A PADMAKUMARI & ORS.

v.

DASAYYAN & ORS.

B (Civil Appeal No. 3570 of 2015)

APRIL 7, 2015

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

C *Specific Relief Act, 1963 – ss. 16(c) and 19(b) – Specific Performance of unregistered agreement for sale – Between plaintiff and defendant Nos. 1 to 11 – Balance sale consideration not paid by the plaintiff within the time i.e. nine* D *months which was agreed upon – Thereafter the property in question sold by defendant Nos. 1 to 11 to defendant Nos. 12 to 15 (appellants) by a registered sale-deed by paying the sale consideration amount – Suit for specific performance by plaintiff – Decreed by courts below – On appeal, held:* E *Finding of facts by courts below was contrary to the terms and conditions of the agreement, pleadings and the evidence on record – Time was the essence of the contract and the plaintiff failed to perform the part of the agreement by not paying the balance sale consideration within stipulated period* F *agreed upon – Plaintiff has also not complied with the mandatory legal requirement provided u/s. 16(c) because the pleadings of the plaintiff were not in conformity with Order 6 Rule 3 and Clause 3 of Form No. 47 in Appendix A of CPC* G *– Respondent Nos. 12 to 15 were* bonafide *purchasers and thus were protected u/s. 19(b) – Thus the suit for specific performance was not liable to be decreed – Code of Civil Procedure, 1908 – Or. 6 r. 3; Appendix A Form 47 clause 3.*

H **Allowing the appeal, the Court**

HELD: 1. It is not correct to say that time was not the essence of the contract as defendant Nos. 1 to 11 themselves have failed to perform their part of the agreement i.e. by measuring the suit schedule property. The question of taking measurement would not arise, before the plaintiff performed his part of the contract regarding the balance consideration within the period stipulated in the agreement. Undisputedly, that had not been done by the plaintiff within the stipulated time and the notice was issued by the plaintiff only after one year, therefore, the plaintiff has not adhered to the time which is stipulated to pay the balance consideration amount to defendant Nos. 1 to 11 which is very important legal aspect which was required to be considered by the Courts below at the time of determining the rights of the parties and pass the impugned judgment. The finding of fact by courts below is contrary to the terms and conditions of the agreement, pleadings and the evidence on record. [Para 16 and 17] [69-G-H; 70-B-D, E]

Gomathinayagam Pillai & Ors. vs. Palaniswami Nadar AIR **(1967) SC 868;** *Chand Rani (D) by Lrs. vs. Kamal Rani (D) by Lrs.* **(1993) 1 SCC 519: 1992 (3) Suppl. SCR 798 – relied on.**

Gomathinayagam Pillai & Ors. vs. Palaniswami Nadar **AIR (1967) SC 868;** *Harold Wood Brick Company Ltd. vs. Ferris* **(1935) King's Bench Division 198;** *Saradamani Kandappan vs. S. Rajalakshmi & Ors.* **AIR (2011) SC 3234 – referred to.**

2. The pleadings of the plaintiff is not in conformity with Order 6 Rule 3 CPC, clause 3 of Form No. 47 in Appendix 'A'. The plaintiff has thus not complied with

A **the legal requirement which is mandatory as provided under Section 16 (c) of the Specific Relief Act. [Paras 18 and 19] [70-F-G; 71-B]**

Jugraj Singh & Anr. vs. Labh Singh & Ors. **(1995) 2 SCC** B **31:1994 (6) Suppl. SCR 168;** *Ram Awadh vs. Achhaibar Dubey* **(2000) 2 SCC 428: 2000 (1) SCR 566;** *Ouseph Varghese vs. Joseph Aley & Ors.* **(1969) 2 SCC 539;** *Abdul Khader Rowther vs. P.K. Sara Bai & Ors.* **(1989) 4 SCC 313;** *Pushparani S. Sundaram* C *& Ors. vs. Pauline Manomani James (D) & Ors.* **(2002) 9 SCC 582 ;** *Manju Nath Anandappa Urf Shivappa Hansai vs. Tammanasa & Ors.* **(2003) 10 SCC 390: 2003 (2) SCR 1068 – relied on.**

D **3. The non-compliance of the contract regarding payment of balance consideration to defendant Nos. 1 to 11 on the part of the plaintiff within nine months is an undisputed fact and further the agreement of sale is not** E **registered, as is evidenced from the encumbrance certificate obtained by defendant Nos. 12 to 15 before they entered into an agreement (Exhibit B-1). Both the Courts below have recorded an erroneous finding on the non-existent fact holding that the agreement of** F **sale in favour of the plaintiff is a registered document. More so, defendant Nos. 12 to 15 before entering into the agreement with defendant Nos. 1 to 11 have made proper verification from the competent authority to purchase the part of the suit schedule property and** G **got the agreement of sale (Exhibit B-1) executed in their favour, from defendant Nos. 1 to 11 and thereafter, they got the sale-deed registered by paying sale consideration amount. Thus, the purchase of the suit- schedule property by defendant Nos. 12 to 15 for a valuable**

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consideration is established. Both the Courts below have omitted to consider this important piece of pleadings as also the material evidence on record, thereby the concurrent finding recorded on the contentious issues has been rendered erroneous in law and is liable to be set aside. Therefore, the reliance placed upon Section 19(b) of the Specific Relief Act as they being the bona-fide purchasers, the specific performance of contract cannot be enforced against the transferees. Defendant Nos. 12 to 15 being the transferee as they have purchased the suit schedule property for value and have paid the money in good faith and without notice of the original contract. [Paras 20 and 21] [71-E-H; 72-A-F]

Case law reference

AIR (1967) SC 868	referred to.	Para 9, 15
(1935) King's Bench Division 198	referred to.	Para 9
AIR (2011) SC 3234	referred to.	Para 9
1994(6) Suppl. SCR 168	relied on.	Para 10
2000 (1) SCR 566	relied on.	Para 10
(1969) 2 SCC 539	relied on.	Para 10
(1989) 4 SCC 313	relied on.	Para 10
(2002) 9 SCC 582	relied on.	Para 10
2003 (2) SCR 1068	relied on.	Para 10
1992 (3) Suppl. SCR 798	relied on.	Para 15

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3570 of 2015

From the Judgment and Order dated 08.02.2007 of the Madurai Bench of Madras High Court in Appeal Suit No. 646
B of 1994

Thomas P. Joseph, M. Gireesh Kumar, Ankur S Kulkarni, Sriram P., Vishnu Shankar, Vijay Kumar for the Appellant.

C V. Balachandran for the Respondent.

The Judgment of the Court was delivered by

V. GOPALA GOWDA, J. 1. Leave granted.

D 2. The concurrent finding of fact recorded by the High Court of Madras, Bench at Madurai, in Appeal Suit No. 646 of 1994 affirming the judgment and decree dated 15.06.1994 passed in O.S. No. 63 of 1993 on the file of Sub Court, Kuzhithurai District is under challenge in this appeal by
E defendant Nos. 12 to 15 urging various legal grounds.

3. For the sake of convenience, the ranks of the parties assigned in the plaint filed before the trial court is adverted to in this judgment.

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4. Defendant Nos. 1 to 11 entered into an agreement of sale on 19.04.1992 in favour of the plaintiff and executed an unregistered agreement agreeing to sell the suit schedule property measuring 2.08 acres of land belonging to them. The
G total sale consideration amount is Rs. 65,000/-. Advance amount of Rs. 2,000/- was agreed to be paid for execution of sale and the remaining balance consideration is agreed to be paid within nine months from the date of agreement of sale. Undisputedly, the remaining balance sale consideration is not

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paid on or before 18.04.1993. On 3.02.1993, defendant Nos. 12 to 15 entered into an unregistered agreement (marked as Exhibit B-1) with defendant Nos. 1 to 11 to purchase the suit schedule property. As per the said unregistered agreement, the property is agreed to be sold for Rs. 80,000/-. Advance amount of Rs. 10,000/- was also paid to defendant Nos. 1 to 11. On 19.04.1993, the suit schedule property Sale Deed No. 75 of 1993 (marked as Exhibit B-3) was executed by defendant Nos. 1 to 11 in favour of defendant Nos. 12 to 15. Out of the sale consideration of Rs. 80,000/- a sum of Rs. 10,000/- is paid as advance amount, a further sum of Rs. 30,000/- is paid at the time of execution of the sale deed, remaining Rs. 40,000/- is retained to be paid in favour of defendant Nos. 1 to 11, free of interest, within one month from the date of disposal of I.A. No. 208 of 1990 in A.S. No. 95 of 1990 pending on the file of District Court Nagarcoil. The appeal was filed challenging the decree for partition in O.S. No. 11 of 1978.

5. The plaintiff got issued the legal notice (Exhibit A-3) on 29.04.1993 to defendant Nos. 1 to 15 demanding execution of the sale deed as per the agreement (Exhibit A-1). Defendant Nos. 12 to 15 replied vide Exhibit B-7. The other defendants did not reply to the demand made by the plaintiff, therefore, he was constrained to institute original suit on 14.06.1993 before the Sub Court Kuzhithurai. The written statements were filed by all the defendants denying the claim of the plaintiff inter alia contending that the time is the essence of the contract as per unregistered agreement of sale (Exhibit A-1). As the plaintiff had agreed to pay remaining sale consideration of Rs. 63,000/- within nine months from the date of agreement, the same has not been paid. Since there is breach of contract on the part of the plaintiff and, therefore, he is not entitled for decree of specific performance in respect of the suit schedule property. Further, it is pleaded that the plaintiff has not shown his

A readyness and willingness to perform his part of the contract, as required under Section 16(c) of the Specific Relief Act, therefore, defendant Nos. 1 to 11 contended that the plaintiff is not entitled for a decree of specific performance of the suit schedule property. Defendant Nos. 12 to 15 denied the plaint
B averments, however, specifically pleaded that they are the bona fide purchasers of the part of the suit schedule property and they are protected under Section 19(b) of the Specific Relief Act. On the basis of the said pleadings the case went for trial.
C Before the trial court the plaintiff and defendants were examined in support of their respective claim and counter claim. The trial court on the basis of the pleadings and evidence adduced on record has formulated the following four issues:

D (i) Whether specific performance of the contract as sought by plaintiff is allowable?

(ii) Is sale deed dated 19.04.1993 valid?

(iii) Have D12 to D15 purchased the suit property in
E good faith?

(iv) What are the reliefs plaintiff is entitled?

6. The trial court on the basis of pleadings and the
F evidence produced on record has appreciated and answered the Issue Nos. 1 and 2 in favour of the plaintiff. Issue No. 3 was answered against defendant Nos. 12 to 15 and, accordingly, answered Issue No. 4 and passed the decree of specific performance in favour of the plaintiff in respect of the suit
G schedule property with certain directions to him.

7. Aggrieved of the said judgment and decree of the learned trial judge, defendant Nos. 12 to 15 preferred an appeal before the High Court raising certain grounds inter alia urging
H that findings and reasons recorded on the contentious issue

Nos. 1 to 3 are erroneous in law and are liable to be set aside and prayed to set aside the judgment and decree of the trial court and disposal of the appeal suit instituted by them. On the basis of the rival legal contentions, the High Court has formulated certain points and the same have been answered in favour of the plaintiff by assigning reasons, rejecting the legal contentions urged in the Appeal Suit on behalf of defendant Nos. 1 to 15. The concurrent finding recorded in the impugned judgment of the High Court is under challenge in this appeal urging certain grounds and prayed to set aside the impugned judgment and decree.

8. Mr. Thomas P. Joseph, learned counsel for defendant Nos. 12 to 15 (appellants herein) questioned the correctness of the concurrent finding of fact recorded on the contentious issues raised by the defendants, which the High Court has answered in favour of the plaintiff, contending that as per the unregistered agreement there is a clause stipulating the time of nine months for payment of balance consideration of Rs. 63,000/- to defendant Nos. 1 to 11 out of the total sale consideration of Rs. 65,000/-, which has not been complied with by the plaintiff. Under Section 55 of the Indian Contract Act, 1872 once the time is specified in the agreement, time is the essence of the contract and the parties shall adhere to the same. Non-adherence of the said contract rendered the contract repudiated, therefore, the plaintiff is not entitled for a decree of specific performance.

9. Learned counsel for defendant Nos. 12 to 15 relied upon the judgments of this Court in the cases of Gomathinayagam Pillai & Ors. vs. Palaniswami Nadar, AIR (1967) SC 868 para 4, Harold Wood Brick Company Ltd. vs. Ferris, (1935) King's Bench Division 198, Saradamani Kandappan vs. S. Rajalakshmi & Ors., AIR (2011) SC 3234

A para 25.

10. Another ground urged by learned counsel for defendant Nos. 12 to 15 is that the pleadings on behalf of the plaintiff must be strictly in conformity with Order 6 Rule 3 of the
B Code of Civil Procedure ("CPC" for short) which provides Form of pleadings and placed strong reliance upon Clause 3 of Form No. 47 in Appendix 'A' which reads thus:

> "The plaintiff has been and still is ready and willing
> C specifically to perform the agreement on his part of which the defendant has had notice".

He further places reliance upon the plaint averments at para 6, which is quoted hereinafter, submitted that the said
D averments are not strictly in conformity with Order 6 Rule 3 CPC of Form 47 of the aforesaid clause, therefore, the plaintiff has not shown readyness and willingness which is the condition precedent as required under Section 16(c) of the Specific Relief Act, that has been ignored by both the Courts below,
E therefore, the concurrent finding recorded by the High Court in the absence of this important aspect of the case has not only rendered the finding erroneous in law but the same are contrary to the judgments of this Court. Learned counsel placed strong reliance upon the following judgments in the cases of Jugraj
F Singh & Anr. vs. Labh Singh & Ors., (1995) 2 SCC 31 at para 6, Ram Awadh vs. Achhaibar Dubey, (2000) 2 SCC 428, Ouseph Varghese vs. Joseph Aley & Ors., (1969) 2 SCC 539, Abdul Khader Rowther vs. P.K. Sara Bai & Ors., (1989)
G 4 SCC 313, Pushparani S. Sundaram & Ors. vs. Pauline Manomani James (D) & Ors., (2002) 9 SCC 582, Manju Nath Anandappa Urf Shivappa Hansai vs. Tammanasa & Ors.,(2003) 10 SCC 390 paras 15, 17 and 18.

H 11. The last legal contention urged by learned counsel

for defendant Nos. 12 to 15 (appellants herein) is that the courts below have erred in law in not noticing the right conferred upon defendant Nos. 12 to 15 under Section 19(b) of the Specific Relief Act as they are bona fide purchasers since they, after proper verification and obtaining the clarification of the property in question, have paid full consideration to defendant Nos. 1 to 11 towards the property in question, therefore, the concurrent finding of the High Court not noticing this important aspect of the matter while affirming the judgment and decree passed by the trial court rendered the finding erroneous in law and, therefore, the same are liable to be set aside.

12. Learned counsel appearing on behalf of the plaintiff (Respondent No. 1 herein) sought to justify the impugned judgment and decree of the High Court contending that the High Court in exercise of its appellate jurisdiction examined the correctness of the finding rendered by the trial court on the contentious issues on proper appreciation of the pleadings and evidence on record and the same has been reaffirmed by the High Court by assigning valid and cogent reasons, hence, there is no ground for this Court to interfere with the same in exercise of its appellate jurisdiction as there is either miscarriage of justice or error in the judgment and decree and, therefore, he prayed to dismiss the appeal.

13. Learned counsel for the plaintiff placing strong reliance upon paragraphs of the plaint in support of the contention that the plaintiff has averred relevant pleadings with regard to the non compliance of the condition enumerated in the agreement of sale by defendant Nos. 1 to 11 in non-measuring the suit schedule property before calling upon the plaintiff to pay the balance sale consideration amounts to breach on the part of the defendants. This plea has not been specifically denied by them in their written statement as

A required under Order 8 Rule 5 CPC, therefore, he submitted that both the courts below have rightly examined the case on proper evaluation of the pleadings and evidence on record and rightly granted the decree in favour of the plaintiff and the same need not be interfered with by this Court in exercise of
B this Court's jurisdiction.

14. With reference to the aforesaid rival legal contentions, we are required to examine the correctness of the concurrent finding recorded on the question of stipulation
C of period to perform the contract by the plaintiff to pay the balance consideration of Rs. 63,000/- on the basis of which he was awarded the decree of specific performance. We have carefully examined this aspect in the backdrop of the recitals contained in the unregistered agreement to sell the suit
D schedule property to the plaintiff. As could be seen from the said agreement the plaintiff has agreed for payment of the balance sale consideration amount within nine months from the date of execution of the agreement to sell. The relevant
E recitals of Exhibit A1 are extracted hereunder for better appreciation of the contentions urged in this regard by the learned counsel on behalf of defendant Nos. 12 to 15:

> "You are willing to purchase this schedule of property for
F Rs. 65,000/-. As we were fully aware that there was no possibility to purchase this property for a higher price by anybody else, we also were willing to sell for the same amount and hence we received an advance of Rs. 2,000/- from the total price. This amount of Rs. 2,000/- is
G received to relieve us a little from our debt trap. <u>You should pay the balance of consideration Rs. 63,000/- within 9 months</u>."
>
> (emphasis supplied)

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15. The above clause in the agreement to sell clearly indicates that the plaintiff has agreed to perform his part of the contract by paying balance consideration amount of Rs. 63,000/- within nine months. This clause falls within the first part of Article 54 of the Limitation Act, 1963. In support of this contention learned counsel for defendant Nos. 12 to 15 has placed strong reliance upon the judgments of this Court. It would be suffice to refer to the case of Gomathinayagam Pillai and Ors. vs. Palaniswami Nadar, AIR 1967 SC 868. Para 9 of the said judgment reads as under:

> "9. The Trial Judge apparently confused two independent issues one of default in performance of the contract by the respondent and the other of readiness and willingness of the respondent to carry out his part of the contract. As observed earlier, if time is not of the essence of the contract, default occurs when a party serves a notice making time of the essence and requires the other party within a reasonable time fixed by the notice to carry out the terms of the contract, and the party served with the notice fails to comply with the requisition. In this case no such notice was served, and from the mere delay in calling upon appellants 1 & 2 to complete the contract, default on the part of the respondent cannot be inferred. But the Trial Court also came to the conclusion that the conduct of the respondent as evidenced by his statement and his witnesses proved that he was not ready and willing to perform his part of the contract. This the Court inferred from the delay of three months after April 30, 1959 and the evidence given by the respondent to explain that delay and other circumstances."

The other judgments relied upon by the learned counsel reiterate the same proposition. It would be worthwhile to extract

A paragraph No. 22 of the judgment in the case of Chand Rani (D) by Lrs. vs. Kamal Rani (D) by Lrs., (1993) 1 SCC 519, which reads as follows:

"22. In Hind Construction Contractors case (1979) 2
B SCC 70) quoting Halsbury's Laws of England, this Court observed at pages 1154-55 as under:

"In the latest 4th edn. of Halsbury's Laws of England in regard to building and engineering contracts the
C statement of law is to be found in Vol. 4, Para 1179, which runs thus:

'1179. Where times is of the essence of the contract. - The expression time is of the essence means that a
D breach of the condition as to the time for performance will entitle the innocent party to consider the breach as a repudiation of the contract. Exceptionally, the completion of the work by a specified date may be a condition precedent to the contractor's right to claim payment. The
E parties may expressly provide that time is of the essence of the contract and where there is power to determine the contract on a failure to complete by the specified date, the stipulation as to time will be fundamental. *Other provisions of the contract may, on the construction of*
F *the contract, exclude an inference that the completion of the works by a particular date is fundamental; time is not of the essence where sum is payable for each week that the work remains incomplete after the date*
G *fixed, nor where the parties contemplate a postponement of completion.*

Where time has not been made of the essence of the contract or, by reason of waiver, the time fixed has
H *ceased to be applicable, the employer may by notice*

fix a reasonable time for the completion of the work and dismiss the contractor on a failure to complete by the date so fixed.' (emphasis supplied)

It will be clear from the aforesaid statement of law that even where the parties have expressly provided that time of the essence of the contract such a stipulation will have to be read along with other provisions of the contract and such other provisions may, on construction of the contract, exclude the inference that the completion of the work by a particular date was intended to be fundamental; for instance, if the contract were to include clauses providing for extension of time in certain contingencies or for payment of fine or penalty for every day or week the work undertaken remains unfinished on the expiry of the time provided in the contract such clauses would be construed as rendering ineffective the express provision relating to the time being of the essence of contract. The emphasis portion of the aforesaid statement of law is based on Lamprell v. Billericay Union [(1849) 3 Exch 283, 308]; Webb v. Hughes [(1870) LR 10 Eq 281] and Charles Rickards Ltd. v. Oppenheim.[[1950] 1 K.B. 616]."

16. The said legal contention urged on behalf of defendant Nos. 12 to 15 has been strongly rebutted by learned counsel on behalf of the plaintiff contending that the question of payment of balance consideration amount of Rs. 63,000/- within nine months would have arisen after the terms and conditions of the contract agreed upon by defendant Nos. 1 to 11 if they had measured the suit schedule property. They have not discharged their part of the contract stipulated in the agreement to sell, therefore, it is urged by him that time was not the essence of the contract as defendant Nos. 1 to 11

A themselves have failed to perform their part of the agreement.

17. The said contention urged on behalf of the plaintiff is unacceptable to us that the question of taking measurement would not arise before the plaintiff perform his part of the B contract regarding the balance consideration within the period stipulated in the agreement. Undisputedly, that had not been done by the plaintiff in the instant case within the stipulated time and the notice was issued by the plaintiff only after one year, therefore, the plaintiff has not adhered to the time which C is stipulated to pay the balance consideration amount to defendant Nos. 1 to 11 which is very important legal aspect which was required to be considered by the Courts below at the time of determining rights of the parties and pass the D impugned judgment. The Courts below have ignored this important aspect of the matter while answering the contentious Issue Nos. 1 and 2 in favour of the plaintiff and granted decree of specific performance in respect of the suit schedule property. The said finding of fact is contrary to the terms and conditions E of the agreement, pleadings and the evidence on record. Accordingly, we answer the said issues in favour of defendant Nos. 12 to 15 after setting aside the concurrent finding of fact recorded by the High Court.

F 18. The second important legal contention raised by defendant Nos. 12 to 15 is that the pleadings of the plaintiff is not in conformity with Order 6 Rule 3 CPC, clause 3 of Form No. 47 in Appendix 'A', extracted hereinabove. By a careful reading of paragraph 6 of the plaint makes it very clear that G the averment as provided under clause 3 is not in *stricto sensu* complied with by the plaintiff. The same is evidenced from the averments made at paragraph 6 of the plaint which reads thus:

"6. The plaintiff is ready and willing to perform his part of H the contract by paying the balance of sale consideration

of Rs. 63,000/- and take the sale deed in accordance with the provisions of the agreement deed dated 19.04.1992." A

19. Upon a careful reading of the abovesaid paragraph we have to hold that the plaintiff has not complied with the legal B requirement which is mandatory as provided under Section 16 (c) of the Specific Relief Act. Section 16(c) fell for consideration and has been interpreted by this Court in a number of cases, referred to supra, upon which reliance has rightly been placed and the said decisions are applicable to C the fact situation in support of defendant Nos. 12 to 15 and, therefore, we have to hold that the concurrent finding of fact recorded by the High Court on Issue No. 1 is erroneous in law and is liable to be set aside.

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20. The last contention urged is whether defendant Nos. 12 to 15 (the appellants herein) are protected under Section 19(b) of the Specific Relief Act as they being the bona fide purchasers. Learned counsel for defendant Nos. 12 to 15 has rightly invited our attention that the non-compliance of the E contract regarding payment of balance consideration to defendant Nos. 1 to 11 on the part of the plaintiff within nine months is an undisputed fact and further the agreement of sale is not registered, as is evidenced from the encumbrance F certificate obtained by defendant Nos. 12 to 15 before they entered into an agreement (Exhibit B-1). Both the Courts below have erroneously recorded an erroneous finding on the non existent fact holding that the agreement of sale in favour of the plaintiff is a registered document which, in fact, is not true. The G same is evidenced from the encumbrance certificate. More so, defendant Nos. 12 to 15 before entering into the agreement with defendant Nos. 1 to 11 have made proper verification from the competent authority to purchase the part of the suit schedule

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property and got the agreement of sale (Exhibit B-1) executed in their favour, from defendant Nos. 1 to 11 and thereafter, they got the sale deed registered by paying sale consideration amount. As could be seen from the agreement of sale and registered sale deed, which is marked as Exhibit B-3, it is very clear that defendant Nos. 12 to 15 have paid the sale consideration amount of the property, therefore, the reliance placed upon Section 19(b) of the Specific Relief Act as they being the bona fide purchasers, the specific performance of contract cannot be enforced against the transferees. Defendant Nos. 12 to 15 being the transferee as they have purchased the suit schedule property for value and have paid the money in good faith and without notice of the original contract.

21. In view of the aforesaid facts, the purchase of the suit schedule property by defendant Nos. 12 to 15 for a valuable consideration is established by the above defendants by adducing evidence on their behalf before the trial court. Both the Courts below have omitted to consider this important piece of pleadings as also the material evidence on record thereby the concurrent finding recorded on the contentious issues has been rendered erroneous in law and is liable to be set aside. Accordingly, we answer the said issues in favour of defendant Nos. 12 to 15.

22. For the reasons stated supra, defendant Nos. 12 to 15 (appellants herein) must succeed. Accordingly the appeal is allowed, the impugned judgments and decrees of the High Court and the trial court are hereby set aside and the suit is dismissed. There shall be no order as to costs.

Kalpana K. Tripathy

Appeal allowed.