The Poorna Pictures Private Limited Vs Karimunnisa Begum

Court: Andhra Pradesh High Court

Date of Decision: Oct. 10, 2014

Acts Referred: Contract Act, 1872 â€" Section 56, 63

Citation: (2015) 3 ALD 2 : (2015) 3 ALT 82

Hon'ble Judges: M.S.K. Jaiswal, J

Bench: Single Bench

Advocate: G. Pedda Babu, Advocate for the Appellant; M.S. Srinivasa Iyengar, Advocate for the Respondent

Judgement

M.S.K. Jaiswal, J.
The plaintiff, being unsuccessful in O.S. No. 313 of 1982 on the file of the learned Additional Chief Judge, City Civil

Court, Hyderabad, in obtaining the decree for specific performance of the agreement, dated 21-08-1977, has preferred the appeal assailing the

Judgment and Decree dated 28-01-1993. The plaint schedule property comprises of 4188 Sq. Yds., forming part of the premises Nos. 1-1-79/C,

1-1-79/B and 1-1-79/A/1, Musheerabad, Hyderabad.

2. The plaintiff, which is a private limited company, in its plaint pleaded that on 21-08-1977 it agreed to purchase the suit schedule property from

the defendants No. 1 to 3 for a consideration of Rs. 4,00,000/- and paid Rs. 40,000/- towards advance and the sale agreement was reduced into

writing. As per the terms of the sale agreement, the plaintiff was entitled to apply for permission so as to construct a theatre in the suit schedule

property. It is averred that originally nine months time was agreed for obtaining such permission, but the time was extended up to 21-10-1978 by

mutual agreement. When the plaintiff applied for permission, the concerned authorities refused to grant the same and then the plaintiff filed W.P.

No. 2028 of 1980 before the High Court, which was pending. It is further averred that the plaintiff addressed several letters to the defendants No.

1 to 3 expressing its readiness and willingness to pay the balance sale consideration. The defendants replied stating that the suit schedule property

was agreed to be sold for the purpose of constructing a theatre and since the permission was refused, the agreement stood cancelled. Such an

interpretation of the terms of the agreement is not correct. The clause providing for obtaining the permission for the benefit of the plaintiff and it is

for the plaintiff to waive such clause. The time is not the essence of contract for the fulfillment of that clause. It was further pleaded that in fact,

defendants No. 1 to 3 extended the time till 24-10-1978 by their letter, dated 24-07-1978. That the plaintiff addressed several letters to the

defendants No. 1 to 3 calling upon them to obtain necessary permission from the competent authority under the Urban Land Ceiling Act but they

failed to do so. The plaintiff has been always ready and willing to perform its part of the contract but the defendants No. 1 to 3 refused to perform

their part of the contract. It was also pleaded that after filing of the suit, the plaintiff came to know that a portion of the suit schedule property

consisting of 2,000 Sq. Yds., was sold to the 4th defendant. So, the 4th defendant was also impleaded and the decree that might be passed in

favour of the plaintiff would bind on her also. In fact, the 4th defendant had the prior notice of the suit agreement. Hence, the suit.

3. Defendants No. 1 to 3 filed their written statement contending that the plaintiff has not complied with the terms and conditions of the agreement,

that the claim is time barred and the suit for specific performance is untenable. The plaintiff has not come to the Court with clean hands and

therefore the discretionary power of equitable relief of specific performance cannot be granted. It was also further pleaded that it was agreed that

the sale transaction would be completed only when the authority permits the plaintiff to construct a theatre and for that purpose six months time

was initially stipulated and the plaintiff was to obtain such permission. However, three months time was extended for obtaining such permission. It

was agreed and understood that if the permission was not obtained within the extended time, there would not be any further extension of time.

Since, the permission was not given even during the extended period, the agreement stood cancelled. It was however agreed for refund of the

advance without interest. It was also agreed that the plaintiff should inform the defendants about the obtaining of the permission so that they could

apply to the Urban Ceiling Authorities seeking permission to alienate the suit site. The plaintiff failed to obtain the permission and therefore the

agreement stood cancelled. It is specifically denied that plaintiff has been ready and willing to perform his part of the contract. The defendants

cannot be compelled to fulfill the other terms of the contract when the plaintiff itself failed to fulfill its commitments. The defendants 1 to 3 have

already sold 2000 Sq. Yds., of land in favour of the 4th defendant in pursuance of an agreement of sale dated 17-08-1979. The suit is liable to be

dismissed with exemplary costs of Rs. 2,000/-.

4. The 4th defendant in her written statement stated that she purchased the site long prior to filing of this suit by which time the suit agreement was

cancelled. She is a bona fide purchaser for value and without notice, in fact, an exchange deed was executed on 02-03-1981, and that earlier, an

agreement dated 17-08-1979 was executed by the defendants No. 1 to 3 on one hand and the defendant No. 4 on the other. The plaintiff sought

for an injunction restraining the defendants No. 1 to 3 from selling the suit property and the same was dismissed. The claim is time barred and as

such the suit is to be dismissed with exemplary costs of Rs. 3,000/-.

5. On the basis of the above pleadings, the following issues were framed:-

1) Whether the plaintiff is entitled for specific performance of the agreement of sale?

2) Whether the claim is time barred?

3) Whether time was essence of the contract?

4) To what relief?

Additional Issue:-

Whether the defendant No. 4 is a bona fide purchaser without notice and consideration?

6. During the course of trial, on behalf of the plaintiff, PWs.1 and 2 were examined on behalf of the plaintiff and marked Exs. A.1 to A.8. On

behalf of the defendants, no oral and documentary evidence was produced.

7. Upon perusal of the material on record by the impugned Judgment and Decree, the learned trial Court has dismissed the suit of the plaintiff but

however directed that the defendants refund the sum of Rs. 40,000/- together with interest thereon @ 18% per annum from the date of agreement

i.e., 21-08-1977 till payment.

8. The suit was originally filed against R.1 to R.3 (D.1 to D.3) and subsequently R.4 (D.4) was impleaded in view of the fact that she has

purchased part of the schedule property under registered sale deed subsequent to the agreement. During the pendency of the proceedings, 4th

defendant died and originally her husband was sought to be impleaded but even before that could be done, he also died and therefore the son of

the 4th defendant Badam Balakrishna has been impleaded as respondent. Similarly, the 1st defendant also died and D.2 and D.3 who are legal

representatives were already on record and hence no steps were taken.

9. Learned Counsel appearing for the appellant/plaintiff fairly concedes that substantial facts are admitted in the case and the only dispute is that as

per the terms of the contract, the plaintiff had the right of waiver of the clause, which was to precede the execution of the sale deed and since the

plaintiff did so, the specific performance of the contract cannot be denied. It is his submission that at the time of agreement, it was agreed that the

plaintiff shall construct a theatre in the property proposed to be purchased and for that purpose steps should be taken for obtaining the permission

and if the permission is refused, the agreement shall stand cancelled. However, the learned Counsel submits that even though the permission to

construct theatres was refused, he has waived that requirement and was prepared to proceed with the transaction, for which the defendants

refused. The learned Counsel appearing for the appellant relied upon various authorities on this aspect, which shall be referred to hereinafter.

10. On the other hand, learned Counsel appearing for the defendants/respondents submits that the very agreement was for the purpose mentioned

therein and it is clearly postulated therein that if the plaintiff fails to secure the requisite permission to construct the theatres, the agreement shall

stand cancelled. For the said purpose, time was stipulated and since the plaintiff could not obtain the permission, for sufficiently long time, they

have cancelled the agreement and even before the suit is filed, half of the suit schedule property has been sold by them to the deceased 4th

defendant under registered sale deed. The learned Counsel further submits that the claim of the plaintiffs is clearly barred and there is no substance

in the submission of the learned Counsel appearing for the appellant that the condition which was prerequisite for completing the transaction stood

waived at the option of the plaintiff.

11. The point that arises for consideration is as to whether the appellant/plaintiff is entitled to a decree as prayed for warranting interference with

the Judgment and Decree?

12. Point:- As has been rightly submitted by the learned Counsel appearing for the appellant substantial factual matrix is admitted and is not in

controversy. The admitted facts may briefly be noticed.

13. D.1 to D.3 were the owners of the suit schedule property which comprises of house Nos. 1-1-79/A, B and C, in all admeasuring 4188 Sq.

Yds. This property is situated near Sangham Theatre, Musheerabad Cross-Roads, in the heart of Hyderabad city, around which area several

theatres do exist. The plaintiff is a company with its Office at Vijayawada and is in the business of Film industry and financing. At the instance of the

husband of the deceased 4th defendant, the plaintiff came to know about the intention of the defendants to sell the schedule property. Accordingly,

the terms were agreed and it was agreed that the land will be purchased @ Rs. 100/- per square yard and the total consideration was determined

at Rs. 4,00,000/-. An agreement to that effect, which is Ex. A.1, is executed on 21-08-1977. On the said date, the plaintiff paid Rs. 40,000/- to

the defendants as per their respective shares. It is also the admitted case of the plaintiff and is also spoken to by the two witnesses examined on its

behalf as PWs.1 and 2 that after the plaintiff obtains permission from the competent authorities for construction of a theatre, they will intimate the

same to the defendants and thereafter, the defendants will take steps to obtain the clearance from the Urban Land Ceiling authorities and Income

Tax and execute sale deed by receiving the balance consideration. It is also admitted by them that they want to purchase the schedule property for

the purpose of constructing a theatre. They also admit that the vendors/defendants on their part have extended the necessary cooperation for

facilitating the plaintiff to obtain the permission. PWs.1 and 2 also admit that in the agreement there was a specific clause that the agreement shall

stand cancelled if the plaintiff could not obtain the permission but however they added that that condition was for their convenience which they

have waived. However, the witnesses admit that such a clause of reserving a right of waiver is not embodied in the agreement of sale. It is also

admitted that even till date, the permission to construct theatres is not obtained.

14. There are specific admissions to the effect that for obtaining the permission, originally the time schedule was fixed for six months, which was

extendable by another three months. Thereafter, as per the agreement, the agreement of sale shall stand cancelled. However, this period of 6+3

months expired, but at the request of the plaintiff that they are likely to get the permission soon, it was further extended by three months. The

authorities have refused to grant permission. Appeal was preferred before the appellate authority. That was also refused. Thereafter, the plaintiff

filed W.P. No. 2028 of 1980. It was dismissed. The plaintiff further filed W.A. No. 384 of 1986. It also stood dismissed. The cumulative effect is

that inspite of all the efforts, the plaintiff could not obtain the permission from the authorities to construct the cinema theatre in the property

proposed to be purchased.

15. The contentious issue however is as to whether inspite of the specific recitals in the agreement of sale Ex. A.1, the plaintiff had the privilege of

waiving the clause of constructing theatre and can they insist the defendants to proceed with the sale transaction even though the permission was

refused.

16. At the outset, it may be said that when the parties to the dispute have reduced the contract into writing, the recitals in the contract will prevail

rather than any oral understanding or agreement between the parties, unless, of course, the opposite party admits the said understanding between

the parties. In the instant case, when there are specific clauses which stipulate that the sale transaction will be completed only in the event of the

plaintiff obtaining the permission to construct the theatre, there is no clause in the agreement which gives right to the plaintiff purchaser to waive the

said requirement.

17. Before proceeding further, it may be trite to re-produce the relevant clauses in the agreement Ex. A.1 around which the controversy revolves.

The relevant clauses are Clause Nos. 5, 6, 7, 8 and 9. They read as under:-

5) The purchaser has entered into this agreement with the Vendors with the object of constructing a Cinema Theatre or Theatres on the property

agreed to be purchased and mentioned in the Schedules A to C hereinafter. The Sale transaction shall be completed only on the authority or

authorities permitting the purchaser to construct theatre or theatres on the property described in the schedules A to C hereunder. The purchaser

shall take all expeditious steps for obtaining permission for constructing a theatre within six months from the date of execution of this agreement of

sale. The vendors and the purchaser hereby agrees on reviewing and in consideration of the position, just before the expiry of the period stipulated

hereinabove shall enter into an agreement extending the period by a further period of three months. That on the expiry of 9 months there shall not

be any further extension and in case the necessary permission for construction of theatre or theatres is not obtained by that date, this agreement

shall stand cancelled.

6) The purchaser shall prepare at his own cost necessary plans, drawings and do other necessary things for initiating the permission proceedings

for construction of theatre, deposit necessary fees for obtaining the permission, pay and do all other necessary things for obtaining permission from

necessary departments. The vendors shall sign all such applications, petitions and all other papers to be signed by the owner of the property along

with the purchaser. This signing by the vendors does not give them any right in the Licence or the permission to construct theatre or theatres. That

in the event of the permission or licence to construct the theatre or theatres is refused, the purchaser shall not be entitled to get back any amount

from the vendors, the amounts spent by the purchaser on account of preparation of plans, deposit or fees and all other incidental expenditure for

obtaining the permission of construct.

7) The vendors have authorized the purchaser to file applications and petitions to obtain licence and empower the purchaser to take all necessary

steps for expeditiously obtaining the permission. The vendors have also delivered to the purchaser a signed letter authorizing the purchaser to

represent the vendors in the proceedings for obtaining licence to construct.

8) That in the event of permission is refused the purchaser shall inform the vendors that the permission has been refused and also demand return of

the money paid as advance to the vendors.

9) The vendors within two weeks of the receipt of the letter from the purchaser return back the amount of advance received by them and on failure

of the vendors, the vendors shall be liable for all costs and damages. That after receipt of the permission stated in para 6 the vendors shall made an

application under the provisions of the Urban Ceiling (Ceiling and Regulation) Act of 1976 permitting transfer of the property described in the

schedule hereinafter. The purchaser shall furnish to the vendors all necessary information, the purchaser has to provide for obtaining the permission

under the provisions of the Urban Ceiling Act.

18. A perusal of the above clauses clearly show that the intention of the parties was unambiguous, which is to the effect that the plaintiff company,

which is in the business of film industry, wanted to purchase the property specifically for the purpose of constructing a theatre. The relevant portion

of the clauses which have been highlighted in the extracted clauses above clearly show the intention of the parties. It is also clear that if the plaintiff

fails to obtain the requisite permission, the agreement shall stand cancelled. It is also manifest that such of the obligation which was cast upon the

defendants was to become operational only after the plaintiff obtains the permission and intimate the said fact to the defendants. In view of the

categoric clauses, the learned Counsel do not deny the fact so far as the recitals in the agreement is concerned the intention of the parties was

clear, but the submission of the Counsel is that the clause of obtaining the permission for constructing the theatre, as a precondition for completion

of the sale was for the benefit of the plaintiff and it was self-induced frustration which the plaintiff waived.

19. The aspects of waiver and frustration of contract are noticed in Sections 56 and 63 of the Indian Contract Act. For the sake of convenience,

these two Sections are extracted hereunder:-

56. Agreement to do impossible act:- An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful A contract to do an act which, after the contract is made, becomes impossible, or,

by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful Where one person has promised to do something

which he knew, or, with reasonable diligence, might have known, and which the promise did not know to be impossible or unlawful, such promisor

must make compensation to such promise for any loss which such promise sustains through the non-performance of the promise.

63. Promisee may dispense with or remit performance of promise Every promise may dispense with or remit, wholly or in part, the performance of

the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

20. The first part of Section 56 enunciates the proposition that the agreement is void if it is for doing something inherently impossible. The second

part of Section 56 propounds the doctrine of frustration of contract by supervening impossibility or illegality. The frustration is the premature

determination of a contract owing to the occurrence of a supervening event making its performance impossible. If the illustrations given in the above

two Sections are carefully analyzed, what is noticed is that the doctrine cannot be invoked by a person who is himself responsible for the

frustration. Either there should be some other supervening circumstances or the conduct of the opposite party should be such which frustrates the

contract and that gives a right to other party of the contract to claim for damages or call upon the opposite party to perform the contract.

21. Learned Counsel appearing for the appellant relied upon several authorities and following are the authorities which may briefly be noticed:-

In Jagad Bandhu Chatterjee v. Smt. Nilima Rani and Others the Supreme Court in para 5 laid down as under:-

In India the general principle with regard to waiver of contractual obligation is to be found in Section 63 of the Indian Contract Act. Under that

Section it is open to a promise to dispense with or remit, wholly or in part, the performance of the promise made to him or he can accept instead of

it any satisfaction which he thinks fit. Under the Indian law neither consideration nor an agreement would be necessary to constitute waiver. This

Court has already laid down in Waman Shriniwas Kini Vs. Ratilal Bhagwandas and Co., that waiver is the abandonment of a right which normally

everybody is at liberty to waive. A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the

right. It is well-known that in the law of pre-emption the general principle which can be said to have been uniformly adopted by the Indian Courts

is that acquiescence in the sale by any positive act amounting to relinquishment of a pre-emptive right has the effect of the forfeiture of such a right.

So far as the law of pre-emption is concerned the principle of waiver is based mainly on Mohammedan Jurisprudence. The contention that the

waiver of the appellants right under Section 26-F of the Bengal Tenancy Act must be founded on contract or agreement cannot be acceded to and

must be rejected.

In Jiwan Lal v. Brij Mohan in para 11 the Supreme Court laid down as under:-

As already discussed, clause 6 was inserted in the agreement for the exclusive benefit of the vendees and not for the benefit of the vendor as well

as vendees. So the vendees could waive the condition precedent specified in clause 6. In AIR 1947 182 (Privy Council), there was an agreement

for sale of immovable property. The property was under attachment by an order of the Court and was about to be sold by public auction. A

certain amount was paid by the prospective vendee as earnest money. Clause 4 of the agreement provided that the balance of the sale

consideration would be paid before the Sub-registrar at the time of the registration of the sale deed within 30 days of the approval of the Court to

the agreement. The Court did not approve the offer. Thereupon the vendor asserted that the contract has come to an end, while the vendee

counter-claimed that as he has waived the condition in clause 4, the contract subsisted. The Privy Council held that as the condition in clause 4 was

not exclusively for the benefit of the purchaser it could not be waived by him and that entire contract fell through. It would follow that where a

stipulation is for the exclusive benefit of one contracting party and does not create liabilities against him, he can waive it unilaterally.

In Boothalinga Agencies v. V.T.C. Poriaswami the Supreme Court held as under in para 10:-

The doctrine of frustration of contract is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or

illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Indian Contract Act. It should be noticed that

Section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties.

In the same authority, the Supreme Court further observed that the doctrine of frustration of contract cannot apply where the event which is alleged

to have frustrated the contract arises from the act or election of a party.

In Satya Jain v. Anis Ahmed Bushdie the Supreme Court laid down as under in para 33:-

The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or consequence

intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The classic test of business

efficacy was proposed by Bowen, L.J. in Moorcock (1889) LR 14 PD 64 (CA). This test requires that a term can only be implied if it is

necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have

intended. But only the most limited term should then be implied the bare minimum to achieve this goal. If the contract makes business sense without

the term, the Courts will not imply the same. The following passage from the opinion of Bown, L.J., in Moorcock (1889) LR 14 PD 64 (CA) sums

up the position: (PD p. 68)

In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must

have been intended at all events by both parties who are businessmen; not to impose on one side all the perils of the transaction, or to emancipate

one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of

both parties that he should be responsible for in respect of those perils or chances.

22. I have carefully perused the authorities of the Supreme Court referred to above. With due respect, I am of the opinion that none of the

authorities apply to the facts of the case in hand. By no stretch of imagination, can it be said that in the instant case there was any supervening

circumstance which has resulted in frustration of the contract. The plaintiff, who was in the business of film industry, was very much conscious of

the fact that securing the permission from the competent authorities to construct a theatre is as uncertain as anything and therefore both the parties

have clearly agreed that in the event of the plaintiff failing to secure the permission from the authorities to construct the theatre, the entire transaction

shall stand terminated and the agreement cancelled. It is manifest from the clauses as reproduced above that the plaintiff wanted to play safe insofar

as the transaction is concerned. He never intended to use the land proposed to be purchased for any purpose other than constructing a cinema

theatre. Since the plaintiff was in the film industry they wanted to purchase the property only for the purpose of constructing a cinema theatre and

this is evident from the perusal of clause 5 of the agreement reproduced above. Nowhere it is mentioned in the agreement that if the authorities

refused to grant the permission, option is given to the plaintiff to proceed with the transaction or terminate the same depending upon his

convenience. When nothing is mentioned in the agreement, such a material part of the alleged understanding cannot be read into the contract.

23. Adverting to the facts of the case in hand, it is evident that the date of agreement Ex. A.1 is 21-08-1977 and originally six months time was

fixed for obtaining the permission, it was extendable by three more months and thereafter the defendant agreed to extend by another three months.

Therefore, the plaintiffs have reserved to themselves the time of one year from the date of agreement to obtain the permission and thereafter call

upon the defendants to fulfill their part of the contract. This period of one year expired by 20-08-1978. Nothing is placed on record on behalf of

the plaintiffs to show that during this period of one year, at any point of time they have informed the defendants of their intention to waive the clause

and proceed with the transaction even if the permission is refused. The only document that is produced on behalf of the appellant is A.3, which is a

copy of the letter, dated 10-10-1978 wherein the plaintiff is said to have informed the defendants that the permission to construct the theatre

should be deemed to have been granted in view of the deeming provision in the Government Orders issued subsequently. Firstly, there is no proof

to show that the original of this letter was sent to the defendants. Secondly, after the period of one year, under Ex. A.4, which is dated 05-11-

1979, the plaintiffs informed the defendants that they are giving up the clause and they waived that right and are prepared to take the document in

respect of the property sold to them even without permission being granted. Exs. A.4, A.6 and A.7 and the corresponding postal covers have

been filed. It is apparent that only on 05-11-1979 i.e., nearly 15 months after the deadline fixed for obtaining the permission is expired, the

plaintiffs informed the defendants that they are prepared to proceed with the sale transaction irrespective of the fact as to whether the permission is

granted or not. Ex. A.8 is the reply given by the defendants wherein all the facts are mentioned and the defendants have also informed that the

agreement stood terminated in view of the terms of the contract.

24. The above conduct of the plaintiff demonstrates that even till November, 1979 i.e., more than two years of the agreement entered into, they

did not think of waiving the clauses which required them to obtain the permission prior to proceeding with the sale deed. Only in November, 1979

they have informed the defendants that they are waiving the said requirement and are prepared to proceed with the transaction even though the

permission to construct the theatre was not granted.

25. In view of the above circumstances, I feel that it is not a fit case where the plaintiffs can be said to have waived the requirement within a

reasonable time so as to hold that he can call upon the defendants to complete the transaction even though the pre-requisite condition is not

fulfilled. Therefore, the contention of the appellant is unsustainable and the same is liable to be rejected as has rightly been done by the trial Court.

26. Learned Counsel appearing for the appellant further submits that in this case, the defendants have neither produced oral nor documentary

evidence and hence the claim of the plaintiff can be taken as substantiated. There is absolutely no force in this submission. It is the plaintiff who is

seeking the relief of specific performance which as is well-known is a discretionary relief. It is for the plaintiffs to establish their case. Whether the

defendants adduce any evidence or not or even if there are any weaknesses in the case of the defendants, the plaintiff cannot take advantage

thereof. The facts of the case in hand are peculiar. Factually, there is absolutely no dispute. All the facts are admitted. Therefore, the non-

examination of the defendants, in the instant case, is not at all detrimental to the case of the defendants.

27. It is further submitted by the learned Counsel appearing for the defendants that the agreement of sale Ex. A.1 is in respect of the property

comprising of Door Nos. 1-1-79/C, B and A/1, in all admeasuring 3888 Sq. Yds. To be precise in Ex. A.1, A schedule is said to be door No. 1-

1-79/C, admeasuring 1332 Sq. Yds., B schedule is shown as door No. 1-1-79/B admeasuring 1419 Sq. Yds., and schedule C is mentioned as

property bearing No. 1-1-79/A/1 admeasuring 1137 Sq. Yds. This is the property covered by Ex. A.1 agreement of sale. The suit, however, is

filed only in respect of the property bearing No. 1-1-79/C, admeasuring 1332 Sq. Yds., which corresponds to schedule A in Ex. A.1. Absolutely,

there is no reference in the plaint as to why the specific performance of the contract is not sought for in respect of schedules B and C referred to in

Ex. A.1. It may be placed on record that it is the specific case of the defendants that on 17-08-1979, D.1 to D.3 sold about 2000 Sq. Yds., out

of the suit schedule property to D.4. As already stated, no reasons, whatsoever, are pleaded or proved to show as to why the plaintiff is restricting

the relief only in respect of suit schedule property without seeking the relief insofar as schedules B and C property in the agreement of sale Ex. A.1

is concerned.

28. In view of the foregoing discussion, it is held that the plaintiff cannot be heard saying that he is entitled to obtain the relief of specific

performance even though they have not obtained the mandatory permission for making construction of a cinema theatre on the property proposed

to be purchased. The trial Court has properly appreciated all the aspects in proper perspective and I see no reason to interfere with the said

finding.

29. Upon perusing the material on record and going through the oral and documentary evidence, I have no hesitation in holding that the plaintiff is

not entitled the relief. The suit was rightly dismissed by the Court below. There are no merits in the appeal and the same is liable to be dismissed.

30. In the result, the appeal fails and the same is dismissed with costs. Consequently, the miscellaneous petitions, if any, pending in this appeal shall

stand closed.