the pendency of litigation. [Para 37][477-B-D] F
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2.1 Although defendant no.2 held a registered power of attorney on behalf of defendant no.1 to sell and dispose of the property, but the defendants not only

- A made a false statement on affidavit that the power of attorney had authorized him only to look after and manage the property but also withheld the said power of attorney from the Court in order to misguide the Court from truth of the facts. Further, by registered agreement
- B the defendants agreed to sell the suit premises after receiving advance consideration but they denied the existence of the agreement in their pleading. Such conduct of the defendants disentitle them to ask the Court for exercising discretion in their favour by refusing
- C to grant a decree for specific performance. If a party to a *lis* does not disclose all material facts truly and fairly but states them in distorted manner and mislead the Court, the Court has inherent power to exercise its discretionary jurisdiction in order to prevent abuse of the process of
- D law. [Para 35][476-B-F]

2.2 In the facts and circumstances of the case and considering the phenomenal increase in price during the period the matter remained pending in different courts, the impugned order is set aside and decree of the trial court is affirmed but with a condition imposed upon the appellant-plaintiff to pay a sum of Rs.15,00,000/- in addition to the amount already paid by the appellant to the respondent. [Para 39, 40][477-E-G]

- F *H. Siddiqui v. A. Ramalingam* 2011 (5) SCR 587 : (2011) 4 SCC 240 ; *Rajinder Kumar v. Kuldeep Singh & Ors.* (2014) 2 SCC 135; *Vimaleshwar Nagappa Shetty v. Noor Ahmed Sheriff & Ors.* 2011 (6) SCR 392 : (2011) 12 SCC 658 ; *K.S. Vidyanadam & Ors. v. Vairavan* 1997 (1) SCR.993 : (1997) 3 SCC 1 ; *Satya Jain v. Anis Ahmed Rushdie* 2013 (3) SCR 319 : (2013) 8 SCC 131 ; *Nirmala Anand v. Advent Corpn. (P) Ltd.* 2002 (2) Suppl. SCR 706 : (2002) 8 SCC

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146 ; V. Pechimuthu v. Gowrammal 2001 (1) Suppl. SCR 199 : (2001) 7 SCC 617 ; K. Prakash v. B.R. Sampath Kumar, Vimalleshwar Nagappa Shet v. Noor Ahmed Shariff and others 2011 (6) SCR 392 : (2011) 12 SCC 658 – referred to.

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Rookey's Case 77 ER 209 ; (1597) 5 Co. Rep.99; *Attorney General v. Wheat* (1759) 1 Eden 177; 28 ER 652 – referred to.

B

CASE LAW REFERENCE

2011 (5) SCR 587	referred to	Para 11	C
(2014) 2 SCC 135	referred to	Para 15	
2011 (6) SCR 392	referred to	Para 15	
1997 (1) SCR 993	referred to	Para 15	
77 ER 209	referred to	Para 26	D
(1759) 1 Eden 177	referred to	Para 27	
2013 (3) SCR 319	referred to	Para 28	
2002 (2) Suppl. SCR 706	referred to	Para 29	E
2001 (1) Suppl. SCR 199	referred to	Para 30	
2011 (6) SCR 392	referred to	Para 32	

CIVILAPPELLATE JURISDICTION : Civil Appeal No(s). 9947 of 2007.

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From the Judgment and Order dated 01-03-2012 of the High Court of Karnataka at Bangalore in Regular First Appeal No. 265 of 1999.

K.K. Mani, Ms. T. Archana, Abhishek Krishna, Advs. for the Appellant.

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V. Prakash, Sr. Adv., Vinodh Kanna B., Ms. Khushboo Arora, L.K. Pandey, M/s K. Ramkumar & Associates for the Respondent.

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A The Judgment of the Court was delivered by
 M. Y. EQBAL, J. 1. Leave granted.

 2. This appeal by special leave is directed against the
judgment and order dated 1.3.2012 passed by the High Court
of Karnataka whereby Regular First Appeal No.265 of 1999
B filed by the defendant-respondent was allowed and the
judgment and decree passed by the trial court in the suit of the
appellant-plaintiff was set aside.

 3. The facts giving rise to the present appeal are that the
C respondent-first defendant is the absolute owner of 1/3rd
undivided share in the property bearing no.43, Mission Road,
Bangalore (hereinafter referred to as the 'suit schedule
property') and his elder brother-second defendant is his power
of attorney holder. It is the case of the plaintiff that on 25.6.1979,
D the second defendant-respondent as registered power of
attorney holder entered into an agreement to sell 1/3rd share in
the suit property to the appellant-plaintiff for consideration of
Rs.40,000/- and received advance of Rs.5,000/-. As per the
E aforesaid registered agreement, the balance consideration
was to be paid on or before 30.12.1980 and the parties to the
agreement had to take necessary steps for obtaining
permission from the competent authority under the Urban Land
(Ceiling and Regulation) Act. Plaintiff's further case is that he
paid the entire sale consideration to the second defendant
F who received the same on behalf of the first defendant. It is
contended that the plaintiff had been always ready and willing
to perform his part of the contract and that the plaintiff has been
requesting the defendants to take necessary steps to obtain
permission from the Urban Land Ceiling Authority. Since the
G defendants failed to take necessary steps, the plaintiff issued
legal notice to the defendants on 5.3.1980 and 25.5.1980
calling upon the defendants to complete the sale in favour of
the plaintiff and to perform their part of the contract. The
defendants sent reply to notice on 4.10.1980 wherein they
H repudiated the agreement in question. As averred, the plaintiff

has been in possession of the undivided share of the defendants in the schedule property in pursuance of the above agreement for sale. Since the defendants failed to execute the sale deed, the plaintiff filed a suit for specific performance praying for a direction to the defendants to execute the sale deed in respect of 1/3rd share in the suit property.

4. In the suit, the defendants 1 and 2 have filed separate written statements. In the written statement filed by first defendant he has admitted that he is the owner of 1/3rd share in the suit property. He has also admitted that the 2nd defendant is the brother and registered power of attorney holder of the first defendant. But he pleaded that the power of attorney was given by him to the second defendant only for the limited purpose of looking after and managing the suit property. He denied that there was an agreement to sell the suit property in favour of the plaintiff and also denied of having received advance amount of Rs. 5000/-. Respondent-first defendant alleged that the said agreement was prepared by his elder brother by misusing the power of attorney and second defendant had acted on the ill-advice of the plaintiff, to play fraud on him. He contended that the suit property was worth more than Rs.3,00,000/- on the date of the said agreement and he had sent a registered notice to the plaintiff on 1.10.1983 denying the execution of the said agreement.

5. It has been further alleged by the respondent-first defendant that one D. Narendra had filed a suit O.S. No.767/78, re-numbered as O.S.2762/80, seeking partition of 1/3rd share in the suit scheduled property. Appellant-plaintiff herein was the 4th defendant in the said suit and he had filed his written statement on 27.2.1979, wherein he pleaded that he had agreed to purchase the suit property. He contended that the same goes to show that the plaintiff had planned to snatch the property and that the agreement in question came into existence in collusion with the second defendant.

A 6. The respondent-defendant has further pleaded that the plaintiff occupied the premises in question as a tenant by virtue of allotment order in HRC(ACC) 306/1970 and that thereafter he has sublet the portion of the suit property to various persons. It is further stated that the plaintiff has not been paying rent to
B the defendant in proportionate to the income that he derives by such sub letting. The defendant alleged that he had no intention to sell the full property to any person much less to the plaintiff, and he wants to retain the suit property.

C 7. The second defendant, elder brother of the respondent and his power of attorney holder, by way of separate written statement denied that the agreement for sale in question was executed with the consent of the first defendant. According to
D him, the plaintiff obtained the said agreement by playing fraud and giving assurance that he would get certain benefits. He also pleaded in his written statement that one D. Narendra, who had alleged to have purchased 1/3rd share in the suit property from Thyagarajan, had filed a suit being O.S.767/78 seeking decree of partition and separate possession. In the
E said suit, the plaintiff stated that he is holding agreement from Thyagarajan to purchase the property. Thyagarajan is the son of the second defendant, who in good faith that his son would retain his 1/3rd share and to save the property obliged the plaintiff to execute the sale agreement and not with an intention to sell the property. It is pleaded that the plaintiff had promised
F that he would not enforce the sale agreement and it is only to see that the suit filed by D. Narendra is dismissed. The second defendant contended that the receipts issued by him to the plaintiff were not towards payment of consideration, but the same was towards payment of rents. Moreover he had not
G issued any receipt for having received money towards sale consideration.

H 8. On consideration of entire facts and evidence brought on record, the trial court decreed the suit directing the first defendant to execute the sale-deed in favour of the plaintiff in respect of 1/3rd share in the suit schedule property. The trial

court held that defendant no.1 has admitted to have executed the power of attorney (Ex.P22) and it clearly states that the second defendant was authorized to sell the suit property. Further, defendant has utterly failed to prove that the plaintiff had obtained the agreement for sale in question by playing fraud. On the contrary, the evidence clearly proves that the first defendant had authorized the second defendant to sell the suit property to the plaintiff and that the second defendant has agreed to sell the suit property to the plaintiff having full authority to do so. Defendant no.1, who was examined as DW-1, has admitted the signatures of defendant no.2 in the receipts produced by the plaintiff, which are at Ex.P8(a) to P8(g). The trial court came to the conclusion that the defendants have received the amount of consideration and the plaintiff performed his part of the agreement by paying full consideration and was always ready and willing to get the sale deed executed. However, the defendants have not performed their part of the agreement and have evaded to execute the sale deed in favour of the plaintiff. Therefore, trial court came to the conclusion that it is a fit case to grant specific performance of agreement and to direct defendant no.1 to execute the sale deed in favour of the plaintiff.

9. Aggrieved by the judgment and decree, the respondent-defendant preferred appeal before the High Court.

10. By judgment dated 3.2.2004, learned Single Judge of the High Court partly allowed the appeal modifying the judgment and decree of the trial court by refusing to grant specific performance and directing the first defendant to pay back the consideration amount with interest at 12% from the date of agreement till the date of payment after deducting rent payable to him by the plaintiff in respect of 1/3rd share.

11. Aggrieved by the aforesaid decision of the High Court, petitioner approached this Court preferring an appeal by special leave being Civil Appeal No.6956 of 2004. This Court by judgment dated 4.3.2011 in that appeal titled as *H. Siddiqui*

A **vs. A. Ramalingam**, (2011) 4 SCC 240, set aside the judgment and order of the High Court and remanded back the matter to the High Court to decide the same afresh in accordance with law. This Court in the remand order observed as under:

B "20. The High Court failed to realise that it was deciding
C the first appeal and that it had to be decided strictly in
D adherence with the provisions contained in Order 41 Rule
31 of the Code of Civil Procedure, 1908 (hereinafter
called "CPC") and once the issue of the alleged power
of attorney was also raised as is evident from Point (a)
formulated by the High Court, the Court should not have
proceeded to Point (b) without dealing with the relevant
issues involved in the case, particularly, as to whether
the power of attorney had been executed by the
respondent in favour of his brother enabling him to
alienate his share in the property.

E 21. The said provisions provide guidelines for the
appellate court as to how the court has to proceed and
decide the case. The provisions should be read in such
a way as to require that the various particulars mentioned
therein should be taken into consideration. Thus, it must
be evident from the judgment of the appellate court that
the court has properly appreciated the facts/evidence,
applied its mind and decided the case considering the
material on record. It would amount to substantial
compliance with the said provisions if the appellate
court's judgment is based on the independent
assessment of the relevant evidence on all important
aspects of the matter and the findings of the appellate
court are well founded and quite convincing. It is
mandatory for the appellate court to independently
assess the evidence of the parties and consider the
relevant points which arise for adjudication and the
bearing of the evidence on those points. Being the final
court of fact, the first appellate court must not record mere

general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions.

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23. More so, none of the courts below had taken into consideration Clause 11 of the agreement dated 30.6.1979 which reads as under:

“11. In the event of any default on the part of the vendors in completing the sale the earnest money paid herewith shall be refunded to the purchasers together with a like amount of Rs.5,000/- (Rupees five thousand only) as liquidated damages for breach of contract.”

Thus, in case of non-execution of the sale deed, the appellant could get the earnest money with damages.

24. So far as the issues of inadequate consideration and rise in price are concerned, both the parties have argued the same at length and placed reliance on a large number of judgments of this Court, including: Chand Rani (Smt.) (dead) by Lrs. v. Kamal Rani (Smt.) (dead) by Lrs., AIR 1993 SC 1742; Nirmala Anand v. Advent Corporation (P) Ltd. & Ors., (2002) 8 SCC 146; P. 1D'Souza v. Shondriilo Naidu, (2004) 6 SCC 649; Jai Narain Parasrampuriah (dead) & Ors. v. Pushpa Devi Saraf & Ors., (2006) 7 SCC 756; Pratap Lakshman Muchandi & Ors. v. Shamlal Uddavadas Wadhwa & Ors., (2008) 12 SCC 67.

25. In view of the above, as we are of the considered opinion that the courts below have not proceeded to adjudicate upon the case strictly in accordance with law, we are not inclined to enter into the issue of inadequate

A consideration and rise in price. However, the judgment impugned cannot be sustained in the eyes of law.”

B 12. On remand, High Court considered the matter afresh and allowed the appeal of first defendant and set aside the judgment and decree of the trial court, dismissing the suit of the plaintiff. Hence, this appeal by wife of the plaintiff (since deceased).

C 13. Mr. K.K. Mani, learned counsel appearing for the plaintiff-appellant, assailed the impugned judgment passed by the High Court as being contrary to law and facts and evidence on record. Learned counsel firstly contended that the learned Single Judge gravely erred in law in holding that the Power of Attorney was not proved as required under Sections 65 and 66 of the Evidence Act. Learned counsel submitted that the D learned Single Judge of the High Court completely misdirected himself in reversing the findings recorded by the trial court which is based on evidence. Learned counsel contended that the reasoning given by the High Court in refusing to grant specific performance merely because the part of the E consideration amount was paid by the plaintiff-appellant prior to the date of the execution of the agreement is wholly unjustified and not tenable.

F 14. Per contra, Mr. V. Prakash, learned senior counsel appearing for the defendant-respondent, at the very outset contended that the agreement in question (PW-1) is not a G genuine transaction and fraud has been played with the defendant-respondent by getting the agreement to sell executed through his elder brother-cum-power of attorney holder. Learned counsel submitted that as per evidence adduced by the plaintiff, the entire consideration amount was H paid but as a matter of fact those payments were admittedly prior to the date of execution of agreement. Learned counsel contended that D. Narendra, claiming 1/3rd share in the said property from one Thyagarajan had filed a suit for partition. The present plaintiff-appellant, who was one of the defendants,

vide written statement, contended that he is holding an agreement from Thyagarajan for purchase of the property. Learned counsel submitted that the second defendant-cum-power of attorney holder in good faith executed agreement for the 1/3rd share to save the property and not with an intention to sell the property. Learned counsel further contended that there is a specific clause in the agreement i.e. clause (11) providing that in the event of any default on the part of the vendors in completing the sale, the earnest money shall be refunded to the purchaser together with Rs.5,000/- as liquidated damage.

15. Mr. V. Prakash, learned senior counsel, further contended that at the time of execution of the agreement, the market price of the property was Rs. 3,00,000/- and as against the said price a sum of Rs.40,000/- was shown in the agreement as full consideration for the suit property. Learned counsel submitted that by the passing of time, the price of the suit property has increased more than 10-15 times, and in that view of the matter, the court should not exercise discretion in granting decree for specific performance. Learned counsel relied upon the decision in **Rajinder Kumar vs. Kuldeep Singh & Ors.**, (2014) 2 SCC 135, **Vimaleshwar Nagappa Shetty vs. Noor Ahmed Sheriff & Ors.**, (2011) 12 SCC 658, **K.S. Vidyadnam & Ors. vs. Vairavan**, (1997) 3 SCC 1.

16. We have perused the judgment passed by the trial Court and also the judgment of reversal passed by the High Court. Firstly, we would like to consider the pleading of the parties in the suit.

17. The first defendant through his power of attorney holder entered into an agreement on 25th June, 1979 agreeing to sell his 1/3rd undivided share in the suit property for a sum of Rs. 40,000/- and out of the said consideration a sum of Rs. 5,000/- was paid in advance. Under the terms of registered agreement the sale was to be completed before 30th December, 1980 on payment of balance consideration of Rs.35,000/- and, in the meantime, all necessary steps had to

A be taken to obtain permission from the competent authority under the Urban Land Regulation Act. The plaintiff further pleaded that he was always ready and willing to perform his part of the contract and in furtherance of that entire sale consideration was paid long before 30.12.1980.

B 18. Both, the first defendant viz. owner of the property and his elder brother, who is a power of attorney holder, have filed separate written statement. Defendant No.1 admitted in his written statement that he is the owner of 1/3rd share in the suit property and that the second defendant is his elder brother and the power of attorney holder. But the case of the defendant C No.1 is that the power of attorney was given to the second defendant only for the limited purpose for managing the suit property. He denied that there was an agreement to sell in D favour of the plaintiff and also denied the payment of advance consideration. The first defendant made out a case that the E agreement in question is a vexed agreement which was prepared by his elder brother by misusing the power of attorney. The defendant further pleaded that the property was worth more than three lakhs on the date of said agreement and that he has not received any part of the consideration amount from the plaintiff.

19. The second defendant in his separate written statement pleaded that he is the power of attorney holder for the limited purpose for safeguarding the interest of the first F defendant. According to his pleading, a sale agreement was obtained by the plaintiff by playing fraud and by giving assurance that the second defendant would get certain benefits.

20. We have noticed that both the power of attorney and the agreement to sale are registered documents. Perusal of G registered power of attorney would show that the first defendant authorized his elder brother- second defendant to sell the suit property at any price which he may deem fit and collect the sale proceeds. Clauses (i) to (iii) of the registered power of H attorney read as under:-

"(i) That my attorney is authorized to sell the above property to any person or persons at any price which he may deem fit and collect the sale proceeds. A

(ii) My attorney is also authorized to get necessary permission from the competent authority for the sale of above property or from any other government machinery required under law. B

(iii) that my attorney is also authorized to execute and sign document of sale/mortgage and any other legal transfer and get the same registered in the proper office of registration complete in all respect." C

21. Similarly by registered agreement of sale dated 25.6.1979, executed by the second defendant, he specifically agreed to sell the property for a sum of Rs. 40,000/- and out of that he received a sum of Rs. 5,000/- as advance consideration. D

22. Although defendant no.2 filed a separate written statement, but he did not examine himself as a witness in order to prove the case pleaded by him. The first defendant examined himself as DW-1 and deposed in the Court. In his evidence, he admitted that he discussed about the sale of the suit property with the plaintiff, but he wanted to sell at a price of Rs. 3,00,000/-. He admitted the signature of his elder brother as power of attorney holder in the agreement and also in the receipt of payment of consideration amount. Certain correspondences made by plaintiff with DW-1 and exhibited in the suits would show that by one letter (exhibit P-14) DW-1 confirmed that he authorized his elder brother to negotiate and sell the suit property. By another letter (exhibit P-15), DW-1 further confirmed that his brother was authorized to negotiate for sale of the property and receive consideration. Another letter (Exhibit P-20) would show that he was aware about the sale agreement executed by his brother, who had received some advance consideration. E
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A 23. Curiously enough, although it was pleaded by
defendant no.1 that the power of attorney was given to
defendant no.2 for limited purpose of managing the property,
the said power of attorney was not produced in the Court. DW-
1 did not produce the original power of attorney to prove his
B case that the second defendant, his elder brother, was only
authorized to manage the property. It is the plaintiff, who
produced the xerox copy of the registered power of attorney,
which was shown to the DW-1 during cross-examination, who
admitted the signature in the power of attorney. All these
C relevant pieces of evidence have not been appreciated by the
High Court in its right perspective. Instead of drawing adverse
inference against the defendant, in not producing the original
power of attorney, which was in their power and possession,
the High court has committed grave error in holding that the
D power of attorney has not been proved as required under
Sections 65 and 66 of the Evidence Act. In our view, when the
xerox copy of power of attorney produced by the plaintiff in
evidence and the signature and the contents of the said power
of attorney were admitted by the defendant, there was no
E question of proving the said document as required under the
Evidence Act. The judgment of reversal passed by the High
Court by coming to the aforesaid conclusion is wholly perverse
and contrary to law. A certified copy of the power of attorney is
now on record and it falsifies the case of the defendants/
F respondent undisputedly.

24. The last contention of Mr. Prakash, learned senior
counsel appearing for the respondent is that having regard to
the increasing market price of the suit property, the discretion
to grant specific performance should not be exercised in favour
G of the plaintiff-appellant and against the defendant-respondent.

25. It is well settled that remedy for specific performance
is an equitable remedy. The Court while granting decree of
specific performance exercises its discretionary jurisdiction.
Section 20 of the Specific Relief Act specifically provides that
H Court's discretion to grant decree of specific performance is

discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles. A

26. The King's Bench in **Rookey's Case** [77 ER 209; (1597) 5 Co.Rep.99] it is said :

"Discretion is a science, not to act arbitrarily according to men's will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the constitution entrusted with" B C D

27. The Court of Chancery in **Attorney General vs. Wheat** [(1759) 1 Eden 177; 28 ER 652] followed the Rookey's case and observed :

"The law is clear and courts of equity ought to follow it in their judgments concerning titles to equitable estates; otherwise great uncertainty and confusion would ensue. And though proceedings in equity are said to be *secundum discretionem boni vin*, yet when it is asked, *vir bonus est quis?* The answer is, *qui consulta partum, qui leges juraq servat.* And as it is said in Rooke's case, 5 Rep. 99 b, that discretion is a science not to act arbitrarily according to men's will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. E F G H

A That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the constitution entrusted with. This description is full and judicious, and what ought to be imprinted on the mind of every judge."

B 28. In **Satya Jain vs. Anis Ahmed Rushdie**, (2013) 8 SCC 131, at page 145, this Court observed:-

C "40. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasised that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in *P.S. Ranakrishnā Reddy v. M.K. Bhagyalakshmi* (2007) 10 SCC 231 and more recently in *Narinderjit Singh v. North Star Estate Promoters Ltd.* (2012) 5 SCC 712 may be usefully recapitulated."

E 29. In **Nirmala Anand vs. Advent Corpn. (P) Ltd.**, (2002) 8 SCC 146, at page 150, a three Judge Bench of
G this Court on a similar issue held as under :-

H "6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do

so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

30. In *V. Pechimuthu vs. Gowrammal*, (2001) 7 SCC 617, at page 629 this court held as under:-

"25. Counsel for the respondent finally urged that specific performance should 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 reconvey property at prices fixed in 1978.

26. 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 the price of the

- A land agreed to be conveyed may be a relevant factor in denying the relief of specific performance. (See *K.S. Vidyanadam v. Vairavan*). But in this case, the decree for specific performance has already been passed by the trial court and affirmed by the first appellate court.
- B 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 (1997) 3 SCC 1* will not apply.”

- C 31. In a recent judgment dated 22.9.2014 in Civil Appeal No. 9047 of 2014 entitled *K. Prakash vs. B.R. Sampath Kumar*, this Court observed that:

- D “17. The principles which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so.
- E
- F Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.
- G
- H

19. Subsequent rise in price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of circumstances and, therefore, on that ground a decree for specific performance cannot be reversed.

20. However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant-owner of the property. This aspect of the matter is considered by a three Judge Bench of this Court in ***Nirmala Anand vs. Advent Corporation (P) Ltd. and Others***, (2002) 8 SCC 146."

32. In the case of ***Vimaleshwar Nagappa Shet vs. Noor Ahmed Shariff and others***, (2011) 12 SCC 658, an agreement to sell a dwelling house was entered into by some of the co-sharers and the matter was ultimately compromised on payment of higher price. On those facts the Court held that since the value of the property escalates in urban areas very fast, it would not be equitable to grant relief of specific performance after the lapse of a long period of time. The said decision has no application in the present case.

33. Similarly, in the case of ***K.S. Vidyadnam*** (supra), this Court on facts found that there was a total lapse and negligence for a period of more than 2½ years from the side of the plaintiff in taking any step to perform his part of contract under the agreement and there was gross violation of the terms of the agreement which required him to pay the balance, purchase the stamp paper and then seek for execution of the sale deed. Further the delay was coupled with substantial rise in price, which brought about a situation where it would not be equitable to give the relief of specific performance to the plaintiff. With due respect, this decision is also not applicable in the facts of the present case.

A 34. The equitable discretion to grant or not to grant a
relief for specific performance also depends upon the conduct
of the parties. The necessary ingredient has to be proved
and established by the plaintiff so that discretion would be
exercised judiciously in favour of the plaintiff. At the same time,
B if the defendant does not come with clean hands and
suppresses material facts and evidence and misled the Court
then such discretion should not be exercised by refusing to
grant specific performance.

C 35. In the instant case, as noticed above, although
defendant no.2 held a registered power of attorney on behalf
of defendant no.1 to sell and dispose of the property, but the
defendants not only made a false statement on affidavit that
the power of attorney had authorized the second defendant
only to look after and manage the property but also withheld
D the said power of attorney from the Court in order to misguide
the Court from truth of the facts. Further, by registered
agreement the defendants agreed to sell the suit premises
after receiving advance consideration but they denied the
existence of the agreement in their pleading. Such conduct of
E the defendants in our opinion, disentitle them to ask the Court
for exercising discretion in their favour by refusing to grant a
decree for specific performance. Further, if a party to a lis
does not disclose all material facts truly and fairly but states
them in distorted manner and mislead the Court, the Court
F has inherent power to exercise its discretionary jurisdiction in
order to prevent abuse of the process of law.

G 36. However, it is noticed from the facts that the registered
agreement to sell was executed between the parties on
25.6.1979 and the suit for specific performance was filed by
the plaintiff-appellant in January, 1981. The suit was decreed
by the trial court in November, 1998. The defendant-
respondent challenged the said decree before the High Court
in April, 1999. The High Court allowed the appeal by terms of
judgment dated 3.2.2004 and set aside the trial court's
H judgment and decree. The plaintiff-appellant preferred special

leave petition, which was numbered as Civil Appeal No.6956 of 2004. The Civil Appeal was finally decided on 4.2.2011 setting aside the High Court's judgment and remanding the matter back to the High Court to decide the appeal afresh. On remand, the learned Single Judge in terms of order dated 1.3.2012 allowed the appeal and set aside the judgment and decree of the trial court. In this way, the matter remained pending before the High Court and this Court for a number of years.

37. As held by this Court time and again, efflux of time and escalation of price of the property by itself cannot be a valid ground to deny the relief of specific performance. But the Court in its discretion may impose reasonable conditions including payment of additional amount to the vendor. It is equally well settled that the plaintiff is not to be denied specific performance only on account of phenomenal increase of price during the pendency of litigation.

38. The defendant-respondent alternatively pleaded in the written statement that even at the relevant time the price of the suit property was Rs.3,00,000/- when the said agreement was executed for Rs.40,000/- only. But on the other hand it has come in evidence that against Rs.40,000/-, the plaintiff-appellant has paid a total amount of Rs.65,000/-.

39. Be that as it may, in the facts and circumstances of the case and considering the phenomenal increase in price during the period the matter remained pending in different courts, we are of the considered opinion that impugned order under appeal be set aside but with a condition imposed upon the appellant (plaintiff) to pay a sum of Rs.15,00,000/- (Rupees Fifteen Lacs) in addition to the amount already paid by the appellant to the respondent. On deposit in trial court of aforesaid amount by the appellant, for payment to the respondent, within three months from today, the respondent shall execute and register the sale deed in favour of the plaintiff in respect of the suit property. In the event the aforesaid

A condition of deposit of Rs.15 lacs is fulfilled within the time stipulated hereinabove but the defendant fails to comply with the direction, then the appellant shall be entitled to execute the decree in accordance with the procedure provided in law.

B 40. In the result, this appeal is allowed. The impugned judgment passed by the High Court is set aside and decree of the trial court is affirmed with the conditions imposed as indicated hereinabove. There shall be no order as to costs.

Nidhi Jain

Appeal allowed.