

**(2005) 04 RAJ CK 0023**

**Rajasthan High Court**

**Case No:** Civil Second Appeal No. 128 of 1982

LRS of Bhinva Ram

APPELLANT

Vs

Sohan Ram

RESPONDENT

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**Date of Decision:** April 28, 2005

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 3
- Contract Act, 1872 - Section 10, 14(1), 15, 2, 73
- Specific Relief Act, 1877 - Section 21
- Specific Relief Act, 1963 - Section 16, 20, 20(2), 21, 21(1)
- Transfer of Property Act, 1882 - Section 54

**Citation:** (2005) 3 CivCC 686 : (2005) 4 RLW 2433 : (2005) 4 WLC 34

**Hon'ble Judges:** Dinesh Maheshwari, J

**Bench:** Single Bench

**Advocate:** M.S. Singhvi, for the Appellant; Rajendra Mehta, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Dinesh Maheshwari, J.

Civil Original Suit No. 17/1977 (2/1972) filed by the respondent Sohanram for specific performance of the contract for sale of agricultural land in the alternative for refund of Rs. 1500/- with interest was decreed for both the reliefs in the alternative by the learned Munsif, Sardarshahar on 5.10.1978 with a further decree for injunction. The learned District Judge, Churu, in Appeal No. 67/1978 modified the decree by setting aside the relief of injunction but otherwise maintained the decree passed by the Trial Court and dismissed the appeal filed by the defendant on 24.8.1982. The present appeal by the legal representatives of the original defendant Bhinvaram was admitted by this Court on 2.2.1983 while formulating the following substantial questions of law:

(a) Whether the plaintiff's suit for specific performance of the agreement to sale should not be dismissed on the ground that the plaintiff did not express his readiness and willingness to perform his part of the contract upto the date of the suit?

(b) Whether in the absence of averments in the plaint about the readiness and willingness of the plaintiff to perform his part of the contract, a decree for specific performance could be maintained in the present case?

(c) Whether the appellant could be allowed to raise the question of absence of readiness and willingness on the part of the plaintiff to perform his part of the contract at the stage of second appeal for the first time?

(d) Whether the plaintiffs suit for specific performance is maintainable although the plaintiff has not prayed for the complete relief permissible to him, because no prayer for possession has been made in the plaint?"

2. During the course of hearing of this appeal, another substantial question of law, which directly arose for just and effectual determination of this case, was formulated thus:

"(e) Whether the decree granting both the reliefs claimed only in the alternative by the plaintiff of specific performance of the contract and refund of the consideration paid, could be maintained in the form granted by the Trial Court and affirmed by the first appellate court?"

3. Learned Counsel for the parties were heard at length in respect of the formulated questions of law and so also in respect of another question on the anvil of Section 20 of the Specific Relief Act, 1963 (hereinafter referred to as "the Act" ("the Act of 1963")) which though proposed by the learned Counsel for the appellant was opposed on behalf of the respondent, regarding which reference shall be made at appropriate place. In view of the questions involved in the case, a reference to the pleadings of the parties and findings by the learned courts below may be made at the first.

#### Plaint

4. Respondent Sohan alias Sona Ram filed a suit for specific performance of contract by presentation of plaint on 28.10.1971 in the Court of Munsif, Churu. The summary of the plaint averments is that according to the plaintiff, an agricultural field of Khasara No. 681 measuring 52 bighas and 18 biswas situated at Ranasar Pavarani, Tehsil Sardar Shahar was of the defendant who being in need of money, on Sawan Budi 12, Svt. 2027 (= 30.7.1970) agreed to sell 27 bighas and 18 biswas of land on the eastern side of this field after retaining 25 bighas for himself for a consideration of Rs. 1500/- which was paid cash on that very day to the defendant and after receiving the amount, the defendant executed an agreement in the "Bahi" of the plaintiff and promised that whenever the plaintiff would desire, sale would be executed in his

favour. Possession on 27 bighas and 18 biswas of land on eastern side was also delivered on that very day to the plaintiff who was cultivating that portion and continuing in its possession. According to the plaintiff, the defendant was asked for execution of the sale deed but the defendant expressed that after the marriage of his son, he would execute the deed before the Sub-Registrar. After the marriage, he was again asked but on 19.8.1971 he flatly refused, therefore, the plaintiff was entitled to get the said agreement specifically performed for which the suit was being filed. The plaintiff prayed for a decree in the manner that the defendant be ordered to execute the sale deed of the land in question in favour of the plaintiff and on his failure to do so, the same be got executed by the court; the plaintiff prayed in the alternative that suit for Rs. 1500/- with in interest at the rate of 1 % per month be decreed against the defendant and for this reason full court fees has been paid; the plaintiff further prayed for a perpetual injunction against the defendant for not interfering in the said portion.

5. The salient features directly available from the plaint, which are relevant for the present purposes, remain :

(i) There is no averment as such in the plaint that the plaintiff has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him of the contract according to its true construction.

(ii) The plaintiff has claimed a decree for entire sale consideration of Rs. 1500/- against the defendant with interest at the rate of 1% per month (i.e., 12% per annum) in the alternative, that is, in substitution of the relief of specific performance.

(iii) The plaintiff has averred that entire sale consideration of Rs. 1500/- was paid by him and the possession of the land agreed to be sold was delivered by the defendant to him and he was in possession of the land and, obviously therefore, the plaintiff did not ask for possession of the property in addition to the specific performance.

Written statement

(6). The defendant in his written statement admitted having the field in khasara No. 681 but denied receiving any cash amount from the plaintiff or entering into any agreement for sale of 27 bighas 18 biswas of land to the plaintiff and averred that the writing referred by the plaintiff was totally fabricated having no value in law and that the sale agreement for a land cannot be scribed in a "Bahi". Averments regarding delivery of possession were also specifically denied stating that the defendant was continuing in possession of the entire land. The defendant averred that plaintiff was a prosperous person who wanted to dispossess the defendant by way of litigations and, therefore, the defendant has filed a suit for permanent injunction before the SDO, Churu. The plaintiff, his father and brothers also forcibly attempted to take over the field last year and criminal case against them was

pending in the court and for pre-empting the two cases, this suit was filed. The averments regarding demand and refusal of performance were also denied with the averments that defendant never stated for sale of the land nor the plaintiff was entitled for any such sale. The defendant raised additional objections that alleged agreement was not a document sufficient for the purpose nor was admissible in evidence nor it could be a basis of the suit; that the plaintiff has claimed the relief alternatively of Rs. 1500/- with interest and therefore, it was clear that neither he had any possession on the land nor had any right, else he would never have taken such a plea; and that recovery of cash with interest amounted to a money transaction for which money lending licence was required which was not available with the plaintiff and, therefore also, the suit was liable to be dismissed. It has also been averred that suit was concerning an agricultural land in which perpetual injunction was also claimed which was of the jurisdiction of the revenue court alone and, therefore also, the suit was not maintainable in civil court.

#### Issues and evidence

(7). On the pleadings of the parties, the learned Trial Court framed seven issues: Issue No.1 on the question as to whether the defendant on Sawan Budi 12, 2027 executed the agreement and after taking Rs. 1500/- cash, agreed to sell 27 bighas and 18 biswas of the agricultural land of Khasara No. 681 to the plaintiff; Issue No. 2 on the question as to whether the plaintiff was entitled to get the sale deed executed through the Court. Issue No. 3 on the alternative prayer that in other event whether the plaintiff was entitled to recover Rs. 1500/- with interest at the rate of 1% per month from the defendant; Issue No. 4 on the question whether the agreement was inadmissible in evidence; Issue No. 5 as to whether the plaintiff was money- lender and could not maintain the suit without license; and Issue No. 6 on the question as to whether the suit was not of the jurisdiction of the Court?

(8). In oral evidence, the plaintiff examined himself as PW-1, Peeru Khan, PW-2; Pangeer, PW-3; Sugan Singh, PW-4; Shravan, PW-6 (these witnesses, PW-2, 3, 4 and 6 alleged to be witnesses to the agreement and/or delivery of possession); and Sagarmal PW-5 (the scribe of the disputed document and so also the witness to the delivery of possession). On the other hand, the defendant Bhinvaram examined himself as DW-1, Dhallu Ram DW-2 (son of defendant); Ram Kumar, DW-3; and Beju Ram, DW-4.

(9). In the documentary evidence, the plaintiff produced the copy of disputed agreement as Ex.1. The contents of this document being relevant for the present purpose are quoted in extenso hereunder:

◆fy[kr 1 Hkhaokjke oYn lSmwjke tkfr pekj lkfdu jk;iqfj;k dk [ksr 1 jksbZ jk.klj dh eSa Hkhokjke dk gS chxk 52 vads ckou vkSj dbZ chlok mij thu [ksr esa lw Hkaokjke 25 chxk vads iphl chxk vius cts esa j[kdj ckn ckdh lkjh tehu djhc 27 chxk vads lrkbZlk chxk lksguyky csVkk Hkxwjke tkfr pekj dks cspdj :ih;k 1500@& vads iujk lks pwdrh

Hkokjke [kqn olwy ik;k lksguyky viuh lqcghl ejth chdjh dj ysos blesa Hkhaokjke o dksbZ Hkh ifjokj dk vkneh vkuk dkuh dj ;k cspuk esa n[ky Hkhaokjke lkjka lksgu dk gjtkuk lkou onh 12&2027 eqrk-30-7-70◆

Judgment and decree 5.10.1978

10. The learned Munsif, Sardarshahar. After hearing the parties, proceeded to decided the issues involved in the case by the judgment dated 5.10.1978. Prior to it, issue No. 6 relating to the jurisdiction of the Court had already been decided against the defendant on 28.6.1978. Issue No. 5 relating to the question of plaintiff being the money-lender and being not entitled to maintain the suit was decided against the defendant as the defendant failed to substantiate the objection. Regarding Issue No. 4 about admissibility of the agreement in evidence, the learned Munsif was of the opinion that in the interest of justice stamp duty and penalty could now be recovered for enforcing the document. The learned Munsif directed for recovery of the penalty at the maximum rate for enforcing the judgment and framing of the decree.

11. Coming to the material issues involved in the case, it is found that on Issue No. 1 the learned Munsif, after considering and weighing the evidence of the respective parties, came to the conclusion that the plaintiff cultivated the land of the defendant sometime back and under the Agreement Ex.1, the eastern portion of the field was agreed to be sold for Rs. 1500/-. Issue No. 1 was decided in favour of the plaintiff.

12. As a consequence of decision on issue No. 1 in favour of the plaintiff, the learned Munsif decided issue No. 2 also in favour of the plaintiff and held that upon refusal of the defendant to execute the sale deed, the plaintiff would be entitled to get the sale deed executed through the Court.

13. On issue No. 3 relating to the alternative prayer of recovery of amount of Rs. 1500/- with interest at the rate of 1% per month, the learned Munsif was of the opinion that from the evidence it was established that the plaintiff obtained the agreement for sale of the land after payment of Rs. 1500/ and the defendant was denying the same now. In these circumstances, according to the learned Munsif, the claim for principal of Rs. 1500/- and 1% interest per month could not be said to be unreasonable and, therefore, in the other event the plaintiff was definitely entitled for Rs. 1500/- with interest at the rate of 1% per month. After concluding this way the discussion on the issues and also observing that the plaintiff was entitled for injunction, the learned Munsif granted the relief in the following form:

nkok oknh cgd oknh f[kykQ izfroknh bl izdkj ls e; [kpkZ dkuwuh fMxzh fd;k tkrk gs fd izfroknh okn i= dh en la◆ 2 esa fy[ks [ksr rknknh djhc 27 ch?kk 18 fcLok dk fo◆; i= oknh ds gd esa rdehy djkos A rdehy u djkus dh fLFkfr esa vihy ifjlhek dky ds ckn oknh U;k;ky; dh ekQZr ;g fo◆; rdehy djkus dk gdnkj gksxk A onhxjlwjr fodYi esa oknh izfroknh ls 1500@& :i;s e; C;kt ,d :i;k lsdM+k ekgokj nLrkost dh rkjh [k esa rk olwyh djus dk gdnkj gksxk A izfroknh mDr fgLLs esa fdLh izdkj dk gLr{ksi ugha djsxk A

U;k;ky; ds jhMj dks funsZ"k fn;k tkrk gS fd og mDr nLrkost ♦bdjkjukek bZ,DI&1♦ dk vf/kdre nj ls rkoku tek dj;k;sxk vkSj mdls ckn bl fu.kZ; dks izHkko esa yk;k tkdj fM♦h cukbZ tk;sxh A rkoku vUnj 3 ;kse tek dj;k;k tkos A ♦

Judgment and decree dated 24.8.1982

14. The learned District Judge, Churu, in the appeal submitted by the legal representatives of the deceased defendant Bhinvaram has noted the contentions raised on behalf of the appellants. First, it was contended that the document was not admissible in evidence and the penalty was not deposited within the time granted by the Court, therefore, decree ought not to have been drawn as the time could not have been enlarged later on. Secondly, it was contended that the witnesses produced on behalf of the plaintiff were all either interested or chance witnesses carrying too much of contradictions and were wholly unreliable. Thirdly, the contention was that there was no justification for selling of the land for Rs. 1500/- only and the document Ex.1 was a fabrication. Fourthly, it was contended that the decree for perpetual injunction could not have been granted by the Civil Court relating to agricultural land.

15. On the first contention, the learned Appellate Judge found that the decree was drawn on 23.1.1978 after deposit of the penalty which could not be said to be improper as the Court had power to enlarge the time and the document Ex.1 was admissible in evidence which had already been exhibited in the Trial Court. Thereafter, the learned Judge, on the second and third contentions regarding appreciation of oral and documentary evidence, took a travel through the entire evidence produced by the parties and found that the execution of the agreement for sale Ex.1 was clearly established and, therefore, the Trial Court had rightly decided Issue No. 1 in favour of the plaintiff. As the defendant thereafter refused the performance, therefore, the plaintiff was entitled for specific performance and issue No. 2 was also rightly decided in favour of the plaintiff. From the evidence it was also established that at the time of execution of the document Ex.1, Rs. 1500/- towards the sale price were paid by the plaintiff to the defendant, therefore, the alternative decree for Rs. 1500/- with interest also cannot be said to be incorrect. While dealing with the fourth contention on granting of the decree for perpetual injunction, the learned Appellate Judge found that there was no issue framed in the case as to whether the plaintiff was entitled for any injunction and, therefore, this relief could not have been granted. The learned Appellate Judge, therefore, modified the decree while concluding thus:

♦vfUre urhtk ;k gS fd vihy vihykFkhZ vkaf"kd :i ls Lohdkj dh tkrh gS v/khuLFk U;k;ky; us tks izfroknx.k ds fo:) rdehy eqgk;nk [kl dh fM♦h ,oa fodYi esa 1500@& :- es C;kt dh fM♦h ikfjr dh gS mls dk;e j[kk tkrk gS ijUrq v/khuLFk U;k;ky; us tks izfroknh ds fo:) fookfnr Hkwfe esa fdLh izdkj dk gLr{ksi ugha djsu dk vksn"k fn;k gS ml gd rd fu.kZ; o fM♦h vijkLr fd;s tkrs gS vkSj bl gn rd vihy Lohdkj dh tkrh gS A ckdh ckcr vikLr fd;s tkrs gS vkSj bl gn rd vihy Lohdkj dh tkrh gS A ckdh ckcr vihy [kfjt dh tkrh gS A vihy dk

Second appeal before this Court:

16. As pointed out hereinabove, this appeal against the judgment and decree passed by the two courts below has been admitted while formulating four substantial questions of law and another question has been formulated during the course of hearing. Both the learned Counsel for the appellant and the respondent have put forward elaborate but lucid contentions on the formulated and proposed questions embellishing them with relevant case law. It shall be appropriate to deal with respective contentions with reference to the particular questions involved in the case.

Question (d)

17. This question has been formulated on the ground raised by the appellant that the defendant had repudiated the allegations of the plaintiff relating to the delivery of possession to him and had pleaded that it was he who was in possession. The appellant has urged that the Trial Court was bound to frame an issue on this question because if the plaintiff was not found to be in possession, he could not have maintained a suit merely for granting a decree for specific performance without asking for delivery of possession. The formulated question of law deals only with the aspect whether the suit for specific performance was not maintainable for the plaintiff failing to ask for the complete relief permissible to him, because no prayer for possession has been made in the plaint?

18. The learned Counsel for the appellant has contended that the plaintiff neither demanded possession nor sought decree for possession and, therefore, even if the decree for specific performance was granted, the same would remain futile and on this score alone the suit ought to have been dismissed. The learned Counsel referred to Section 22 of Specific Relief Act and relied upon a decision of the Hon<sup>ble</sup> Supreme Court in 2001 VII AD 513 (SC)

19. The learned Counsel for the respondent on the other hand submitted that the relief of possession even if not claimed in a suit for specific performance, the same is not fatal to the maintainability of the suit. Moreover, when the plaintiff has asserted possession with himself, there was no occasion for him to claim the relief of possession.

20. Having given a thoughtful consideration to the rival submissions, this Court is clearly of opinion that this question (d) deserves to be answered against the appellants.

21. Section 22 of the Specific Relief Act reads as under:

"Power to grant relief for possession, partition, refund of earnest money, etc.-

(1) Notwithstanding anything to the contrary contained in the CPC 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under Clause (a) or Clause (b) of Sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the Court to grant relief under Clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation u/s 21."

22. A bare look at the provision makes it clear that it is an enabling provisions not causing any mandatory requirement of law for the plaintiff to sue for possession also in a suit for specific performance.

23. In the case of Adcon Electronics relied upon by the learned Counsel for the appellant, the Hon"ble Supreme Court was concerned with the question whether the suit simplicitor for specific performance of contract answers the description "suit for land" for the purposes of Clause 12 of the Letters Patent of the High Court of Judicature at Bombay. After considering the case law dealing with the question, the Hon"ble Supreme Court held that "suit for land" is a suit in which relief claimed relates to title or delivery of possession of the land or immovable property. For considering the character of a suit in which only relief of specific performance of the agreement was sought for and the relief of delivery of possession was not claimed, the Hon"ble Supreme Court after referring to Section 22 of the Specific Relief Act held :

17. "It may be seen that Sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in Clauses (a) and (b) thereof Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of Sub-section (2) of Section 22 is that no relief under Clauses (a) and (b) of Sub-section (1) shall be granted by the Court unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for.

18. In the instant case the suit is for specific performance of the agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed, as such it cannot be treated as a "suit for land".

19. We cannot also accept the contention of Mr. Chitale that the suit is for acquisition of title to the land and is a "suit for land". In its true sense a suit simpliciter for specific performance of contract for sale of land is a suit for enforcement of terms of contract. The title to the land as such is not the subject-matter of the suit."

24. The decision cited by the learned Counsel for the appellant itself squarely answers the contention sought to be raised. It has been laid down by the Hon"ble Supreme Court in no uncertain terms that Section 22(1) is only an enabling provision. A suit simpliciter for specific performance of contract of sale of land has been specifically categorized by the Hon"ble Supreme Court as a suit for enforcement of the terms of contract.

25. In the case of Durgadan v. Devidan: 1974 RLW 296 this Court after referring to the decided cases and Section 54 of the Transfer of Property Act held:

"It is only for the sake of convenience and for avoiding multiplicity of suits that even in a suit for specific performance of a contract for sale with respect to immovable property a prayer for possession is made, but it is far from saying that without such a prayer the suit for specific performance of the contract will not be maintainable."

26. In the present suit, the plaintiff has alleged delivery of possession to himself at the time of agreement and hence obviously there was no occasion for him to claim relief of possession. It is altogether different a matter that the defendant has denied plaintiffs possession and Trial Court has neither framed any issue nor recorded any clear finding on this question but so far as the frame of suit is concerned, it cannot be said that without claiming relief of possession, suit itself was not maintainable.

27. In a suit for specific performance of contract, though a claim for possession might be made but it is not obligatory upon the plaintiff to seek such a relief. It is only for the sake of convenience and for avoiding multiplicity of the proceedings that such a prayer for possession of the property is made in a suit for specific performance but until the decree for specific performance is granted, the plaintiff gets no entitlement to possession and therefore, it cannot be said that without the prayer for possession, a suit for specific performance of contract would not be maintainable.

28. Question (d), therefore, is specifically answered against the appellant and it is held that even if the plaintiff has not prayed for the relief for possession, it cannot be said that the suit for specific performance is not maintainable.

Question (c)

29. The learned Counsel for the respondent has urged that the questions which are sought to be raised in this second appeal have no foundation or basis in the case pleaded by the defendant in the Trial Court and the appellant cannot be permitted to raise the question of want of necessary pleadings at the stage of second appeal for the first time. The learned Counsel sought to draw a support from the observations made by this Court in the case of *Vadu v. U.K. Chand* : 1982 RLW 256 in which this Court has, while holding a due compliance of the requirements of Section 16 in the said suit, inter alia observed that,-

"... and the plaintiffs cannot be non-suited in the absence of specific objection being raised in the written statement by the defendants on the ground that they have failed to aver and prove that they had performed or have always been ready and willing to perform the essential terms of the contract which are to be performed by them."

30. The learned Counsel for the appellant on the other hand contended that necessary pleadings as contemplated by Section 16(c) of the Act are the requirement of law and if the want of necessary pleadings is fatal to the case, that gives rise to a pure question of law and could be raised even in second appeal.

31. Having given anxious consideration to the submissions made by the learned Counsel for the parties, this Court is clearly of opinion that this question as to whether the appellant could be permitted to raise this objection about want of pleadings in this second appeal deserves to be answered in affirmative.

32. In a suit for specific performance of contract, it is the requirement of the statute, u/s 16 of the Act, that the plaintiff must aver and prove that he has performed or was always ready and willing to perform his part of the contract according to its true construction. This directly give rise to a specific question of law as to whether the necessary pleadings as required by the law have been taken or not and what is the effect of the pleadings made ?

33. An enquiry into this question does not require any fresh evidence and this question is essentially a pure question of law and deals directly with the maintainability of the action on the part of the plaintiffs and further with the jurisdiction of the court to grant a relief in equity by a decree for specific performance. If such a question arises from the material available on record, or for want of it, which does arise in the present case, this Court is clearly of opinion that it cannot be laid down as an abstract proposition of law that it cannot be permitted to be raised for the first time in second appeal at all.

34. The necessity of such averments on the part of plaintiff cannot be overstated as the same is spelt out in express terms in the provision of law itself. It is a different matter that mere use of letters of statute is not insisted upon by the courts and what result comes out of the construction of pleadings and the material on record is also altogether different an issue. But, it cannot be said that such an objection of

want of necessary pleadings and proof as contemplated by the statute cannot be raised by the defendant in second appeal, even if it be for the first time.

35. So far the observation made by this Court in the case of *Vadu v. UK Chand* (supra), is concerned, it is to be noticed that in the aforesaid case, the contention of the defendant of want of pleadings and proof was rejected with reference to the conduct of the parties which included the purchaser, apart from the payment of entire sale consideration, spending further amount in purchase of the stamps and producing the deed for registration before the Sub-Registrar. This Court agreed with the observations of the Gauhati High Court in *Kamdev Nath Choudhary v. Devendra Kumar Nath*: AIR 1979 Guah 65 where the plaintiff instead of expressing in so many words about readiness and willingness deposited entire consideration amount in the court which was held to be a clear manifestation of his readiness and willingness, After recording a specific finding that there was a substantial and due compliance of provisions of Section 16(c) of the Act, this Court observed that the plaintiff cannot be non-suited in absence of specific objection having been raised by the defendants of the want of necessary averments and proof. Thereafter, the learned Single Judge observed that even at the risk of repetition, it could be said that from the averments in the plaint, nothing remained to be performed for the plaintiffs because even after execution of the sale deed, they presented it for registration before the Sub-Registrar when the vendor failed to get it registered. In that view of the matter, the authorities cited by the counsel for the parties were not examined. The observations made in the facts and circumstances of the said case cannot be read to be an authority of this Court for the sweeping proposition that such objections can never be permitted in second appeal for the first time. This Court is of opinion that in appropriate case, the objection could be raised in second appeal, even if not raised in the courts below. On the facts and in the circumstances of the present case, the appellant is entitled to raise this question. (36). Formulated substantial question (c) is answered in the affirmative, in favour of the appellant, that is to say that the appellant is entitled to raise the question of the absence of necessary pleading even at the stage of second appeal for the first time. Questions (a) and (b)

36. The learned Counsel for the appellant strenuously contended that the fact that the plaintiff has not pleaded about his readiness and willingness to perform his part of the contract remains unquestionable inasmuch as a bare look at the plaint is sufficient to show that the plaintiff has not stated a single word in that regard in the plaint. The learned Counsel urged that as the plaintiff has failed to state his readiness and willingness to perform his part of the contract until the date of suit, such failure operates as a bar against the plaintiff to obtain the relief of specific performance. Learned Counsel further submitted that the want of necessary pleadings and proof is coupled with the omission to pray for possession and is further accompanied with a demand for refund of the entire amount of

consideration. All these circumstances show that the plaintiff was not continuously ready and willing to perform the contract and, therefore, decree for specific performance ought not to have been granted. The learned Counsel referred to Section 16 of the Specific Relief Act and relied upon [Ouseph Varghese Vs. Joseph Aley and Others](#), Abdul Khader Rowther v. Sara Bai, 1989(43) ELT797(SC) and [Ram Awadh \(Dead\) by Lrs. and Others Vs. Achhaibar Dubey and Another](#),

37. Per contra, the learned Counsel for the respondent submitted that once it was established beyond doubt on record that the agreement was executed by the defendant for sale of 27 bighas and 18 biswas of land after taking Rs. 1500/- from the plaintiff, which was the entire sale price, nothing further was required to be done so far the plaintiff was concerned and, therefore, even if the words as such were not put in the pleadings, the same are of no consequence inasmuch as the readiness and willingness of the plaintiff is inherent in the pleadings. The learned Counsel for the respondent further submitted that there is no mathematical formula for considering the requisite pleadings and it is the pith and substance of the plaint averments as a whole which is required to be considered. In the present case, the plaintiff has specifically stated that he has paid the entire consideration, obtained possession, offered and demanded the performance of the agreement which was refused by the defendant. The plaint read as a whole leads clearly to the conclusion that all the necessary pleadings have either been expressly made or are innate and intrinsic in the case pleaded by the plaintiff. Learned Counsel further submitted that there was no question of seeking relief of possession because the possession was with the plaintiff and the alternative prayer for refund of the entire amount with interest has validly been made as recognised and countenanced by law, and it has no impact on entitlement of the plaintiff-respondent to obtain a decree for specific performance. The learned Counsel cited and relied upon [Syed Dastagir Vs. T.R. Gopalakrishnasetty](#), Vadu v. U.K. Chand : 1982 RLW 256 and [Motilal Jain Vs. Smt. Ramdasi Devi and Others](#),

38. The learned Counsel for the appellant rejoined with reference to the decision of the Hon"ble Supreme Court in the case of Manjunath Anandappa Urf Shivappa Hansi v. Tammanasa and Ors. : AIR 2003 SC 1396 and contended that in this later decision, the Hon"ble Supreme Court has considered substantial number of concerning decisions including the decision sought to be relied upon by the learned Counsel for the respondent and it has been held that the requirement of taking the pleadings is a must and not only that the plea has to be taken that the plaintiff had all along been and even on the date of the suit was ready and willing to perform his part of the contract, but also the plaintiff has to prove such as a fact and it is only in exceptional situation where exact words have not been used but readiness and willingness could be culled out from the pleadings that the requirement of Section 16(c) could be held to have been complied with. The learned Counsel also referred to Forms-47 and 48 in the Appendix-A of the CPC to show that the plaint has to contain the specific pleadings about readiness and willingness.

39. For seeking the answers to the questions (a) and (b), applicable provisions and principles of law may be taken note of at the first.

40. It is specific requirement of law for the court of equity to be satisfied that there is no personal bar operating against the plaintiff for grant of equitable relief of specific performance. It being a relief in equity, is fundamentally taken to be a personal relief to the plaintiff concerned. The Specific Relief Act, 1963 is the enactment only to define and amend the law relating to certain kinds of specific relief. This Act (its forerunner being the Specific Relief Act, 1877) is fundamentally based on equity jurisprudence and by its very nature, the Act deals with equitable remedies as opposed to the remedies available in the common law. The Act does not deal with compensatory remedies which are the species of common law, except where the compensatory remedies are required to be dealt with incidentally insofar as they are either supplementary or alternative to the equitable remedies. Section 21 of the Act is clear explication of this principle. The Act deals with different kinds of reliefs which are to be granted in specie, i.e., (i) recovery of possession of movable and immovable property; (ii) specific performance of the contract; (iii) rectification of the instruments; (iv) rescission of contract; (v) cancellation of instruments and (vi) declaratory decrees. These are contained in the respective Chapters in Part-II of the Act, whereas Part-III deals with another branch of equity, that is preventive relief by way of injunction. While specific relief compels the party in default to carry out his duty, on the other hand, the preventive relief is aimed at preventing invasion of or injury to a person's right.

41. The provisions contained in Chapter-II of Part II of the Act dealing with specific performance of the contract begin with Section 9 permitting, subject to other provisions, defences respecting suits for relief based on contract. To put it differently, it starts with rebuttal first and provides the defendant with a right to take any ground in defence which is available for him under the law relating to the contract; the defendant can show that the agreement is not enforceable by law and is NOT a contract (vide Section 2 and 10, Indian Contract Act).

42. Section 10 of the Act provides for the cases in which specific performance of contract is enforceable and a look at the same makes it clear that subject to other provisions, where any non-performance by a person having any impact on the other, could not be adequately compensated by damages, the specific performance may be granted. In case of breach of contract to transfer immovable property, the court would presume, unless contrary is proved, that such breach cannot be adequately relieved by monetary compensation, whereas the principle is quite opposite for movable property (except with two exceptions carved out in Explanation-(ii) of Section 10) that the court is to presume, unless contrary is proved, that the breach of contract to transfer movable property can be relieved by monetary compensation. Section 14(1) of the Act makes it further clear that a contract, the non-performance of which monetary compensation is adequate relief,

would not be specifically performed and so also the contract either running in minute details or dependent on personal qualification or volition of the parties, or otherwise of such nature, which the court cannot enforce or which in its nature is determinable or where something is to be performed continuously which the court cannot supervise. After these broader aspects on and for which specific performance may or may not be granted, the legislation has provided in Section 15 about the persons who can obtain specific performance and thereafter comes Section 16 which provides for personal bar upon the plaintiff which would prevent him from obtaining specific performance. Section 16 reads thus:

"Personal bars to relief-Specific performance of a contract cannot be enforced in favour of a person-

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation-for the purposes of Clause (c),-

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

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

43. As noticed above, by its very nature, the relief of specific performance is a relief in equity as opposed to common law remedy of recovering compensation for a breach of contract and before the court comes in aid of the plaintiff seeking specific performance, he has to satisfy that he is the person concerned who is entitled to the rights under the contract and entitled to recover compensation, that is what the principle behind Clause (a) of Section 16 is. The Court must further be satisfied (vide Clause b) that the conduct of the plaintiff has not been hostile to the contract and he has never acted at variance with the contract. His commitment to the contract has to be clear and absolute.

44. Clause (c) of Section 16 puts another personal bar on a plaintiff to obtain specific performance if he fails to aver and prove that either he has performed or has always been ready and willing to perform the essential terms of the contract which are to

be performed by him except the terms the performance whereof has either been prevented or waived by the defendant. Explanation (ii) makes it clear that the plaintiff must aver either performance or readiness and willingness to perform the contract according to its true construction. However, explanation (i) clarifies that where the contract involves payment of money, the actual tender thereof is not essential. It may be pointed out that predecessor of Section 16 of the Act of 1963 was Section 24 of the Act of 1877 which read thus:

"24. Personal bars to the relief.

Specific performance of a contract cannot be enforced in favour of a person-

(a) who could not recover compensation for its breach;

(b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed;

(c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract; or

(d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force."

45. It could be seen that provisions as contained in Clause (c) of Section 16 of the Act of 1963 were as such not available in the Act of 1877. It is significant to notice that even though such a provision was not in the statute book, but, as the relief itself was based on equity jurisprudence, case law even without existence of a provision like Section 16(c) were specifically to the effect that in a suit for specific performance, the plaintiff must show that all conditions precedent have been fulfilled and must allege and prove his continuous readiness and willingness to perform the contract on his part right from the date of the contract to the time of hearing of the suit. In *Ardeshir H. Mama v. Flora Sassoon*: AIR 1928 P C 208 it was held,-

"Although so far as the Act is concerned, there is no express statement that the averment of readiness and willingness is in an Indian suit for specific performance as necessary as it always was in England (Section 24(b) is the nearest), it seems invariably to have been recognized, and, on principle their Lordships think rightly, that the Indian and the English requirements in this matter are the same."

46. One may also usefully refer to Forms No. 47 and 48 in Appendix-A of the Code of Civil Procedure. Order 6 Rule 3 CPC requires that the forms in Appendix-A, when applicable, shall be used for all pleadings. Form No. 47 deals generally with a suit for specific performance, whereas Form No. 48 deals with a particular kind of a suit for specific performance where the plaintiff even pleads about tendering of the amount (of consideration) to the defendant and demands transfer of property. No such kind of an averment is seen in Form No. 47. Forms No. 47 and 48 carry different required

pleadings so far as readiness and willingness is concerned. While Para 3 of Form No. 47 requires thus,-

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

On the other hand, Para 5 of Form No. 48 states thus,-

"5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant."

47. Another significant factor to be noticed is that these kind of pleadings formed the part of Code of Civil Procedure, 1908 even before the provision as contained in Section 16(c) was enacted in the Specific Relief Act, 1963. The elements of essentials of equity are clearly visible in the Forms of pleadings contemplated by the CPC and with the insertion of Section 16(c) in the Act of 1963, the requirement has been put as a statutory mandate and the principles recognised by the courts have been incorporated in the statute with necessary explanations.

48. It is, therefore, clear that in an action for specific performance, the requirement of making an averment and proving that plaintiff has either performed his part of the contract or has always been ready and willing to perform his part of the contract is not a matter of mere form but is of definite substance.

49. It is of course true that the rules of pleadings cannot be put into any strait jacket formula and one cannot insist for repetition of the mere words, yet the requirement cannot be brushed aside as a mere technical formality. It is rather the very foundation for exercise of equity jurisdiction and forms the very basis for which the relief in equity is granted.

50. In the case of Ouseph Varghese (supra), the plaintiff filed a suit for specific performance alleging that when he sold the suit property to the first defendant, there was an oral agreement between the parties whereunder the first defendant agreed to reconvey the properties sold for the very price whenever the plaintiff calls upon for reconveyance. The first defendant died before filing of written statement and his widow denied the agreement pleaded in the plaint but instead stated that just before his death, her husband had agreed to sale Item No. 1 of the suit property less one acre of paddy field for Rs. 11,500/- and expressed her willingness to give such property. The plaintiff did not pray for any relief on the basis of the agreement pleaded by the defendant nor informed the Court that he was ready and willing to accept the agreement pleaded by the defendant. The Trial Court decreed the suit as prayed for; however, in appeal the High Court did not accept the agreement pleaded by the plaintiff but granted decree in terms of agreement pleaded by the defendant. The Hon"ble Supreme Court, after examining the evidence, found that the story put forward was improbable and also expressed that it was likely that neither side came forward with true version. The Hon"ble Supreme Court referred

to the observation of the Trial Court that there was no clear-cut evidence for proving the oral contract alleged by the plaintiff and thereafter examined the correctness of the decree passed by the High Court in terms of the admission made by the defendant and found that the agreement pleaded by the defendant was wholly different from that pleaded by the plaintiff and the plaintiff had not at any stage accepted that agreement as pleaded by the defendant to be true. The Hon"ble Supreme Court found and held thus:

"The plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. In a suit for specific performance it is incumbent on the plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement pleaded by him but the defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the plaintiff has taken those pleas. As observed by this Court in *Pt. Prem Rai v. The D.L.F. Housing and Construction (Private) (Ltd.) and Anr.*, that it is well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract and in the absence of such an allegation the suit is not maintainable."

51. In the case *Abdul Khader Rowther (supra)*, the plaintiff alleged the mortgage transaction evidenced by Ex. B-I and sale transaction evidenced by Ex. A-I to be sham and intended to protect the property from the creditors. The plaintiff pleaded that despite clear understanding between the parties that no right or interest passed under the documents, the first defendant fraudulently dispossessed the plaintiff of the suit properties and therefore, the plaintiff brought the suit for reconveyance of the properties in terms of the Ex. A-I. The Trial Court found the two transactions to be not sham and being supported by consideration. The Trial Court held that Ex. A-I did not evidence a mortgage by conditional sale but it evidenced sale of suit properties with a covenant for reconveyance of the same and therefore, the suit was decreed holding the plaintiff entitled to recover possession of the suit properties on payment of the sale consideration together with value of improvements. The defendants appealed to High Court on the main ground that when the plaintiff contended Ex. A-I to be a sham one and not intended to be acted upon and he had never stated that he was ready and willing to pay back to the defendants the sale consideration and value of improvements, therefore, he was not entitled for reconveyance. This ground found favour with the High Court and the decree of the Trial Court was reversed. Inter alia, it was contended before the Hon"ble Supreme Court on behalf of the plaintiff-appellant that even if the plaint language was not in strict conformity with Forms 47 and 48 of First Schedule to CPC, there was

substantial compliance thereof. The Hon"ble Supreme Court noted and approved the findings of High Court, wherein the High Court stated,-

"Even by putting a liberal construction on the various statements contained in the plaint, it is difficult to hold that there has been even a faint attempt to make it to conform to the requirements prescribed in Forms 47 and 48 of the First Schedule in the Civil Procedure Code, that the plaintiff had applied to the defendants specifically to perform the agreement and that he had been and is still ready and willing to specifically performs his part of the agreement...."

52. The Hon"ble Supreme Court found that the case of the plaintiff that the documents in question were sham transactions was not accepted by the Trial Court and these findings were not challenged by the plaintiff even in appeal filed by the defendants. In those circumstances, the Hon"ble Supreme Court found that the plaint did not contain the requisite pleadings necessary to obtain a decree for specific performance and on the contrary it was a case where the plaintiff was seeking specific performance of a contract stated to be evidence by an allegedly sham document. The Hon"ble Supreme Court quoted the law already stated in Ouseph Varghese (supra), and following that principle, dismissed the appeal of the plaintiff.

53. In the last case cited by the learned Counsel for the appellant in his opening submissions of Ram Awadh v. Achhaibar Dubey (supra), a Three Judges Bench of the Hon"ble Supreme Court was referred the question of correctness of the view expressed in Jugraj Singh v. Labh Singh: AIR 1995 SC 945. In that case of Jugraj Singh, the Hon"ble Supreme Court had taken the view that the plea of the bar of Section 16(c) of the Act was a personal plea available to the vendor and the subsequent purchasers have got only the right to defend their purchase on the ground that they had no previous knowledge of the agreement and were bona fide purchasers for valuable consideration. The Hon"ble Supreme Court took the view that the plea, that the plaintiff must always be ready and willing to perform his part of the contract, must be available to the vendor or his LRs but not to the subsequent purchasers.

54. On the matter being referred to the Three Judges Bench for re-considering the ratio of Jugraj Singh's case, the Hon"ble Supreme Court held with reference to Section 16 of the Act that the obligation imposed by Section 16 is upon the Court and a Court may not grant the specific performance to a plaintiff who has failed to aver and to prove that he has performed or always been ready and willing to perform his part of the agreement. In that view of the matter, the Hon"ble Supreme Court held that there was no question of the plea being available to one defendant and not to another. The Hon"ble Supreme Court held thus:

"The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of Clauses (a), (b) and

(c) thereof. A Court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the Court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh's case (1995 AIR SCW 901 : AIR 1955 SC 945) is erroneous."

55. Coming to the decisions cited by the learned Counsel for the respondent, it may be noticed that in the case of Syed Dastagir (supra), the plaintiff had clearly pleaded that he had paid and defendant had received a total of Rs. 3,880/- out of the balance amount of Rs. 4,000/- due on the agreement for sale and the defendant refused to accept the final remaining amount of Rs. 120/- which was tendered in the court. The Trial Court granted, and first appellate court affirmed, the decree for specific performance, which, however, was reversed by High Court for want of pleadings as required by Section 16(c) of the Act. After referring to the pleadings of the plaintiff, the Hon"ble Supreme Court referred to the contention on behalf of the defendants-respondents that the actual words i.e., "ready and willing to perform his part of the contract" were missing and that was a dis-entitlement for the relief in view of Section 16(c). The Hon"ble Supreme Court held that in construing a plea in a pleadings, it must be kept in mind that a plea is not an expression of art or science, but an expression through words to place facts and law and one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still the meaning could be gathered by reading the whole of the pleadings. To gather true spirit behind a plea, it should be read as a whole and one has to see pith and substance to judge whether he has performed his obligations, no specific phraseology or language is required to take such a plea. Mechanical reproduction of the exact words of the Statute would amount to insisting for the form rather than the essence. The Hon"ble Supreme Court held thus:

"10. Returning to the facts of the present case we find the aforesaid pleading recites that all balance amount of the consideration under the contract has been paid by the plaintiff of which there is an endorsement by the defendant except the balance amount of Rs. 120 about which also there is a specific plea that he has tendered the same in the Court. It is true that in the pleading the specific words "ready and willing to perform" in this nomenclature are not there but from the aforesaid plea, could it be read that the plaintiff was not ready and willing to perform his part of that obligation? In other words, can it be said that he has not pleaded that he is "ready and willing" to perform his part? Courts cannot draw any inference in the abstract or to give such hypertechnical interpretation to defeat a claim of specific performance which defeats the very objective for which the said Act was enacted. The section makes it obligatory to a plaintiff seeking enforcement of specific performance that

he must not only come with clean hands but there should be a plea that he has performed or has been and is ready and willing to perform his part of the obligation. Unless this is there, Section 16(c) creates a bar to the grant of this discretionary relief. As we have said, for this it is not necessary to plea by any specific words, if through any words it reveals the readiness and willingness of the plaintiff to perform his part of the obligation then it cannot be said there is non-compliance of the said section."

56. The Hon'ble Supreme Court also referred to the requirement as explained by Explanation-(i) to Clause (c) that it was not essential for the plaintiff to actually tender to the defendant or deposit in the Court any money except when so directed by the Court but in terms of Explanation-(ii), he must at least aver his performance or readiness or willingness to perform his part of the contract. The Hon'ble Supreme Court found that although it was not essential for the plaintiff to tender the amount but that did not mean that he could not do so and hence when the plaintiff has tendered the balance amount of Rs. 120/- in Court even without the Court's order it cannot be construed adversely against the plaintiff. The Hon'ble Court also referred to the earlier decision in [R.C. Chandiok and Another Vs. Chuni Lal Sabharwal and Others](#), and observed that the readiness and willingness cannot be treated as a strait-jacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned. The Hon'ble Supreme Court in the said case held the interpretation put by the High Court on the pleadings to be wrong and the plea taken by the plaintiff coupled with his tendering of the total amount was accepted as showing that he has performed his part of the obligations.

57. The learned Counsel for the respondent also relied upon Motilal Jain's case (supra), where the plaintiff entered into an agreement on 20.2.1977 for purchase of the suit property for a consideration of Rs. 25,000/- out of which Rs. 17,000/- were paid at the time of execution of the contract and balance of Rs. 8,000/- were stipulated to be paid within five months from the date of the agreement, at the time of execution of the registered sale deed. Alleging that the defendant was evading to receive the balance amount and execute the sale deed, the plaintiff sent notices nearly 14 months after the execution of the agreement and then filed the suit on 10.8.1979 for specific performance of contract and in the alternative for damages. The defendant denied the execution of agreement at all. The Trial Court held the agreement to have been executed and decreed the suit for specific performance. In appeal, the High Court confirmed the finding of execution of the agreement but noted the delay in filing of the suit, want of averments in the plaint about readiness and willingness and want of proof of the same and, therefore, the decree for specific performance was set aside but instead a decree for compensation was granted. The decision in R.C. Chandiok and Syed Dastagir (supra), were relied upon before the Hon'ble Supreme Court in appeal by the plaintiff, whereas the decisions in Ouseph Varghese and Abdul Khader were relied upon by the defendants for the respective

arguments for want of pleading and proof of readiness and willingness. The Hon"ble Supreme Court firstly found as incorrect the approach of the High Court regarding the delay in filing the suit as the delay was neither running beyond the prescribed period of limitation nor due to delay and third party rights have been created nor it rendered inequitable to grant a discretionary relief. The Hon"ble Supreme Court thereafter referred to the contention regarding the want of pleadings of readiness and willingness. The Hon"ble Court referred to the ratio emanating from Ouseph Varghese and Abdul Khader's cases but then noted that a different note was struck in R.C. Chandiok's case which was relied upon by a Three Judges Bench in Syed Dastagir's case (supra). The Hon"ble Supreme Court found that the concerning averments were not of a mathematical formula that it should be in the specific words and if the averments read as a whole do clearly indicate the readiness and willingness merely because the plea was differently worded would not militate against the readiness and willingness of the plaintiff. The Hon"ble Supreme Court held,-

"It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfill his part of the obligations under the contract which is subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale."

58. The Hon"ble Supreme Court perused the paras 6 to 11 of the plaint which indicated readiness and willingness of the plaintiff and the contention that the conduct of the plaintiff disentitles him to the relief of specific performance was not accepted.

59. In the said case of Motilal Jain, another contention was raised that as the plaintiff has claimed compensation in lieu of specific performance, he has desentitled himself to claim specific performance. The Hon"ble Supreme Court found that such a claim was in accord with the provisions of Section 21 of the Act and merely because the plaintiff claims damages as alternative relief, it cannot be said that he was not entitled to the main relief. In that view of the matter, the appeal of the plaintiff was allowed and the judgment and decree of the Trial Court was restored.

60. The learned Counsel for the respondent has also relied upon the decision by a Single Judge of this Court in Vadu V. U.K. Chand (supra). The facts of that case were that Smt. Kanu was alleged to have sold her land to the plaintiff for Rs. 1500/- on August 3, 1965 and executed a sale-deed (Ex. 1) on the same day on a stamp of Rs. 48/-. It was not registered on the same day because the Office of the Sub Registrar was closed. The old accounts between the plaintiffs and Mst. Kanu were settled and the balance of Rs. 1100/- was adjusted towards the sale price. The plaintiffs paid Rs. 400/- in cash to her. According to the plaintiffs, she was misguided by others and sold the same land to the defendant No. 2 and 3 on May 29, 1966. The plaintiffs

averred that defendants No. 2 and 3 had knowledge about the transfer in their favour when they obtained the sale-deed of the suit land. The plaintiffs therefore, filed the suit for specific performance and possession and in the alternative for the return of the sale price, stamp expenses with interest. The defendants denied execution of any document for sale. The Trial Court dismissed the suit but the First Appellate Judge accepted the appeal and decreed the suit for specific performance of contract. A contention was raised before this Court that the plaintiffs failed to take averments about readiness and willingness. This Court, after considering the pleadings, found that whatever was performed by the plaintiffs in respect of the contract was averred and nothing remained to be performed by them. This included the fact that the plaintiff has spent amount for purchase of stamps and presented sale-deed for registration before the Sub Registrar. This Court found thus,-

"It is clear from the plaint that the sale-deed (Ex.1) dated 3.8.1965 was written on a non-judicial stamp paper and it was executed. It is also stated that the sale deed could not be registered as the office time of the Sub-Registrar was over on that day and, therefore, the defendant agreed to get it registered. In para 2 of the plaint it was stated that the sale consideration was Rs. 1500/- out of which Rs. 1100/- which were found due from Smt. Kanu were adjusted towards the sale price and Rs. 400/- were paid in cash. In para 3, it is mentioned that the plaintiffs spent Rs. 48/- in connection with the stamps etc. and Rs. 1.20 were paid cash on being asked by defendant No. 1 which she failed to return. The sale-deed, which was executed by defendant No. 1 was presented for registration in the office of the Sub-Registrar by the plaintiffs. But despite information, she did not appear before the Sub-Registrar for registration and tried to avoid it. From these averments in the plaint, it is clear that whatever was performed by the plaintiffs in respect of the contract was averred and that nothing remained to be performed by them."

61. The later decision by the Hon"ble Supreme Court in the case of Manjunath Anandappa Urf Shivappa Hansi v. Tammanasa and Ors. (supra), referred by the learned Counsel for the appellant may now be noticed. In this case of Manjunath, the Hon"ble Supreme Court was concerned with a suit for specific performance in which the defendant No. 2, the constituted attorney of defendant No. 1, on or about 1.10.1978 was alleged to have entered into an agreement for sale of the suit property for a consideration of Rs. 30,000/- out of which a sum of Rs. 20,000/- was allegedly paid in advance and the plaintiff was allegedly put in possession of the suit property. The deed of sale, pursuant to the agreement was to be executed within three years on payment of the balance of Rs. 10,000/- The defendant No. 3 purchased the suit property by a registered sale deed on 15.5.1984 for a consideration of Rs. 50,000/-. The plaintiff made inquiries and after coming to know about execution of the sale deed, served a notice upon the defendants No. 1 and 2 on 8.8.1984 demanding specific performance and then filed the suit. It was not in dispute that the plaintiff did not take any averments as regards his readiness and willingness in terms of Section 16(c) of the Act and the only allegation was that after

the agreement of sale, the defendant No. 2 was asked to bring defendant No. 1 and to execute the sale deed after receiving the balance of the sale consideration but the defendant No. 2 went on postponing the same. At last, the plaintiff demanded defendant No. 1 and 2 by giving notices and despite notice, the defendant No. 2 not replied whereas the notice sent to the defendant No. 1 returned unclaimed. The Trial Court dismissed the suit for want of necessary averments of readiness and willingness. The First Appellate Court endorsed the view of the Trial Court. In second appeal, however, the High Court reversed the findings. The only substantial question of law formulated was regarding readiness and willingness on the part of the plaintiff but the High Court answered the question by merely saying that the said question did not arise for the simple reason that defendant No. 1 and 2 did not contest the case. The High Court considered the question whether the appellant-defendant No. 3 was a bona fide purchaser and answered in the negative on the ground that he did not examine himself in the suit.

62. In the backdrop of the aforesaid facts, the Hon"ble Supreme Court considered substantial number of authorities on the subject. Amongst others, the Hon"ble Supreme Court specifically referred to the decisions in Ouseph Varghese and Abdul Khader (supra), which have been relied upon by the counsel for the appellant in the present case. The Hon"ble Supreme Court also referred to the cases of Syed Dastagir and Motilal Jain (supra), which have been relied upon by the learned Counsel for the respondent in the present case. The apart, the Hon"ble Supreme Court referred to the case of R.C. Chandiok (supra), which had been relied upon in Syed Dastagir and so also another decision in [Pushparani S. Sundaram and Others Vs. Pauline Manomani James \(Deceased\) and Others](#), The law laid down and explained by the Hon"ble Supreme Court in Manjunath's case (supra), after explaining the previous decisions is as follows:

"27. The decisions of this Court, therefore, leave no manner of doubt that a Plaintiff in a suit for specific performance of contract not only must raise a plea that he had all along been and even on the date of filing of suit was ready and willing to perform his part of contract, but also prove the same. Only in certain exceptional situation where although in letter and spirit, the exact words had not been used but readiness and willingness can be culled out from reading all the averments made in the Plaintiff as a whole coupled with the materials brought on record at the Trial Court of the suit, to the said effect, the statutory requirement of Section 16(c) of the Specific Relief Act may be held to have been complied with."

63. The Hon"ble Supreme Court immediately after referring to Section 16 of the Act has observed thus,-

"In terms of the aforementioned provision, it is incumbent upon the plaintiff both to aver and prove that he had all along been ready and willing to perform the essential terms of contract which were required to be performed by him."

64. The Hon"ble Supreme Court has also held,-

"Forms 47 and 48 of the Appendix A of the CPC prescribe the manner in which such averments are required to be made by the plaintiff."

65. Considering the facts and circumstances of the case and previous decisions, the Supreme Court found that plaintiff cannot be said to have substantially complied with requirement of law. While holding that plaintiff was not entitled to the relief of specific performance, the Hon"ble Supreme Court also referred to the conduct of the plaintiff in filing suit after six years of agreement and not showing demand of performance to the owner of the property, defendant No. 1.

66. It may also be pointed out that in the case of [Pukhraj D. Jain and Others Vs. G. Gopalakrishna](#), the Hon"ble Supreme Court has again laid down the law in no uncertain terms that,-

"Section 16(c) of the Specific Relief Act lays down that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant. Explanation (ii) to this sub-section provides that the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. The requirement of this provision is that the plaintiff must aver that he has always been ready and willing to perform the essential terms of the contract. Therefore, not only should there be such an averment in the plaint but the surrounding circumstances must also indicate that the readiness and willingness continue from the date of the contract till the hearing of the suit. It is well settled that equitable remedy of specific performance cannot be had on the basis of pleadings which do not contain averments of readiness and willingness of the plaintiff to perform his contract in terms of Forms 47 and 48 CPC."

67. The gist and essence of the matter remains, as condensed and declared by the Hon"ble Supreme Court in Manjunath's case (supra), that raising of a plea on the part of the plaintiff in a suit for specific performance of contract, that he had all along been and even on the date of filing of the suit ready and willing to perform his part of the contract, is a mandatory requirement of law, the plaintiff should not only plead it but is also obliged to prove the same. It is only in exceptional situations the want of such pleading would not be fatal when, otherwise, the readiness and willingness could be culled out from the reading of the entire averments coupled with the material to the effect brought on record at the trial. Nonetheless, the requirement is mandatory and it is not a matter of mere form but is of substance for the obvious reason that what the plaintiff is asking for is a relief in equity which is ultimately at the judicial discretion of the Court. As seen from the decision in Ram Awadh (supra), the obligation is upon the Court not to grant specific performance if

the plaintiff fails to meet the requirements of Section 16.

68. A journey through the voluminous case law on the subject makes one aspect clear that the requirement is mandatory and want of it is fatal to the suit for specific performance. However, in a given fact situation, despite not taking the pleadings in so many words, when the fact that the plaintiff has performed his part of the contract or his continuous readiness and willingness to perform the essentials on his part, is otherwise discernible from the pith and substance of the pleadings and material on record taken as a whole and stand proved by the evidence, the decree for specific performance could be granted or maintained. However, as laid down by the Hon<sup>ble</sup> Supreme Court in the case of Manjunath, it could only be in exceptional cases.

69. It follows at once that ordinarily the pleadings indicative of the plaintiff having performed his part of the contract or his being continuously ready and willing to do so are a must and proof of these elements is also a must for a decree for specific performance of the contract.

70. The requirement of the pleadings on these material aspects are not merely related to the technical rules of pleadings but directly deal with the substantive law inasmuch as the relief of specific performance of a contract is itself a relief carved out from the principles of equity and it is not the relief available in common law, where normally, in case of breach of contract, the entitlement remains limited to damages and compensation. This being a relief in equity, it has been left at the judicial discretion of the Court, whether to grant specific performance or not. For obtaining such relief in equity, the conduct of the plaintiff vis-a-vis the relationship of the parties is of material significance and that is why Section 16 of the Act prescribes personal bars to relief of specific performance, the bars being personal to the plaintiff. The requirement of Section 16 are not a mere formality but a plaintiff is obliged to establish that no personal bar is operating against him for grant of a decree for specific performance.

71. A comprehensive reading of the plaint makes it apparent that the plaintiff has definitely failed to aver that he has performed his part of the contract or that he has always been ready and willing to perform essential terms of the contract which were to be performed by him according to its true construction. The learned Counsel for the respondent strenuously contended that nothing was further required to be performed by the plaintiff and, therefore, this technical requirement of simply making the averment of being ready and willing to perform the agreement cannot come in the way of maintaining the decree for specific performance granted by the two courts below. The contention put forward by the learned Counsel for the respondent cannot be accepted for the reason that it is the continuous readiness and willingness to perform the essential terms of the contract that is incumbent for the plaintiff to aver and prove. If he has carried out the performance of such essentials, then also the requirement of the law for the plaintiff to aver and prove

that he has performed his part of the essential terms of the contract.

72. The fact remains that no such essential averments could be culled out even in the periphery of the averments taken in the plaint. It is rather extremely difficult for a court of equity to presume the readiness and willingness to be available in the aforesaid plaint averments either directly, or between the lines or even in the periphery.

73. The performable terms of a contract could be those, that have to be performed before the other side could be called upon to carry out his part and there could be other terms which may have to be subsequently performed. Accomplished performance is required to be shown and a clear expression has to come of readiness and willingness to perform the later conditions. From the plaint averments, it is evident that neither completed performance has been stated nor willingness to perform the essentials has been stated. Even while putting a most liberal construction on these pleadings, at the most, it could be said that the plaintiff has averred about demand of performance to show existence of elements of his willingness before filing of the suit (evidence and proof thereof is also shaky, as we shall presently see) but in any case, the plaint is lacking in material aspect of showing continuous readiness and willingness on the part of the plaintiff to perform the essentials of the agreement, while filing the suit.

74. For further comprehension of the case sought to be set up by the plaintiff, the other surrounding circumstances may also be looked at. Examining the evidence as a whole, some more doubts are generated rather than quelling of already existing doubts.

75. Learned Counsel for the respondent laid a great emphasis on the fact that the entire consideration had been paid, possession had been obtained, demand of performance was made and refusal of the defendant was obtained and, therefore, the plaintiff has practically done everything which was required of him for seeking specific performance. It is of course true that the payment of the entire sale consideration of Rs. 1500/- is stated in the agreement and has been held proved by the two courts below. However, so far the possession is concerned, despite a specific denial made by the defendant, the learned courts below have chosen not to put this aspect in issue at all and the findings by the learned courts below also cannot be read for a categorical decision on the question of possession. Leaving that aside, the material aspect of the case remains that even the cursory pleadings regarding the demand and refusal of performance taken in the plaint have not been specifically established in evidence. The plaintiff PW-1 Sohan has not stated a single word in the examination-in-chief as to when he demanded performance from the defendant and when the defendant refused? A line coming in the cross-examination is to the effect that 2-3 months after the agreement, he asked for registration. This nature of evidence when examined in the light of the plaint averments show that the so-called demand and refusal are not established as purported to be alleged. It

has been averred in the plaint that very many times, the performance was demanded but the defendant only stated that he was engaged in the marriage of his son and after the marriage, he would get the document registered, he was again asked after the marriage, then he refused on 19.8.1971. The agreement is dated 30.7.1970. Several demands of performance and avoidance in the name of marriage and refusal on 19.8.1971 have not at all been stated by the plaintiff in his evidence nor there is any other supporting material on record by which such averments could be held proved. Even in the cross-examination of the defendant, such demand and refusal has vaguely been suggested that even after delivery of possession to Sohan and cultivation for two years, he refused to execute the sale. This vague suggestion of refusal after two years is incompatible with all other averments and circumstances of the case, and is obviously incorrect. Therefore, it cannot be said that the plaintiff has proved even his past willingness to perform his part and to get the contract performed. Moreover, there is no evidence at all to show, or to provide a basis for even an inference that the plaintiff always carried such willingness continuously.

76. It is also noticed that the agreement carried with it a serious uncertainty for not stating the land agreed to be sold in its exact measurements with four boundaries. The land of the defendant was 52 bighas and 18 biswas and if he was retaining 25 bighas with him, division of the land by mets and bounds became necessary. The measurement could not have been stated as "27 bighas approximately" because there is no question of any approximation when the specific measurements were known. Then there is another doubt created about the true nature of transaction from the market price of the land as stated by Sagarmal, scribe of Ex.1, who seems to be dabbling in such land. He has sold about 26 1/2 bighas of land in Svt. 2028 or 2029 for Rs. 5000/- and another field he has sold in Svt. 2032 at the rate of Rs. 200/- per bigha. With the price range stated by him, no reason worth the name has been brought on record why the defendant was obliged to sell 27 bighas and 18 biswas of land for Rs. 1500/- only? Be that as it may, these aspects of the matter are not being gone into further for the reasons that the findings of fact on the existence of the agreement and payment of consideration of Rs. 1500/- cannot be re-opened in the second appeal nor any question of law has been formulated there for. However, all these circumstances have been pointed out for the purpose of noticing the significant aspect of the case that in a plaint seeking specific performance of such kind of a contract there is obvious omission to state and prove accomplished performance and continuous readiness or willingness of performance, and further there is a specific prayer in the alternative for the decree of Rs. 1500/- (the entire amount paid by the plaintiff) with interest at the rate of 1% per month. (78). The "willingness" is the exact state of mind of the plaintiff. The elements of willingness on the part of the plaintiff to adhere to the contract by all means in its true construction have been contradicted effectively by the plaintiff himself when he has not only omitted to take averments regarding his continuous willingness but

coupled with this omission he sought the relief of entire consideration with interest particularly when he sought such relief in the alternative and not in addition. Section 21 of the Specific Relief Act reads thus:

"Section 21. Power to award compensation in certain cases-

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) 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.

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint the Court shall, at any stage at the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation-The circumstances that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section."

77. In a plaint omitting to state averments required by Section 16(c) of Act, the significance of the claim of relief of compensation not in addition but in substitution of the relief of specific performance cannot be ignored.

78. Mere omission to state the elements as required by Section 16(c) may not by itself be sufficient to deny specific performance if otherwise the plea could be culled out from the pleadings and material on record taken as a whole; and, mere claim of refund of the purchase price with interest may also by itself be not sufficient to deny specific performance, if otherwise, found available; but scenario in the present case is that the want of necessary pleadings and proof of performance or continuous willingness to perform is coupled with the demand for refund of entire consideration.

79. This Court is clearly of opinion that want of necessary plea and proof coupled with demand for refund strikes at the bottom of the case of the plaintiff. It is not a case of mere omission to plead and show willingness to go along with contract, it is further a case of showing unwillingness. The plaintiff has claimed a relief which it was not necessary to claim and has omitted to plead which it was necessary to plead.

80. In the present case, the plaintiff has not only failed to aver and prove that he has performed or has always been ready and willing to perform his part of the contract but has specifically prayed for a relief in the form of refund of the sale price with interest at the rate of 1% per month specifically in the alternative and not in addition. The fact that the plaintiff did not plead and prove essentials of Section 16(c) of the Act coupled with the fact that plaintiff asked for refund of the entire amount with interest, operate against the plaintiff and it at least shows that he was not continuously willing to go along with contract and to perform his part of the essentials of the same. It would have been a different matter if the plaintiff would have pleaded and proved his readiness and willingness and would have explained the reasons for his asking for compensation in the alternative but the plaintiff has not only omitted to do so, but has further over-emphasized on the relief of refund of the amount by hastening to add in para 6 (kha) while claiming alternative relief that "for this reason full court fee has been paid".

81. The pleading read as a whole cannot be construed to be answering the requirements of Section 16(c) of the Act. Even by putting liberal construction on the case set up by the plaintiff and not insisting upon the repetition of the letters of the statute, on a total comprehension of the case set up by the plaintiff, it is found that the necessary averments are conspicuously omitted in the plaint and the surrounding circumstances do not indicate that plaintiff was ready and willing to perform the contract according to its true construction and rather the entirety of facts and circumstances show that his primary election was to get back the amount of Rs. 1500/- with interest. The decree for specific performance in such circumstances ought not to have been granted. Both the courts below have not adverted to the essentials of the requirements of law. The decree for specific performance cannot be sustained and deserves to be set aside.

82. The questions (a) and (b) are specifically decided in favour of the appellants, that is to say, that the plaintiff's suit for specific performance of the contract was required to be dismissed on the ground that he failed to express his continuous readiness and willingness and failed to aver in the plaint about his having performed the essential terms of the contract or his being always ready and willing to perform his part of the contract.

Question (e)

83. Taking up Question (e) now, one may usefully refer to the relief granted by the Trial Court and affirmed by the appellate court. As quoted hereinabove, the learned Trial Court has proceeded to grant both the reliefs as claimed in the alternative by the plaintiff that is of specific performance of the contract and in the alternative for refund of amount of Rs. 1500/- with interest at the rate of 1% per month. The Trial Court also granted a decree for injunction which has been set aside by the Appellate Court. However, the Appellate Court has otherwise endorsed the decree granted by the Trial Court in the aforesaid alternative form.

84. The decree granted by the Trial Court suffers from the fundamental error of jurisdiction. A plaintiff could definitely seek the reliefs in the alternative but the Court cannot grant both the reliefs in the alternative in the manner and form as granted in the present case. In a suit for specific performance of the contract when the plaintiff has claimed relief of specific performance and in the alternative of refund of entire amount paid by him with interest either, the decree for specific performance of contract could have been granted or the relief of compensation or of refund of the price or earnest, as the case may be. The relief of refund of amount u/s 22 is granted when specific performance is refused and relief of compensation could either be in addition or substitution of specific performance u/s 21. In the present case, the amount was claimed in the alternative, that is in substitution of the specific performance. In such circumstances, question (e) is answered to the effect that the learned Trial Court has erred in granting both, the decree for specific performance of contract and an alternative decree for refund of the sale price with interest without specifying the reasons for such a course and without specifying as to how and when the alternative money decree was to be enforced?

85. The plaintiff cannot be left at the option or election to either get the document executed or in the alternative to have the amount refunded. Money decree in the present case was claimed and could have been granted only when specific performance was refused. Leaving a plaintiff at election without specifying the reasons and basis for such a course to either get specific performance or to have amount refunded back is not compatible with the nature of relief being granted by the court.

86. However, in the present case, as found in the answers to Questions (a) & (b) supra, the plaintiff is not entitled for the relief of specific performance and that part of the decree deserves to be set aside. With setting aside of the said part of the decree, this Court is of opinion that now remaining part of the decree of refund of amount by the defendant to the plaintiff could not only be maintained but deserves to be maintained for the reason that the finding of fact on the question that the defendant entered into the agreement and received the amount of Rs. 1500/- stands concluded being the concurrent finding of fact and in equity, the defendant ought to return the amount with interest as allowed by the two courts below.

87. In the case of [Kanshi Ram Vs. Om Prakash Jawal and others](#), the Hon"ble Supreme Court considered the balance of equities wherein a suit was filed in the year 1970 for specific performance and alternatively damages for sum of Rs. 12,000/-. The courts below had granted decree for specific performance and the appellant offered an amount of Rs. 10 lacs as alternative relief though the respondent claimed only Rs. 12,000/- instead of granting specific performance. Having regard to the facts of the case, the Hon"ble Supreme Court considered the question as to whether it would be just, fair and equitable to grant the decree for specific performance. Although the rise in price during the pendency of the suit may not be the sole consideration for refusing the decree but this is equally well settled that the decree for specific performance is in the discretion to be exercised on sound principles. In those circumstances, the Hon"ble Supreme Court took into consideration the fact that the plaintiff himself has claimed alternative relief for damages and observed thus:

"When the Court get into equity jurisdiction, it would be guided by justice, equity, good conscience and fairness to both the parties. Considered from this perspective, in view of the fact that the respondent himself had claimed alternative relief for damages, we think that the Courts would have been well justified in granting alternative decree for damages, instead of ordering specific performance which would be unrealistic and unfair. Under these circumstances, we hold that the decree for specific performance is inequitable and unjust to the appellant."

88. The Hon"ble Supreme Court, therefore, allowed the appeal and instead of specific performance granted a compensation of Rs. 10 lacs to the respondent.

89. In the case of [Parakunnan Veetill Joseph"s Vs. Nedumbara Kuruvila"s and Ors](#), the Hon"ble Supreme Court held that Section 20 preserves the judicial discretion of the Court and the Court is not bound to grant specific performance merely because it was lawful to do so. The Hon"ble Supreme Court held thus,-

"14. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion to Courts as to decreeing specific performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff."

90. In the case of [B.R. Mulani Vs. Dr. A.B. Aswathanarayana and others](#), the Hon"ble Supreme Court upheld the refusal of relief for specific performance on the ground that the plaintiff had taken unfair advantage of the agreement and if the equity jurisdiction would be exercised in favour of the plaintiff, it would result in great hardship to the defendants. The Hon"ble Supreme Court however observed that certain equities were required to be taken note of and adjusted in moulding the

relief. The Hon'ble Supreme Court, therefore, directed for repayment of the monies paid against the mortgage with accrued interest thereon and further compensation in lieu of specific performance was also granted.

91. On the facts and in the circumstances of the present case, as noticed above, the balance of equities lies in maintaining the decree for refund of the amount of Rs. 1500/- with interest awarded by the courts below @ 12% per annum. In that view of the matter, the later part of the decree is upheld while deleting the relief of specific performance.

Other contentions

92. The learned Counsel for the appellant urged, apart from the formulated questions, that decree for specific performance was not called for in this case as the land in question is the principal source of livelihood of the appellant and he would suffer comparatively greater hardship if deprived of the land. However, in view of the findings on Questions (a), (b) & (e) supra, this question proposed by the learned Counsel for the appellant relating to the considerations of Section 20 of the Act of the hardship likely to be suffered by the defendant in the event of granting of a decree for specific performance, need not be gone into. The defendant has even otherwise not taken any specific pleading in that respect nor raised any such ground before the courts below for which the courts below could have considered in refusing to exercise discretion in granting the decree for specific performance with reference to Sub-section (2) of Section 20 of the Act. Be that as it may, as the decree for specific performance is not being maintained, any further dilatation on this question is not necessary and this contention of the learned Counsel for the appellant is, therefore, rejected as redundant.

Conclusions:

93. In view of the answers to the questions of law formulated in the present case, the decree for specific performance cannot stand and the same is liable to be reversed and the suit for the relief of specific performance is liable to be dismissed. However, the plaintiff has been held entitled to the refund of Rs. 1500/- with interest at rate of 12% per annum and with concluded finding on issue No. 1 of the defendant having entered into the agreement and having received the amount of Rs. 1500/-, it is justified that the defendant be directed to refund the amount received by him with interest as awarded by Trial Court.

94. As a result of the aforesaid, this appeal is partly allowed, the decree under appeal is reversed so far the relief of specific performance is concerned and the suit for specific performance of the agreement stands dismissed. However, the plaintiff is held entitled for refund of the amount of Rs. 1500/- with interest at the rate of 12% per annum from the date of agreement till realisation. In the circumstances of the case, the parties are left to bear their own costs through-out.