

GUJARAT HIGH COURT

Hon'ble Judges:K.S.Jhaveri and A.G.Uraizee JJ.

Gunvantlal Ratanchand Since Deceased Thro Heirs Versus Rameshbhai Purshottamdas Patel

LETTERS PATENT APPEAL No. 657 of 2000 ;
FIRST APPEAL No. 1879 of 1984 ; *J.Date :- MARCH 18, 2015

- [BOMBAY TENANCY AND AGRICULTURAL LANDS ACT, 1948](#) Section - [63](#)
- [CONTRACT ACT, 1872](#) Section - [29](#), [32](#), [56](#)
- SPECIFIC RELIEF ACT, 1963 Section - 10(b), 12, 14, 20

Contract Act, 1872 - S. 29, 32, 56 - Specific Relief Act, 1963 - S. 10(b), 12, 14, 20 - Bombay Tenancy and Agricultural Lands Act, 1948 - S. 63 - specific performance - agreement for sale of agricultural land - Trial Court concluded that ratio laid down by the Division Bench is not applicable looking to the facts and circumstances of the present case that one of the plots was in agricultural zone governed by the Bombay Tenancy Act for which the Prant Officer had refused to grant permission for sale - appeal before High Court - Ld. Single Judge of High Court upheld the order of Trial Court - LPA - held, land in question was an agricultural land and the same was sold to non-agriculturists - therefore, permission u/S. 63 of the Tenancy Act was mandatory - Courts below have not committed any error in granting specific relief under the Act - subsequent development of agreement to sale between the respondent No. 8 to 12 and present appellant was not a confirming party and still he made an application dated 1-6-1972 seeking permission to sell the subject land in favour of the present appellant u/s. 63 of the Bombay Tenancy Act - application dated 1-6-1972 was in continuation of the first application dated 25-4-1972, and therefore, both the applications have merged into one application - rejection of application dated 25-4-1972 by the Prant Officer vide his letter dated 29-8-1972 tantamount to rejection of both the applications.

Contract Act, 1872 - S. 29, 32, 56 - Specific Relief Act, 1963 - S. 10(b), 12, 14, 20 - Bombay Tenancy and Agricultural Lands Act, 1948 - S. 63 - specific performance - agreement for sale of agricultural land - terms in the supplementary agreement were uncertain which rendered the contract uncertain and such uncertain contracts depending upon the happening of uncertain events could not be specifically enforced - considering the provisions of S. 63(c), it is clear that no conditional decree could have been passed - prayer is only for agreement dated 23-5-1972 where the original owners were not party to agreement and no prayer is claimed for assignment of earlier agreement - in view of S. 32 of the Contract Act, after refusal of permission u/S. 63 of the Tenancy Act, no further event remains to happen and on the contrary by refusal of permission it becomes clear that the performance of contract became prohibited by law leaving no further uncertainty when the order of refusal remained unchallenged - it is fit to award damages to appellants to the tune of Rs. 75,000/- with 9% interest over and above Rs. 20000/- at 12% interest granted by Trial Court - appellants shall be paid additional amount of Rs. 75,000/- at 9% interest per annum from the date of suit till

Shri K. S. Nanavati
Sr. Advocate

realization proportionately from respondents no. 1 to 6 and newly added respondent no. 14 - appeal partly allowed.

Imp.Para: [[7](#)] [[9](#)] [[10](#)]

Cases Referred to :

1. Durgaben Manibhai Makanji V/s. Moria Bavia, AIR 1956 Bom 707
2. Govindbhai Gordhanbhai Patel And Others V/s. Gulam Abbas Mulla Allibhai And Others, 1977 3 SCC 179
3. M.C. Chacko V/s. The State Bank Of Travancore, AIR 1970 SC 504
4. Narinderjit Singh V/s. North Star Estate Promoters Limited, 2012 5 SCC 712
5. Nirmala Anand V/s. Advent Corporation (P) Ltd And Others, 2002 5 SCC 481
6. Prataprai Kothari V/s. John Braganza, AIR 1999 SC 1666
7. [Shah Jitendra Nanalal V/s. Patel Lallubhai Ishverbhai And Others, 1984 2 GLR 1001 : 1985 GLH 53 : 1984 AIR Guj 145 : 1984 AIJEL HC 211134](#)

Cases Relied on :

1. Shah Bhojraj Kuverji Oil Mills And Ginning Factory V/s. Chandra Yograj Sinha, AIR 1961 SC 1596

Equivalent Citation(s):

2015 (2) GLR 1640 : AIR 2015 CC 2180

JUDGMENT :-

K.S.JHAVERI, J.

1 We have heard learned Counsels appearing for the parties.

The appellant herein has challenged the order dated 13.09.2000 passed by the learned Single Judge in First Appeal No. 1879 of 1984 whereby the learned Single Judge confirmed the judgement of the trial court holding that the ratio laid down by the Division Bench is not applicable looking to the facts and circumstances of the case that one of the plots was in agricultural zone governed by the Bombay Tenancy and Agricultural Lands Act for which the Prant Officer had refused to grant permission for sale vide Ex. 87 dated 29.08.1972.

2 The brief facts giving rise to this appeal are as follows:-

2.1 Two plots bearing Nos.236/2 and 234/2 admeasuring 7986 sq. yards are situated in village Bodakdev, Taluka Dascroi, District Ahmedabad. These plots were owned by Parshottam Babarbhahi Patel. These plots were undivided joint hindu family property. Defendants Nos.1 to 4 and deceased Parshottamdas Babarbhahi Patel executed an agreement to sell in favour of the defendants nos.8 to 12 on 29.11.1971. Twelve months' period was fixed for execution of the sale deed. Thus, the sale deed was to be executed by the defendants nos.1 to 4 and Parshottamdas Babarbhahi Patel before 29.11.1972. On the basis of the aforesaid agreement to sell the defendants

Shri K. S. Nanavati
Sr. Advocate

nos.8 to 12 in turn executed an agreement to sell in favour of the plaintiffs on 23.5.1972 and received Rs.20,000/- as earnest money from the plaintiffs. The time limit for the execution of the sale deed was fixed up to 20.11.1972. Under the terms and conditions of the agreement to sell the defendants were required to produce title clearance and were to obtain necessary permission under Section 63 of the Bombay Tenancy Act. Another condition in the agreement to sell was that the defendants were to execute the sale deed in favour of the plaintiffs or any person as desired by the plaintiffs.

2.2 On 17.11.1972 a supplementary agreement was executed by Parshottamdas Babarbai Patel and the defendants nos.1 to 4 in favour of defendants nos.8 to 12. According to this agreement the time limit for execution of the sale deed was fixed as 3 months after cessation of Gujarat Vacant Land in Urban Areas Prohibition Alienation Act, 1972. Under the terms and conditions of the agreement the defendants were required to produce title clearance and were to obtain necessary permission under Sec. 63 of the Bombay Tenancy Act. Another condition in the agreement to sell was that the defendants were to execute the sale deed in favour of the plaintiffs or any person as desired by the plaintiffs.

2.3 On 17.11.1972 a supplementary agreement was executed by Parshottamdas Babarbai and the defendants nos.1 to 4 in favour of defendants nos.8 to 12. According to this agreement the time limit for execution of the sale deed was fixed as 3 months after cessation of Gujarat Vacant Land in Urban Areas Prohibition Alienation Act, 1972. Similarly defendants nos.8 to 12 executed agreement in favour of plaintiffs and extended the period for execution of the sale deed to two months after the provisions of the said Act ceased to remain in force vide agreement dated 8.11.1972. The said Act ceased to remain in force with effect from 12.8.1975. In this way, time limit given under the agreement dated 23.5.1972 stood extended up to 12.10.1975.

2.4 Parshottam Babarbai Patel expired on 26.10.1973. The defendants nos.1 to 4 and 6 and 7 are children of said Parshottam Babarbai Patel. The defendant no.5 was the widow of Parshottamdas Babarbai Patel. In this way, according to the plaintiffs the transaction entered into by Parshottamdas Babarbai Patel is binding upon the defendants nos.1 to 7. After 12.8.1975 when the Gujarat Vacant Land in Urban Areas Prohibition Alienation Act, 1972 ceased to remain in force, the plaintiffs asked the defendants to execute the sale deed. The plaintiffs were ready and willing to perform their part of the agreement but the defendants did not perform their part of the agreement and failed to execute the sale deed and thereby committed breach of the agreement and defendants nos.1 to 7 tried to sell the land to other persons.

2.5 Consequently, the plaintiffs published a notice in daily newspaper "Gujarat Samachar" on 16.11.1975 indicating their intention to purchase the land and disclosing the agreement to sell subsisting in their favour. Thereafter Urban Land (Ceiling & Regulation) Act, 1976, came into force on 17.2.1976. The plaintiffs asked the defendants to obtain the requisite permission from the competent authority under this Act to execute the sale deed but the defendants did not obtain any such permission. Accordingly, suit was filed by the plaintiffs against the defendants claiming specific performance of the agreement to sell, handing over of possession of the suit land or in

Shri K. S. Nanavati
Sr. Advocate

the alternative claimed a refund of earnest money amounting to Rs.20,000/- and damages amounting to Rs.75,000/- with interest at the rate of 9% per annum.

2.6 The defendants nos.1, 2, 4, 6 and 7 in their written statement contested the suit inter alia on the ground that the suit is not maintainable, that the suit is time-barred and that there is no privity of contract between them and the plaintiffs hence the plaintiffs are not entitled to relief under Specific Relief Act or even in the alternative they cannot claim refund of the earnest money nor they can claim damages from them. It is also pleaded that the defendants nos.2 and 3 being minors, the alleged agreement to sell is not binding on them. They have also denied execution of the agreement to sell and pleaded that it was in connection with money lending transaction. Defendants nos.8 to 12 despite service of summons on them remained absent. Hence, the suit proceeded against them ex parte.

2.7 The trial Court found that the defendants nos.1 to 4 and Parshottamdas Babarbhai Patel executed an agreement to sell dated 29.11.1971 in favour of the defendants nos.8 to 12. It further found that the defendants nos.8 to 12 executed agreement to sell dated 23.5.1972 in favour of the plaintiffs and accepted Rs.20,000/- towards earnest money. It further found that the writings in the nature of supplementary agreement dated 17.11.1972, 18.12.1972 and 13.7.1973 were proved to have been executed as alleged by the plaintiffs. The trial Court however found that the plaintiffs failed to establish their readiness and willingness to act in accordance with the terms of the contract, hence, they are not entitled to the specific performance of the contract.

2.8 Regarding refund of the earnest money the trial Court found that in the alternative the plaintiffs are entitled to refund of Rs.20,000/- as earnest money only from the defendants nos.8 to 12. It was further found by the trial Court that the plaintiffs are not entitled to damages amounting to Rs.75,000/- because the contract itself was void. On the plea of limitation, the trial Court found that the suit was within limitation. It repelled the defendants' plea that the contract is not binding upon the defendants nos.2 and 3. The trial Court further found that the suit is not maintainable against defendants nos.5 to 7. The last finding of the trial Court regarding binding nature of the agreement dated 23.5.1972 on the defendants nos.1 to 7 has been in negative.

2.9 With these findings, the aforesaid judgement and decree was passed by the trial Court against which the appeal was filed. The learned Single Judge after hearing the parties passed the aforesaid order. Hence, the appellants are in appeal before this Court.

3 Mr. K.S. Nanavati, learned Senior Counsel appearing with Mr. C.G. Sharma, learned advocate appearing for the appellants contended that the learned Single Judge failed to appreciate that it was a properly constituted suit and the enactment of the Urban Land Ceiling Act was brought into force subsequently. He submitted that the learned Single Judge failed to appreciate the settled position of law which lays down that a conditional decree for specific performance subject to exemption being obtained u/s 20 of the Act is permissible and that an agreement to sell can be enforced subject to permission and/or exemption under the Urban Land Ceiling Act.

3.1 Mr. Nanavati further submitted that the learned Single Judge ought to have appreciated that it was a properly constituted suit because the agreement to sell dated

Shri K. S. Nanavati
Sr. Advocate

29.11.1971 at Ex. 81 executed in favour of the respondent defendants no. 8 to 12 on basis of which the agreement rights were assigned in favour of the appellants and which had been held to be binding to respondents defendants no. 1 to 7 by the trial court. He submitted that when the suit agreements have been held to be binding on all the defendants including defendant nos. 1 to 7, the dismissal of the suit on the ground that the agreement is uncertain and vague and therefore void and unenforceable is not tenable in law.

3.2 Mr. Nanavati submitted that the land in question was held by the co-parceners of Hindu Undivided Family of Pushottambhai Baberbhai Patel wherein each of the coparcener was entitled to hold 1000 sq. mt of land in Ahmedabad Agglomeration. He submitted that the provisions of The Bombay Tenancy and Agricultural Lands Act went to the root of the matter where for the abundant caution permission was sought from the Prant Officer for purchase of the land under Section 63 of the Bombay Tenancy Act by appellants at Ex. 100 which was also not refused.

3.3 Mr. Nanavati submitted that the supplementary agreement provides that the time limit viz. extended for a period of three months after the provisions of Gujarat Vacant Land Urban Areas prohibition of Alienation Act, 1972 ceased to be in force and that such agreement cannot be said to be uncertain within the meaning of Section 29 of the Contract Act. He submitted that the Gujarat Vacant Land Urban Areas prohibition of Alienation Act, 1972 was a temporary legislation and the Act itself provided the date till the law was to remain in force. He submitted that Sections 46 to 50 of the Contract Act provides that a contract in which the date of performance is not provided is enforceable in law and therefore such contract cannot be said to be void for uncertainty as contemplated by Section 29 of the Contract Act.

3.4 Mr. Nanavati further submitted that the learned Single Judge failed to appreciate that the agreement to sell was pertaining to two plots bearing Survey No. 234/2 and 236/2 out of which for the land designated as agricultural land, appropriate permission was required under section 63 of the Tenancy Act but the appellant basically being agriculturists do not require such permission. He submitted that only upon assignment of agreement rights for abundant caution such permission was made to the Prant Officer by the appellants which is in fact not rejected. He submitted that the learned Single Judge under misconception held that such permission is refused and thereby confirmed the decree passed by the trial court. He submitted that under the circumstances, the suit is maintainable despite the land falling under the agricultural zone and though the agreement for sale is executed in favour of respondents defendants no. 8 to 12 and upon assignment of the agreement rights in favour of appellants plaintiffs.

3.5 Mr. Nanavati submitted that the contract had not become void on the ground of frustration. He has relied upon a decision of the Apex Court reported in 1977(2) SCC 757 that the power exercised of granting permission under section 63 is administrative in nature and decree can be passed directing the defendant to apply again for such permission.

3.6 Mr. Nanavati submitted that when performance of contract made conditional upon obtaining necessary statutory permissions, a conditional decree for specific performance can be passed directing the defendant to apply and obtain such

Shri K. S. Nanavati
Sr. Advocate

permission. He submitted that under the agreement it is the obligation of the vendor to obtain permission u/s 63 and therefore conditional decree directing the defendants to apply for and obtain permission u/s 63 of the Bombay Tenancy Act and then execute Conveyance ought to be passed.

3.7 Mr. Nanavati further submitted that it is relevant that what was rejected was application dated 25.04.1972 by order dated 29.08.1972 and that application dated 01.06.1972 was never rejected and was in fact pending. He submitted that therefore the contract cannot be said to have become void and unenforceable on the ground of frustration. He submitted that the defendant cannot plead frustration of contract on the ground of rejection of the application for permission u/s 63 of the Bombay Tenancy Act because after rejection of the permission the defendants have accepted payments towards further sale considerations and agreed to obtain necessary permission u/s 63 of the Bombay Tenancy Act and further agreed that all the terms and conditions of the Agreement to Sell dated 29.11.1971 would be continued between the parties and signed supplementary agreements.

3.8 Mr. Nanavati contended that there is a clear breach of contract on the part of the defendants by not performing their part of the contract, even though the appellants were always ready and willing to perform their part of the contract. He submitted that refusing to pass decree on this ground would amount to putting premium on default and dishonesty of the defendants. He submitted that at the most in view of the undisputed escalation of price, the Court may direct the plaintiff to pay additional price.

3.9 Mr. Nanavati has drawn the attention of this Court to section 29 of the Contract Act and sections 10(b) and 14 of the Specific Reliefs Act which read as under:

"29. Agreements void for uncertainty. Agreements, the meaning of which is not certain, or capable of being made certain, are void. Agreements, the meaning of which is not certain, or capable of being made certain, are void."

Section 10(b) in The Specific Relief Act, 1963 (b) when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.

Explanation. Unless and until the contrary is proved, the court shall presume

(i) that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and

(ii) that the breach of a contract to transfer movable property can be so relieved except in the following cases:

(a) where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;

(b) where the property is held by the defendant as the agent or trustee of the plaintiff.

Shri K. S. Nanavati
Sr. Advocate

Section 14 in The Specific Relief Act, 1963 14. Contracts not specifically enforceable.

(1) The following contracts cannot be specifically enforced, namely:

(a) a contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:

(a) where the suit is for the enforcement of a contract,

(i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or

(ii) to take up and pay for any debentures of a company;

(b) where the suit is for,

(i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or

(ii) the purchase of a share of a partner in a firm;

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land: Provided that the following conditions are fulfilled, namely:

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

Shri K. S. Nanavati
Sr. Advocate

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for nonperformance of the contract is not an adequate

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed. "

3.10 In support of his aforesaid submissions, Mr. Nanavati has relied upon the following decisions:

(I) Govindbhai Gordhanbhai Patel and Others vs. Gulam Abbas Mulla Allibhai and Others reported in (1977) 3 SCC 179 wherein it is held as under:

"9. Two questions arise for determination in this case---(1) whether the order of the Prant Officer dated December 8, 1958, rendered the aforesaid agreement dated May 16, 1957 impossible of performance and as such void under section 56 of the Indian Contract Act and (2) whether in view of the aforesaid order of refusal by the Prant Officer, Thana dated December 8, 1958, the Additional Collector, Thana, was not competent to grant the sanction and the certificate under section 63 of the Act and Rule 36 of the Rules. The answer to the first question depends on the construction of the expression 'impossible of performance' occurring in section 56 of the Indian Contract Act which lays down:

"56. An agreement to do an act impossible in itself is void--A contract to do an act which after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promise sustains through the non- performance of the promise."

10. The meaning of the aforesaid expression 'impossible of performance' as used in the above quoted section would be clear from the, following observation made by Lord Loreburn in *Tampfyn Steamship 518 Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd*(1) 403 which is generally considered to contain a classic and terse exposition of the law relating to frustration:

"The parties shall be excused if substantially the whole contract becomes impossible of performance or in other words impracticable by some cause for which neither was responsible."

(II) *Shah Jitendra Nanalal vs. Patel Lallubhai Ishverbhai and Others* reported in 1984(2) GLR 1001 wherein it is held that a conditional decree for specific performance subject to exemption being obtained under sec. 20 of the Urban Land (Ceiling and Regulation) Act, 1976 is permissible.;

(III) *Nirmala Anand vs. Advent Corporation (P) Ltd and Others* reported in (2002) 5 481 more particularly paras 10 to 12 which read as under:

Shri K. S. Nanavati
Sr. Advocate

"10. The plea that the suit for specific performance must necessarily fail on account of the giving up of Golwallas, who were original defendants in the Suit and respondents 3 to 5, has no merit and needs mention to be rejected, only. The agreement sought to be enforced is indisputably with defendants 1 and 2, respondents 1 and 2 herein. Even in the Suit Agreement dated 8.9.1966, specific reference is made to the transfer of the rights, which subsisted in Golwallas, the Advent Corporation Pvt. Ltd. and Praveen D. Desai, to the party of the first part in the agreement, the specific performance of which is sought to be enforced. Recitals were also specifically made in this agreement about the satisfaction of the title of the party of the first part and the undertaking to accept the title being derived from the said party to the building and the rights in the land transferred to the Co-operative Society consisting the body of the purchasers of the flats in the building in question. Likewise, it could be seen from the Deed of Assignment dated 14.10.1994 (filed in this Court) that the same, which was executed in respect of the entire building "Divya Prabha", excluding Flat No.71 agreed to be sold to the appellant, also refers to the fact that by an Agreement dated 20.6.1967 the said Golwallas surrendered their rights, title and interest in the land and building in favour of Advent Corporation Pvt. Ltd. In the teeth of such admitted facts available on record, it does not lie in the mouth of the respondents to raise such a plea. This objection, therefore, is rejected.

11. In *Rojasara Ramjibhai Dahyabhai vs. Jani Narottamdas Lallubhai (Dead) By LRs. & Anr.* [1986(2) SCR 447], this Court held that from the mere fact that the agreement contemplated the execution of the sale-deed after the requisite permission was obtained from the Collector for use of the land as a village site and not as agricultural land, it cannot be considered to be contingent contract, there being in every contract to sell an implied covenant on the part of the vendor to do all things necessary to give effect to the agreement, including the obtaining of the permission for the transfer of the property. Relying upon certain earlier decisions of this Court in *Mrs. Chandnee Widyavati Maddein vs. Dr. C.L.Katial* [1964 (2) SCR 495] and *Ramesh Chandra Chandiook & Another vs. Chuni Lal Sabharwal (dead) by LRs. & Others* [1971 (2) SCR 573], it has been observed that if the vendor agrees to sell the property which can be transferred only with the sanction of some Government authority, the Court has jurisdiction to order the vendor to apply to the authority within a specified period and if the sanction is forthcoming to convey to the purchaser within a certain time. Such principles apart, this Court in that case also took notice of the subsequent fact about making of an application and obtaining the required permission. The case reported in *Rajendra Kumar Bhandari vs. Poosammal & Others* [AIR 1975 Mad. 379] is one wherein a Division Bench of the Madras High Court refused to grant the relief of specific performance of an agreement entered into by the plaintiff with a person who was not the owner of the property but a mere tenant entitled to the protection of the city tenants protection with a privilege or personal right which is only heritable but not transferable or saleable, when it was found that even such right also he lost before it could fruition into a transferable or assignable right and that too even before the plaintiff came to court seeking for relief.

12. In *Sardar Singh vs. Krishna Devi (Smt) and Another* [1994 (4) SCC 18] it was held that since Section 20 (1) of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary, the Court is not bound to grant such relief merely because it is lawful to do so observing at the same time that the exercise of such discretion must not be arbitrary but sound and reasonable guided

Shri K. S. Nanavati
Sr. Advocate

by judicial principles and capable of correction by Appellate Court. The circumstances specified in Section 20 were considered to be illustrative and not exhaustive and that the Court should take into consideration circumstances in each case, the conduct of the parties and the respective interest under the contract. In *K. Narendra vs. Riviera Apartments (P) Ltd.* [1999 (5) SCC 77], this Court dealt with the case of an agreement followed by a supplementary agreement to sell a plot and the structure thereon and where the agreement also envisaged the obtaining of permission for the conveyance from the Land & Development Officer as well as approval for the construction plan. Factually, the construction plan submitted was said to have been rejected on more than one reason, and the building plan was also rejected more than once. In respect of a portion of land hit by Urban Ceiling Law, only a conditional exemption alone seems to have been granted. Under such circumstances when the suit came to be filed seeking for annulment of the sale agreement on the ground of impossible of performance and the other party filed a suit for specific performance, this Court dealt with such claims in the light of Section 20 of the Specific Relief Act and observed as follows:

"29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant, which he did not foresee while nonperformance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in *Lourdu Mari David v. Lous Chinnaya Arogiaswamy* by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court."

13. Ultimately it was held that since at one point of time the contract was rendered incapable of performance and stood frustrated with reference to Section 56 of the Contract Act, the repeal of the Urban Ceiling Act after nearly 16 years is no ground to enforce the agreement and grant a decree for specific performance."

(IV) *Narinderjit Singh vs. North Star Estate Promoters Limited* reported in (2012) 5 SCC 712 wherein paras 25 & 26 read as under:

"25. We are also inclined to agree with the lower appellate Court that escalation in the price of the land cannot, by itself, be a ground for denying relief of specific performance. In *K. Narendra v. Riviera Apartments (P) Ltd.* (supra), this Court interpreted Section 20 of the Act and laid down the following propositions:

"Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief

Shri K. S. Nanavati
Sr. Advocate

merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant." (emphasis supplied)

26. In the present case, the appellant had neither pleaded hardship nor produced any evidence to show that it will be inequitable to order specific performance of the agreement. Rather, the important plea taken by the appellant was that the agreement was fictitious and fabricated and his father had neither executed the same nor received the earnest money and, as mentioned above, all the Courts have found this plea to be wholly untenable."

4 Mr. A.J. Patel, learned Senior Counsel appearing with Mr. Shital Patel, learned advocate for the respondent 1 - 4 , 5.1 - 5.4 & 6 7 submitted that the suit for specific performance was filed on 16.04.1977 and that the Bombay Tenancy and Agricultural Lands Act, 1948 was amended by Gujarat Act 30 of 1977 which came into effect on 23.10.1977 immediately after the suit was filed. He submitted that after the amendment, Section 63(c) of the Act comes into effect immediately after the suit was filed and therefore continuing of the suit for the purpose of enforcement of an agreement for specific performance became illegal and therefore, the suit itself was filed on the date on which the section was amended. He submitted that the suit therefore fails only on the preliminary ground that the suit became devoid of any merit and continuing the suit also became illegal on which no decree could be passed.

4.1 Mr. Patel submitted that the amendment contemplated that permission to enter into an agreement will have also to be taken after the introduction of the amendment which came immediately after the suit was filed. He submitted that the people who entered into an agreement with the original cultivator of the land came from Bombay and that they were not agriculturist and therefore they or anybody on their behalf were not entitled to file a suit.

4.2 Mr. Patel submitted that the contract itself was not enforceable without obtaining permission under section 63 and that the cultivator of the land had applied for the purpose of obtaining permission under section 63. He submitted that for the same, one has to see Exs. 89 and 100. He further submitted that these two documents would go to show that the original agriculturist had already made an application for the purpose of obtaining permission and at the instance of parties from Bombay it was stated in the application that he would like to sell in the name of the present appellants. He submitted that therefore the parties from Bombay did not hold a legitimate and enforceable contract and thus it would not be possible for them to assign the contract to anybody.

4.3 Mr. Patel submitted that a person can assign a contract in favour of some person only after he is in possession of a contract which is enforceable. He submitted that the parties from Bombay who are the original holders of the agricultural land in question

Shri K. S. Nanavati
Sr. Advocate

were not agriculturists and their application at Ex. 100 for the purpose of obtaining permission under section 63 was rejected. He submitted that on rejection of the application by the competent authority under the Tenancy Act, the contract came to an end. He submitted that when a person cannot assign something which he does not possess, the contract failed at that stage.

4.4 Mr. Patel contended that the law of assignment contemplates a written document and there is no such written document assigning the contract by the parties from Bombay in favour of the present appellants. He submitted that the appeal therefore deserves to be dismissed with costs.

4.5 Mr. Patel submitted that the agreement dated 23.05.1972 was never signed. He has relied upon the decision of the Apex Court in the case of Shah Bhojraj Kuverji Oil Mills and Ginning Factory vs. Chandra Yograj Sinha reported in AIR 1961 SC 1596 wherein identical set of circumstances came up before the Apex Court and the Court held that no such suit can be decreed as it is a public policy and passing a decree in violation of public policy is something not permitted under the law.

4.6 Mr. Patel also relied upon the decision of the Bombay High Court in the case of Sm. Durgaben Manibhai Makanji vs. Moria Bavia reported in AIR 1956 Bombay 707. He submitted that this decision was rendered prior to bifurcation and there also the question was as to whether the Tenancy Act which came after filing of the suit would be applicable or not and that the Bombay High Court held that it shall be applicable. He submitted that the Court observed that when the suit was filed the Act was not applicable but during the pendency of the suit, in that part of area of Bombay where land in question was situated, the Act was made applicable and therefore the Act would be applicable.

5 Mr. Mehul Shah, learned advocate appearing with Mr. S.K. Patel for the new purchaser who purchased immediately after the order passed by the learned Single Judge contended that there was no injunction operation and no prohibition against the purchase and therefore the respondent has purchased the land in question under the bonafide belief that the first appeal has been disposed of and no litigation is pending. He submitted that there was no extension of stay by the learned Single Judge in the first appeal.

5.1 Mr. Shah submitted that looking to the scope of present appeal which is as good as second appeal no interference is called for against the concurrent finding of both the courts below. He submitted that both the courts have exercised discretion by refusing specific performance by well reasoned order supported by materials on record considering the provision of section 20 of the Specific Relief Act.

5.2 Mr. Shah submitted that no relief can be granted to the appellant against either respondent no. 14 or her predecessor who are not parties nor they have signed 2nd and 3rd contract or the so called assignment deed in favour of the appellant.

5.3 Mr. Shah has drawn the attention of this Court to section 15(b) of the Specific Relief Act and contended that while claiming relief of agreement dated 23.05.1972, the assignee has also to seek enforcement of which he is claiming. He submitted that no relief can be granted against the contesting defendants for want of privity of contract in view of section 15(b). In this regard, he has relied upon a decision of the

Shri K. S. Nanavati
Sr. Advocate

Apex Court in the case of M.C. Chacko vs. The State Bank of Travancore reported in AIR 1970 SC 504 wherein para 9 reads as under:

"The Kottayam Bank not being a party to the deal was not bound by the covenants in the deed, nor could it enforce the covenants. It is settled law that a person not a party to a contract cannot subject to certain well recognised exceptions, enforce the terms of the contract: the recognised exceptions are that beneficiaries under the terms of the contract or where the contract is a part of the family arrangement may enforce the covenant. In Krishna Lal Sadhu v. Primila Bala Dosi, I.L.R. 55 Cal 1315 Rankin, C.J observed:

"Clause (d) of section 2 of the Contract Act widens the definition of 'consideration' so as to enable a party to a contract to enforce the same in india in certain cases in which the English Law would regard the party as the recipient of a purely voluntary promise and would refuse to him a right of action on the ground of nudum pactum. Not only, however, is there nothing in s. 2 to encourage the idea that contracts can be enforced by a person who is not a party to the contract, but this notion is rightly excluded by the definition of 'promisor' and 'promisee'."

Under the English Common Law only a person who is a party to a contract can sue on it and that the law knows nothing of a right gained by a third party arising out of a contract: Dunlop Pneumatic Tyre Co. v. Selfridge & Co.. It has however been recognised that where a trust is created by a contract, a beneficiary "may enforce the rights which the trust so created has given him The basis of that rule is that though he is not a party to the contract his rights are equitable and not contractual. The Judicial Committee applied that rule to an Indian case Khwaja Muhammad Khan v. Husaini Begam. In a later case Jaman Das v. Ram Autar, the Judicial Committee pointed out that the purchaser's contract to pay off a mortgage debt could not be enforced by the mortgagee who was not a party to the contract. It must therefore be taken as well settled that except in the case of a beneficiary under a trust created by a contract or in the case of a family arrangement, no right may be enforced by a person who is not a party to the contract. "

5.4 Mr. Shah submitted that so far as the second application for permission under section 63 is concerned, there are no pleadings in the suit and therefore no such argument shall be available to the appellant that too at the stage of second appeal in the form of present appeal. He submitted that neither new case is permissible nor any new evidence can be looked into at the stage of second appeal. In this connection, he has relied upon the decision of the Apex Court in the case of Prataprai Kothari vs. John Braganza reported in AIR 1999 SC 1666 more particularly para 10 which reads as under:

"10. Reliance was sought to be placed on the additional evidence admitted by the learned Single Judge during the pendency of the appeals to prove that the appellant had title to the property. It is settled law that in the absence of any plea, no evidence is admissible. The Single Judge of the High Court overlooked that when there was no plea or issue on the question of title, no evidence whatever was admissible regarding the same. He acted beyond his jurisdiction in permitting additional evidence to be filed in appeals."

Shri K. S. Nanavati
Sr. Advocate

5.5 Mr. Shah further submitted that there is no relief for the performance of any other contract except May 1972 contract and therefore no relief as prayed for by the appellant can be granted in respect of the other contract. He submitted that by order of refusal of permission under section 63, the contract has been frustrated by operation of law and therefore also the conditional decree cannot be passed, more particularly, when it is prohibited under law on the basis of such contract. He submitted that no conditional decree can be passed when permission under section 63 is already refused and the order of refusal has become final, there remains no further condition to be fulfilled.

5.6 Mr. Shah contended that no decree of specific performance can be passed on the ground of hardship to the defendants after a period of 43 years particularly when the appellant has been awarded compensation by way of alternative prayer with interest on the consensus of the defendants in the suit. He has also drawn the attention of this Court to section 32 of the Contract Act and submitted that when the order of refusal of permission u/s. 63 remains unchallenged the performance of contract becomes prohibited by law.

6 Mr. Nanavati, learned Senior Counsel, in rejoinder to the submissions made by learned advocates for the respondents, submitted that the provisions under section 63(c) is not retrospective but prospective and contended that the amendment will not change the position and that conditional decree can be passed. He submitted that when the amendment is not made retrospective in operation either by express provision or by necessary implication it cannot apply to the suit agreements which were entered into much before the amendment. He further contended that application is not rejected as contended by Mr. Patel and that the application could have been persuaded and that the agreement ought to have been enforced or should have been entered between the parties. He submitted that the decision in the case of Shah Bhojraj Kuverji Oil Mills and Ginning Factory (supra), shall not apply on the facts and circumstances of the present case because the law in that case was interpreted to provide that the point of time when the law will operate is when the decree for recovery of possession would have to be passed. He submitted that the language of sub-section was interpreted to apply to suits pending when it came into force and that the law in the instant case is not retrospective and that it is not intended to affect either the pending suits or concluded contracts.

7 It is pertinent to note that the land in question was an agricultural land and the same was sold to non-agriculturists. Section 63 of the Bombay Tenancy Act reads as under:

"Section 63 Transfers to non-agriculturists barred

(1) Save as provided in this Act:-

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of person who is not an agriculturist [or who being an agriculturist [will after such sale, gift, exchange, lease or mortgage, hold land exceeding two-thirds of the ceiling area

Shri K. S. Nanavati
Sr. Advocate

determined under the Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961] or who is not an agricultural labourer]: (Mah.XXVII of 1961)

Provided that, the Collector or an officer authorised by the [State] Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage on such conditions as may be prescribed.

Explanation:- For the purposes of this sub-section the expression 'agriculturist' includes any person who as a result of the acquisition of his land for any public purpose has been rendered landless for a period not exceeding ten years from the date of possession of his land is taken for such acquisition.

(1A) Where any condition subject to which permission to transfer was granted is contravened, then the land in respect of which such permission was granted shall be liable to be forfeited in accordance with the provisions of section 84CC.

(1B) where permission is granted to any transfer to land under sub-section (1) any subsequent transfer of such land shall be subject to the provisions of sub-section (1).

(2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease of a dwelling house or the site thereof or any land appurtenant to it in the favour of an agricultural labourer or an artisan [or a person carrying on any allied pursuit.

(3) Nothing in this section shall apply or be deemed to have applied to a mortgage of any land or interest therein effected in favour of a co-operative society as security for the loan advanced by such society [or any transfer declared to be a mortgage by a court under S.24 of the Bombay Agricultural Debtors Relief Act, 1947.] (Bom. XXVIII of 1947)

(4) Nothing in section 63A shall apply to any sale made under sub-section (1)."

7.1 Therefore permission under section 63 of the Act was mandatory. From the record it is borne out that the application was rejected. In that view of the matter, both the courts while considering the case have rightly appreciated evidence on record.

8 The learned Single Judge has considered the observations made by the trial court and confirmed the same. The relevant observations made by the learned Single Judge are as under:

"So far as the permission under the Bombay Tenancy Act is concerned, it was already applied for by the respondents nos.1 to 5 within a period of one year from the execution of the agreement to sell which was refused by the Prant Officer, as discussed in the forgoing portions of this judgement. In this view of the matter, the respondents nos.1 to 5 or, for that matter, the respondents nos.1 to 7 are not required to approach again and file application for permission u/s 63 of the Bombay Tenancy Act. Shri Nanavati, has however argued regarding legislative changes in Section 63 of the Bombay Tenancy Act so far as it applies to Gujarat State with reference to the Gujrat Town Planning and Urban Development Act, 1976. Section 63 of the Bombay Town Planning Act provides that save as provided in this Act, (a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land

Shri K. S. Nanavati
Sr. Advocate

revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any or interest therein, or (b) no mortgage of any land or interest therein in which the possession of the mortgaged property is delivered to the mortgagee or (c) no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein, shall be invalid in favour of a person who is not an agriculturist or who being an agriculturist cultivates personally and not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer. The proviso to this section further empowers the Collector or an officer authorised by the State Government in this behalf who may grant permission for such sale, gift, exchange, lease or mortgage on conditions as may be prescribed. Prant Officer was certainly an officer authorised to grant permission under this Section and he had already refused to grant such permission to the respondents nos.1 to 5. Consequently, in view of this provision, the agreement to sell executed at the first stage, namely, by the respondents nos.1 to 5 in favour of the defendants nos.8 to 12 will not be valid, so also the second agreement executed by the defendants nos.8 to 12 in favour of the plaintiffs. The trial Court has observed that the defendants nos.8 to 12 as well as the plaintiffs are not agriculturists. This conclusion was reached from the evidence on record. 32 Shri Nanavati however contended that during the pendency of the suit, Gujarat Town Planning and Urban Development Act, 1976 was well in operation and Section 121 of this Act provided that the provisions of Tenancy Act not to apply to areas under town planning schemes. In view of this provision, the provision of Bombay Tenancy Act will not apply to the area which is included in the scheme of Gujarat Town Planning and Urban Development Act. This section was, however, deleted by Gujarat Act No.4 of 1986 with effect from 12/06/1985. He therefore contended that the provisions of Gujarat Town Planning Act, 1976 were in operation when the judgement was delivered in the year 1984 and Section 121 was deleted only with effect from 12/06/1985 and as such no permission was needed. However for this, two things have to be seen. First is whether it has been established from the evidence on record that these plots which were subject matter of the agreement to sell were actually included in the Town Planning Scheme. The trial Court has observed from the evidence on record, namely, the statements of two witnesses of the plaintiffs that the two plots were situated in agricultural zone and the Town Planning Scheme was not approved by the State Government. For this he has placed reliance on the statement of PW No.2 - Kirtikumar R Shah. He was serving as Asst. Town Planning Officer in AUDA. He stated that he brought the map and record of the suit lands and the nearby lands. The map which was sent by his office to the State Government for sanction on 18.1.1983 was pending in the Government and no sanction was given so far. His statement was recorded on 12.12.1983. He further stated that the land of Survey No.236 is not coming in residential zone and it is situated in agricultural zone. Likewise, he stated that out of the land of Survey No.234 some land is of residential zone and some is in agricultural zone. PW No.3 Hasmukhbhai Patel has likewise stated that the suit land is in the agricultural zone and as such it cannot be sold to any person other than an agriculturist without permission u/s 63 of the Bombay Tenancy Act. Thus, it is doubtful even from the plaintiffs' evidence that the two plots which were under the agreement to sell came within the Town Planning Scheme on the relevant date. As such, bar of Section 63 of the Bombay Tenancy Act could not be lifted.

As mentioned earlier, Section 121 of the Gujarat Town Planning and Urban Development Act was deleted with effect from 12/06/1985. Its effect will be that

Shri K. S. Nanavati
Sr. Advocate

thereafter the provisions of Section 63 of the Bombay Tenancy Act will apply to the disputed land and since permission for sale was refused by the competent authority, sale deed could not be executed. Thus, in my opinion, even the subsequent events will not help the plaintiffs in getting the decree for specific performance.

It is relevant to point out at this stage whether the discretion should be exercised in refusing to grant decree for specific performance in view of Section 20 of the Specific Relief Act. Section 20 prescribes that jurisdiction to decree suit for specific performance is discretionary and the Court is not bound to grant such relief merely because it is lawful to do so. But the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Thus, what is provided under Section 20(1) of the Specific Relief Act is that the jurisdiction of a Court to decree the suit for specific performance is discretionary. However, the discretion has to be exercised judicially based on sound and settled judicial principles and it should not be arbitrarily exercised. Sub-section (2) of Section 20 gives certain illustrations in which the Court may properly exercise the discretion not to decree a suit for specific performance. Three illustrations have been given in this Section where decree for specific performance can be refused. One of such situations is contemplated u/s 20(2)(c) of the Specific Relief Act which says that where the defendant entered into the contract under circumstances which do not render the contract voidable, but, makes it inequitable to enforce specific performance. In my opinion, it is inequitable to grant a decree for specific performance for the obvious reason that the first agreement executed in favour of defendants nos.8 to 12 was executed by Parshottamdas Babarbai and defendants nos.1 to 4 on 29.11.1971. The second agreement was executed by the defendants nos.8 to 12 in favour of the plaintiffs on 25.3.1972. The question is whether it is equitable in this appeal to grant a decree for specific performance of an agreement to sell after a lapse of 28 or 29 years of the agreement to sell on the same terms and conditions under which the agreements were executed. Judicial notice can be taken that during three decades the prices of the land have gone high and it would be inequitable to compel the defendants - respondents to execute the sale deed on the same terms and conditions contained in the original agreements. It is also inequitable to decree the suit for specific performance because even the plaintiffs had claimed damages to the tune of Rs.75,000/which indicates that they have admitted increase in the prices of land. If they have claimed damages at Rs.75,000/- in addition to the refund of earnest money with interest, it is inequitable to grant a decree for specific performance on the same consideration which is mentioned in the agreement to sell. The possession of the land remained with the respondents nos.1 to 7 during all these years. There is no dispute about it because decree for delivery of possession has also been claimed by the plaintiffs. The case of MADAMSETTY SATYANARAYANA v/s G. YELLOJI RAO reported in AIR 1965 SC 1405 relied upon by Shri Nanavati does not entitle him to a decree for specific performance. The discretion is being exercised in this appeal reasonably and in accordance with settled judicial principles and not arbitrarily. In view of the foregoing discussions, I am of the view that the plaintiffs are not entitled to decree for specific performance of the agreement to sell merely because of their readiness and willingness to perform their part of the contract. As discussed above, the contract has become determinable, hence, no decree for specific performance can be granted. Further in view of bar of Section 63 of the Bombay Tenancy and Agricultural Lands Act, no decree for specific performance of the agreement could be granted. Subsequent events, namely, legislative changes also do not entitle the

Shri K. S. Nanavati
Sr. Advocate

plaintiffs to a decree for specific performance and lastly it is inequitable to grant a decree for specific performance on the facts and circumstances of the case.

The next question for consideration is whether the plaintiffs are entitled to refund of earnest money and if so from which of the defendants. The trial Court has held that the plaintiffs are entitled for refund of the earnest money paid by them to defendants nos.8 to 12 from these defendants and not from the defendants nos. 1 to 7. Shri Desai, learned counsel for the respondents nos.1 to 7 contended that in the absence of privity of contract and further because no earnest money was received by these respondents, they are not liable to refund any earnest money to the plaintiffs. However, I am not convinced with these contentions of Shri Desai. It has already been indicated in the foregoing portion of the judgement that the defendants nos.1 to 7 were bound to execute the sale deed in favour of the defendants nos.8 to 12 or to any person to whom the defendants nos.8 to 12 desired to execute the sale deed. Not only that the defendants nos.8 to 12 received the earnest money from the plaintiffs but the defendants who are executants of first agreement to sell dated 17.11.1972 also received earnest money from the defendants nos.8 to 12 in two installments of Rs.2,000/and Rs.5,000/-. As such, in my opinion, the trial Court was in error in refusing to grant the decree for refund of earnest money against the respondents nos.1 to 7. It is however clarified that the decree for refund of earnest money amounting to Rs.20,000/- together with interest at the rate of 12% per annum shall be joint decree against the respondents and in case the plaintiffs proceed to execute this decree against the respondents nos.1 to 7, these respondents will be entitled to proceed against the respondents nos.8 to 12 for the recovery of the balance amount. The decree is against all these respondents and the respondents nos.8 to 12 shall be jointly and severally responsible.

Shri Nanavati further contended that the trial Court was in error in refusing to grant decree for damages amounting to Rs.75,000/claimed by the plaintiffs for breach of contract. Section 21 of the Specific Relief Act provides that in a suit for specific performance of the contract the plaintiffs may also claim for compensation for its breach either in addition to or in substitution of such performance. Sub-section (4) of Section 21 provides that in determining the amount of any compensation awarded under this Section, the Court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872. I have examined the allegations made in the plaint as well as the statements of the plaintiff Gunvantlal Ratanchand, recorded by the trial Court. In the plaint the amount of compensation has been disclosed in lumpsum. If the compensation is to be worked out in accordance with Section 73 of the Indian Contract Act, then in such cases, the compensation should be the difference between the market price of the land as on the date of the agreement to sell and as on the date of breach of contract. It is not a case of breach of contract, hence, section 73 of the Indian Contract Act will not apply. More over in view of absence of specific evidence as to what compensation should be awarded to the plaintiffs, their abrupt claim for Rs.75,000/- cannot be accepted. As such, I dont find force in this argument of Shri Nanavati."

9 We are of the opinion that the courts below have not committed any error in granting specific relief under the Act. The original owner Shri Parshottamdas Babarbhahi Patel executed the agreement to sale dated 29.11.1971 in favour of respondents no. 8 to 12 and thereafter by application dated 25.04.1972 under section 63 of the Bombay Tenancy Act

Shri K. S. Nanavati
Sr. Advocate

addressed to the Prant Officer, he applied for sell the subject land in favour of respondents no. 8 to 12. There is no cavil between the parties that respondents no. 8 to 12 by agreement to sale dated 23.05.1972 agreed to sell the subject land to the original plaintiff i.e. present appellant. In view of this subsequent development of agreement to sale between the respondent no. 8 to 12 and present appellant, original land owner Shri Parshottamdas Babarbai Patel was not a confirming party and still he made an application dated 01.06.1972 seeking permission to sell the subject land in favour of the present appellant u/s 63 of the Bombay Tenancy Act. It shall be worthwhile to reproduce the application dated 01.06.1972 and the same is extracted hereunder:

" Patel Parshottam Babarbai At Bodakdev Date: 1.6.1972 The Prant Officer, Viramgam. With respect, I Patel Parshottam Babarbai resident at Bodakdev request that I have made an application to you sir to permit me to sell the land bearing Survey No. 234/2 and 236/2 of Bodakdev to Bhanumati Kundanlal Trivedi and others, under section 63 of the Tenancy Act, on 25.4.1972. But, own, instead of the said persons, I desire to sell the said numbers to the following persons: 1. Shri Gunvantlal Ratanchand Shah. 2. Shri Ajitbhai Ratanchand Shah. 3. Shri Sandip Ratanchand Shah Therefore, it is requested that now these numbers may be permitted to be sold to the aforesaid three persons. A copy of the record is enclosed herewith Date : sd/- Patel Parshottam Babarbai Copy forwarded to: 1. The Mamlatdar, Taluka Daskroi. 2. The Talati, Bodakdev "

9.1 The Prant Officer rejected the application for permission u/s 63 of the Tenancy Act vide order dated 29.08.1972 which reads as under:

No. T.N.C.V. 1083

Office of the Prant Officer,

Viramgam Prant ,

Ahmedabad

Date : 29.8.1972

To

Shri Parshottam Babarbai

Residing at Bodakdev

Taluka Dascroi .

Shri K. S. Nanavati
Sr. Advocate

Subject : Regarding grant of permission under Section 63 of the Tenancy Act, to sell the land bearing Survey No. 236/2 and 234/2 of village Bodakdev , Taluka Dascroi .

With reference to your application dated 25.4.1972 on the subject noted above I have to inform you that:

Since the land bearing Survey No. 234/2, Acre 0-24 guntahs and Survey No. 236/2, Acre 1-21 gunthas of village Bodakdev , Taluka Dascroi is situated within 16 K.Ms . From the Ahmedabad Municipal Corporation limits and since the total area thereof exceeds 10000 sq. mts ., as per the Vacant Land Act, permission to sell cannot be granted . Therefore, please note that your application is rejected.

Yours faithfully,

sd /- Illegible.

Prant Officer, Viramgam

Prant ,

Ahmedabad

Shri K. S. Nanavati
Sr. Advocate

Copy to : The Mamlatdar , Dascroi for
information

9.2 The contention of Mr. Nanavati, learned Senior Counsel for the appellant that the Prant Officer has refused permission u/s 63 of the Tenancy Act qua application dated 25.04.1972 and the subsequent application dated 01.06.1972 has not been decided till date does not hold water. In our opinion there is no force in this submission as we are of the considered opinion that the application dated 01.06.1972 was in continuation of the first application dated 25.04.1972 and therefore we are of the view that both the applications have merged into one application. The rejection of application dated 25.04.1972 by the Prant Officer vide his letter dated 29.08.1972 tantamount to rejection of both the applications.

9.3 So far as the question of whether specific performance of part of the contract could be granted conditionally is concerned, the learned Single Judge has rightly appreciated section 12 of the Specific Reliefs Act and has come to the conclusion that in agreement to sell there were two plots namely 236/2 admeasuring 6292 sq. yds and 234/2 admeasuring 1694 sq. yds and consequently decree for part performance of the contract on the facts and circumstances of the case was not possible and is not possible even in this appeal. It is required to be noted that the terms in the supplementary agreement were uncertain which rendered the contract uncertain and such uncertain contracts depending upon the happening of uncertain events could not be specifically enforced. The learned Single Judge has rightly held that since the application made by Parsottam Babarbai was rejected by the Prant Officer, the agreement to sell could not be the basis for executing a sale deed in pusuance of the said agreement to sell.

9.3 It further emerges that the prayer is made only for the agreement dated 23.05.1972 and no prayer is made for assignment of earlier agreement dated 29.11.1971 between the original land owner and respondents no. 8 to 12. Considering the provisions of section 63(c) it is clear that no additional decree could have been passed. The prayer is only for agreement dated 23.05.1972 where the original owners were not party to agreement and no prayer is claimed for assignment of earlier agreement. In view of section 32 of the Contract Act after refusal of permission under section 63 of the Tenancy Act, no further event remains to happen and on the contrary by refusal of permission it becomes clear that the performance of contract became prohibited by law leaving no further uncertainty when the order of refusal remained unchallenged.

9.4 In view of the foregoing discussion, it is not necessary to burden this judgment with detailed analysis of the authorities cited at bar by either side.

10 However, considering the alternative prayer made by the appellants we are of the opinion that the same deserves consideration. We accept the alternative prayer and accordingly think it fit to award damages to the appellants to the tune of Rs. 75,000/- with 9% interest over and above Rs. 20000/- at 12% interest granted by the trial court.

11 In the premises, appeal is partly allowed. The appellants shall be paid additional amount of Rs. 75,000/- at 9% interest per annum from the date of suit till realization proportionately from respondents no. 1 to 6 and newly added respondent no. 14. The appeal is not allowed qua prayer for specific performance.

Shri K. S. Nanavati
Sr. Advocate

12 At this stage Mr. Nanavati has requested to continue the relief which had been operating till date. In our view this litigation is being carried on since 1974 and continuing the relief further will not serve any fruitful purpose when this court has not found any merit in the appeal. We are not inclined to extend relief any further. Request is therefore rejected.

Shri K. S. Nanavati
Sr. Advocate