

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

---

Volume 2 | Issue 3

2020

---

© 2020 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at [editor.ijlsi@gmail.com](mailto:editor.ijlsi@gmail.com).

---

# Pandemic: Analysis of Breach of Contracts and Performance of Sale Agreements: An Indian Perspective

---

JEEVA DHARSHINI. R<sup>1</sup>, KAARTHIK BALAJI V.G<sup>2</sup> AND DR. L.R.K. KRISHNAN<sup>3</sup>

## ABSTRACT

*The pandemic has interrupted our personal, financial and commercial transactions, by preventing the execution of normal activities even have the consequence on performance of contracts. Various terms and conditions were breached and terminated owing to the lockdown with strict rules and regulations all over India. It also led to frustration among the people who are held up with their cases in courts. Several studies and observations have been made to deal with the subject matter of the sale agreement cases. This is a non-doctrinal research which mainly focuses on pending case of District court of Kanchipuram and the judgement given by the judiciary in relevant cases which includes the equitable remedies namely specific performance, injunction that are available for the aggrieved party.*

**Keywords:** *Performance of contract, breach, terminated, sale agreement, equitable remedies, specific performance, Injunction.*

## I. INTRODUCTION

The pandemic had led to several hardships owing to the impossible performance of contract. The breach that had been resulted due to agreement of sale and filed before the District court of Kanchipuram have been discussed. The breach of contract comes under section 73 of Indian Contracts Act, 1872. In the present case, A. Murali Vs M. S. Ranganathan, I.A No. 564 of 2018 in O.S No. 139 of 2018 before the District Judge No. II at Kanchipuram district, there exist a breach of contract by the defendant in performing his terms of contract which had made the petitioner file a complaint against the defendant. The remedy for breach of contract is dealt under section 73 of the Indian Contract Act 1872, which states that, when a contract has been broken, then the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to

---

<sup>1</sup> Author is a student at VIT Chennai (Law School), India.

<sup>2</sup> Author is a student at VIT Chennai (Law School), India.

<sup>3</sup> Author is a Professor at VIT Chennai (Business School), India.

him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. It can happen in both a written and an oral contract.

Further, a breach of contract generally falls under one of two main categories, an actual breach is when one party refuses to fully perform the terms of the contract, and an anticipatory breach is when a party states in advance that they will not be delivering on the terms of the contract. This case falls under the actual breach. It includes sale agreements as well. This case is an Actual breach, where the Defendant had refused to show his willingness in performing the contract with an intent to cheat the petitioner. This was made by the petitioner in his plaint that was filed before the District court of Kanchipuram. So, the remedy for the breach is that, both the parties are directed to bear their costs as clearly mentioned in the case *Mr. J. Vincent vs Mr. S. Srinivasan* on 1st october, 2015, High court of Judicature at Madras dated 1st october 2015 Coram, the honorable justice G. Chocka lingam Civil suit no.413 of 2011.

This study mainly focuses on the sale agreement in the schedule mentioned property which was registered before the Sub registrar via the sale deed. A sale agreement constitutes the terms and conditions of sale of a property by the seller to the buyer. The section 4(3) of the sale of goods act defines the sale agreement as, where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. Scheduled Property is an insurance legal term, which refers to property itemized on a list that record some property value, which provided the basis for insurance payments in the event of a loss under an insurance policy. The list is ordinarily attached on to an insurance policy.

In the case of *A. Murali V Mr. S. Ranganathan* I.A No. 564 of 2018 in O.S No. 139 of 2018 before the District Judge No. II at Kanchipuram district, the title deed was registered before the sub registrar and the sale deed was not registered due to the refusal of the defendant. A sale deed is a legal document, which proves that the seller has transferred the absolute ownership of property to that of the purchaser. Through this document, the new owner acquires the rights and interests of the property. The plaintiff had issued a legal notice to both the defendants. The defendants even after receiving the notice failed to reply. It is stated that the first defendant in order to defraud the plaintiff disposed the suit property in favor of the second defendant after receipt of the pre-suit notice and this was noted in the case of *P. Sankar vs Sundaramoorthy* on 3<sup>rd</sup> January 2020, High court of Judicature at Madras, Coram

The Honorable Justice S.M. Subramaniam, Appeal suit no.567 of 2013 & M.P.No.1 of 2013.<sup>4</sup> Hence, a civil lawsuit was filed by the petitioner to obtain remedy for the breach of contract. The appropriate compensation or remedy depends upon the circumstances of the contract. The non-breaching party will need to demonstrate or prove that the other party failed to perform in order to be entitled to any type of remedy. He is seeking to obtain, damages for the loss sustained, or a decree for specific performance, or an injunction.

In the present case, the suit was filed on specific performance and a suit was filed on permanent injunction under section 27 of T.N.C.F. AND S. V act as mentioned in the case V. Ramesh vs Smt. Bhavani on 13<sup>th</sup> February 2020, High court of Judicature at madras, Coram Honorable Justice S.M. Subramaniam A.S. No. 1026 of 2019 and C.M.P No. 27726 of 2019. This comes under section 73 of the Indian Contract Act, 1872. The laws that are relating to damages are governed by the Contract Act, whereas the laws which relates to injunctions and specific performance are governed by the Specific Relief Act, 1963. Section 73(1) states that when a contract has been broken, the party who suffers by such breach from the breach of contract is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him

Which would naturally arise in the usual course of things from such breach, or which the parties knew already, when they made the contract, to be likely to result from the breach of the contract.

By analyzing the various relevant cases such as P. Sankar vs Sundaramoorthy on 3<sup>rd</sup> January 2020 High court of Judicature at Madras, Coram The honorable Justice S.M. Subramaniam, appeal suit no.567 of 2013 & M.P.No.1 of 2013, and V. Ramesh vs Smt. Bhavani on 13<sup>th</sup> February 2020, High court of Judicature at Madras, coram honorable Justice S.M. Subramaniam A.S. No. 1026 of 2019 and C.M.P No. 27726 of 2019<sup>5</sup> and the clear facts of the case, equitable remedies and a fair justice on account of prayer of both the parties can be noted.

#### **(A) Scope of the Study**

Our attempt in this paper is to analyze systematically the effects and the efficiency of various breaches and its consequences during the pandemic. This study analyses the kinds of breach namely the actual breach and the anticipatory breach. The present case comes under Actual

---

<sup>4</sup> P. Sankar vs Sundaramoorthy on 3<sup>rd</sup> January 2020, High court of Judicature at Madras, Coram The honorable Justice S.M. Subramaniam, appeal suit no.567 of 2013 & M.P.No.1 of 2013

<sup>5</sup> V. Ramesh vs Smt. Bhavani on 13<sup>th</sup> February 2020, High court of Judicature at Madras, coram honorable Justice S.M. Subramaniam A.S. No. 1026 of 2019 and C.M.P No. 27726 of 2019

breach and its consequences were studied with relevant cases of Supreme court, High court and Common law cases. From the findings of various relevant cases proper remedies can be found and can be awarded to the aggrieved party.

### **(B) Methodology**

This is a non-doctrinal research on breach of contract dealing with pending case of District court of Kanchipuram. On analyzing the case, we found that the above-mentioned case was unique and it will be a test case to research on the breach of contract and award compensation. On analyzing the case, we found that, the Present case A. Murali v Ranganathan I.A No. 564 of 2018 in O.S No. 139 of 2018 before the District Judge No. II at Kanchipuram district, deals with the breach made by the owner in a contract with related to the sale of property. A breach is a violation upon any agreed terms or conditions in a contract. Here the owner of the property obtained a loan from Tamilnadu Mercantile Bank, Kanchipuram. The buyer accepts to buy the property from the owner for a sum of Rs. Eighty nine lakhs ten thousand only. A contract was entered and according to the terms and conditions of the contract, the buyer must pay an advance amount of Rs. Ten lakhs and the owner must execute an agreement of sale in the name of the buyer. And the further amount of Rs. Seventy nine lakhs ten thousand must be paid by the buyer in subsequent time according to the terms of contract. The owner receives totally a sum of Rs. Twenty two lakhs in further time as an advance amount. The buyer insists the seller to execute the sale deed in the name of the buyer and receive the further amount in six months. But the buyer tries to sell a part of the property to a third party without the parent document. Hence the buyer decided to take legal actions against the owner and the sub registrar. For analyzing the case, we used the petition filed and arguments raised by the concerned petitioner and respondent.

## **II. ANALYSIS**

### **Facts and Arguments of the Present Case**

The defendant named Mr. Ranganathan is the owner of the schedule mentioned property, and the same was purchased and registered before the sub registrar on Sale Deed. Also, defendant has obtained a Loan from The Tamil Nadu Mercantile Bank, Kanchipuram branch and executed a deposit of Title Deeds in favor of the Tamil Nadu Mercantile Bank, before the sub registrar. The plaintiff named Mr. Murali has agreed to buy the property from the defendant and paid an advance amount of Rs. Ten lakhs and the defendant has executed an agreement of sale in favor of the plaintiff with a condition to clear the Bank debts and hand over the Original Parent document of the property and receive the balance of Consideration of the Sale

of Rs. Seventy nine lakhs ten thousand only and register the sale deed within 6 Months from the Date of the sale agreement. Also, the defendant has approached the plaintiff and demanded for further advance amount to clear the Bank Debts. As an advance amount, defendant has totally received a sum of Rs. Twenty two lakhs. As per the terms and conditions of the sale agreement, the defendant agreed to receive the balance of sale consideration of Rs. Sixty seven lakhs ten thousand from the plaintiff within six months and agreed to execute the sale deed in favor of the plaintiff in respect of the property within six months from the date of the sale agreement. In the meantime, the defendant had sold a part of his property to the third parties.

### **Petitioner Argument**

1. The Plaintiff submits that the 1<sup>st</sup> defendant is the owner of the property, and the same was purchased and was Registered before the sub registrar 2nd defendant on 8<sup>th</sup> december 2006 via sale deed bearing document No. 5724/2006. The Plaintiff submits that the 1st defendant has obtained a Loan from The Tamil Nadu Mercantile Bank and executed a deposit of title deeds in favor of the Tamil Nadu Mercantile Bank before the 2nd Defendant on 15<sup>th</sup> July 2008 and same was registered as document No. 3879/2008. The plaintiff submits that the sale consideration for the Property was fixed as Rs. Eighty nine lakhs ten thousand only.

2. The plaintiff submits that on 7th August 2017, the 1st defendant has received a sum of Rs. Ten Lakhs and the 1st defendant has executed an agreement of sale in favor of the Plaintiff on the same day with a condition to clear the bank debts and hand over the original parent document of the property and receive the balance of consideration of the sale of Rs. Seventy nine lakhs ten thousand and register the sale deed within six months from the date of the sale agreement in favor of the plaintiff.

3. The plaintiff submits that the 1st defendant has totally received a sum of Rs. Twenty two lakhs. The plaintiff submits that as per the terms and conditions of the sale agreement, the 1st defendant agreed to receive the balance of sale consideration of Rs. Sixty seven lakhs ten thousand from the plaintiff within six months and agreed to execute the sale deed in favor of the plaintiff.

4. The plaintiff submits that even he approached the manager of the Tamil Nadu Mercantile Bank, Kanchipuram branch for One Time Settlement, but the 1st defendant was refused to co-operate for the OTS Scheme The plaintiff submits that on 28<sup>th</sup> september 2018, the 1st defendant was tried to alienate the property to some third parties even without the Parent Documents and even though, as per the standing order of the Director of Inspector

General of Registration without the parent documents, the 2nd defendant could not entertain any deed for registration, but the 1st defendant was tried to alienate the suit property

5. The plaintiff apprehends that the 1st defendant might once again try to alienate the suit property in to third parties and therefore, the plaintiff was constrained to issue a legal notice to both the defendants on 1st october 2018 and the defendants has received the legal notice and refused to give any reply till date.

6. He also said that the 1st defendant was dragging to perform his part, and the 2<sup>nd</sup> defendant has entertained sale deed in respect of the property mentioned in the deposit of the title deeds in the encumbrance certificate and therefore the plaintiff had no option other than adding the 2<sup>nd</sup> defendant to this suit and the plaintiff have prima facie and the balance of convenience is in the favor of plaintiff in granting injunction, and otherwise the plaintiff will be put to irreplaceable loss and hardships which cannot be compensated.

7. The plaintiff submits that he had no other option except to file this suit for specific performance of the contract dated 7<sup>th</sup> august 2017 by directing the 1st defendant to execute the sale deed after receiving the balance of sale consideration of Rs. Sixty seven lakhs ten thousand and in default, this Hon'ble Court may be deducting the bank debt in the balance consideration and to execute and register the sale deed on behalf of the 1st defendant in favor of the plaintiff at the expense of the plaintiff or in the alternative, to direct the 1st defendant to pay the advance amount of Rs. Twenty two lakhs together with Interest from the date of the plaint till the date of realization at the Rate of 12% per annum and until then have a statutory charge on the properties.

8. The Cause of Action for this Suit arose on of 15<sup>th</sup> July 2008, The Deposit of Title Deed was dated on 7th august 2017, the Date of Sale Agreement between the plaintiff and the defendants on 28th september 2018, the date of attempt of the 1st defendant for alienation, on 1<sup>st</sup> october 2018.

9. The plaintiff values the suit at Rs. Thousand for the permanent injunction under section 27 of T.N.C.F act and S.V act and pays a court fee of Rs. Thirty and the plaintiff values the suit at Rs. Eighty nine lakhs ten thousand only under Section 42(a) of T.N.C.F act and S.V act and pays a court fee of Rs. Two lakhs sixty seven thousand and three hundred only. Total court fee paid is Rs. Two lakhs sixty seven thousand three hundred and thirty only. Jurisdictional value is Rs. Eighty nine lakhs ten thousand only.

### **Respondent Argument**

1. The respondent admits the fact that he purchased the schedule mentioned property from one Mr. Balaraman. He was in need of money for his mineral water business. Hence, he obtained a loan from Tamilnadu Mercantile Bank Kanchipuram. The respondent never approached the petitioner. It is the petitioner who approached the respondent and demanded to sell the property.

2. It is further submitted that the respondent explained the loan transaction to the petitioner. Hence an agreement was drafted and executed by both parties on 7<sup>th</sup> August 2017. The respondent is always ready to register a sale deed within a period of six months as mentioned in the unregistered sale agreement. It is further submitted that the petitioner never approached the respondent in time to register the sale deed by paying balance sale consideration for a sum of Rs. Sixty seven lakhs ten thousand only. It is pertinent to note that the sale consideration is fixed for the entire property for a sum of Rs. Eighty nine lakhs ten thousand only.

3. It is further submitted that unfortunately the petitioner has sent a legal notice after a lapse of fourteen months to the sale agreement demanding to register the sale deed. The respondent clearly has said that he is not willing to register the sale deed in respect of the property and asked the petitioner to get back their money paid as advance without any interest.

### **III. ANALYSIS**

#### **Evidence Act, 1872**

Evidence determines how the parties are to convenience the Court to the existence and that the state of facts .According to the provisions of the substantive Law would establish the existence of the Rights, Liability, or Disability, which they assert to deny in a suit . The evidence submitted by the respondent is that the reply for the legal notice given by the petitioner has a lapse of 14 months to the sale agreement demanding to register the sale deed. This clearly shows that the plaintiff was not readily willing to register the sale deed in respect of the schedule property. Thus, the plaintiff not entitled to get specific performance.

Plaintiff: C.S. Venkatesh

Defendant: A.S.C. Murthy (D) By Lrs. & Ors

Court: the supreme court of India civil appellate jurisdiction

Case no: civil appeal no 8425 OF 2009<sup>6</sup>

---

<sup>6</sup> C.S.Venkatesh V A.S.C.Murthy (D) by Lrs & Ors the supreme court of India civil appellate jurisdiction civil

C.S.Venkatesh V A.S.C.Murthy (D) by Lrs & Ors The Court came to a conclusion that the sale deed dated 23<sup>rd</sup> April 1975 was not a nominal one, as contended by the plaintiff. The Court recorded a finding that the plaintiff has averred in the plaint that there was sufficient plea in relation to readiness and willingness of the plaintiff to perform his part of the contract. However, it was held that the plaintiff had failed to prove that he was ready and willing to perform the contract. Consequently, the trial court dismissed the suit.

### **Alternate Dispute Resolution Act,2010**

In the United States, by 1991 the courts had held in several cases that, although a contract to arbitrate would be enforced, they would traditionally refuse to enforce the agreements to mediate. A contract providing for alternative dispute resolution should be enforced and one party should not be allowed to evade such contract and resort prematurely to the courts. Arbitration agreement is defined under Section 7 of the Act. It does not prescribe any particular form as such. In terms of the said provision arbitration agreement means

An agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

An arbitration agreement shall be in writing.

Plaintiff: Arbitration Case No. 11 Of 2012

Defendant: Sandeep Singh And Others

Court: High Court of Punjab and Haryana at Chandigarh

Case no: Case No.11of 2012

Dated on: 30th November 2012<sup>7</sup>

Arbitration case no.11 of 2012 v Sandeep singh and Others, If the sellers do not execute the sale-deeds within the stipulated period, the purchaser is given a right to get the same executed through Court. This remedy for the sellers is provided in the eventuality the purchaser has paid the amount but the sellers are not executing the sale-deeds within the stipulated period. It is only this aspect of the dispute which gets excluded. However, in the present case, I am

---

appeal no 8425 OF 2009

<sup>7</sup> Arbitration Case No. 11 Of 2012 V Sandeep Singh And Others High Court of Punjab and Haryana at Chandigarh Case No.11of 2012,30th November 2012

concerned with a different situation. According to the sellers, the purchaser has not paid the amount and the sellers have cancelled the contract. All these petitions accordingly succeed. Since the parties have failed to make reference to the named arbitrators in the arbitration agreement and going by the nature of disputes as well, I am of the opinion that an independent arbitrator needs to be appointed in these cases.

### **Constitution of India, 1950**

- **Right to Property**

The Constitution of India came into force on 26th January, 1950, the right to property was included as a 'fundamental right' under Article 19(1)(f) and Article 31 in Part III, making it an enforceable right. The Supreme Court has said in *Commissioner, Hindu Religious Endowment V. K. Lakshmindra*, that there is no reason why the word 'property' as used in Article 19(1) (f) of the constitution should not be given a liberal and wide connotation and should not be extended to those well recognised types of interests which have the insignia or characteristic of proprietary rights. the Supreme Court of India in *Indian Handicraft Emporium v. Union Of India*, wherein the Court observed that right to property is a human right as a constitutional right under Article 300-A, but it is not a fundamental right. It is indeed a Statutory right but each and every claim to property would not be property rights.

- **Doctrine of Impossibility**

The Doctrine of Impossibility of performance of contract can be applied in the mentioned case, *A. Murali Vs M. S. Ranganathan*, I.A No. 564 of 2018 in O.S No. 139 of 2018 before the District Judge No. II at Kanchipuram district. Doctrine of impossibility arises when a party in a contract cannot perform his duties of the contract due to circumstances.

Here in the mentioned case, the sale deed registered by the plaintiff is a fabricated document and it is not valid in the eyes of law. Hence the defendant can take impossibility of performance as a defense against the plaintiff, since the plaintiff had not performed his contractual duties.

### **IV. TRIAL COURT PROCEEDINGS**

In *P.Sankar vs Sundaramoorthy* on 3 January, 2020 High Court of Madras dated 03.01.2020 Coram, The Honourable Mr.Justice S.M.Subramaniam appeal Suit No.567 of 2013 & M.P.No.1 of 2013, the plaintiff is the appellant in the First Appeal and the defendants are the respondents in the First Appeal. The suit was instituted for specific performance and the contention of the plaintiff before the Trial Court was that the first defendant offered to sell the

plaintiff schedule property to the plaintiff for a sum of Rs. Five lakh fifteen thousand and entered into a written sale agreement on 11<sup>th</sup> February 2002.. On the said date of agreement, the plaintiff paid an advance amount of Rs. Two lakhs and agreed to pay the balance on fulfilment of conditions scribed in the agreement. The plaintiff states that he was ready and willing to perform his part of contract but the defendant was postponing the same without any reason.

### **Findings**

On the basis of the above pleadings and relevant case P. Sankar vs Sundaramoorthy on 3<sup>rd</sup> January 2020, High court of Judicature at Madras, Coram The Honorable Justice S.M. Subramaniam, Appeal suit no.567 of 2013 & M.P.No.1 of 2013, the following issues are framed in consideration with the suit: The plaintiff submits that in the meantime, the 1st defendant has obtained a Loan from The Tamil Nadu Mercantile Bank and executed a deposit of title Deeds in favor of the Tamil Nadu Mercantile Bank, Kanchipuram Branch and the said deposit of Title Deeds Registered before the 2nd defendant on 15<sup>th</sup> July 2008 and same was registered as document No. 3879/2008. The Plaintiff submits that the 1st defendant has approached the plaintiff and offered to sell the schedule of Property in order to clear the bank debt and other personal debts. The plaintiff has also agreed to purchase the schedule of property. The plaintiff submits that the sale consideration for the Schedule of Property was fixed as Rs. Eighty nine lakhs ten thousand only and the advance amount was fixed as Rs. Ten lakhs for the Sale.

Whether the agreement of sale, dated on 15<sup>th</sup> July 2008 is a true and valid document or it is a fabricated document?

The plaintiff submits that the he was always ready and willing to perform his part of contract but the 1st defendant has neglected to neither repay the sale amount not to execute and register the sale deed in favor of the plaintiff or his authorized agent. The plaintiff submits that from the date of the sale agreement, the 1<sup>st</sup> defendant had handed over and placed the plaintiff in the physical possession of the schedule Mentioned property. He also submits that the 1st defendant had purposefully evaded to clear the bank debts and simply evading to receive the balance of sale consideration and even the plaintiff has assured and undertakes to clear bank debts in his own means, but the 1st defendant only with a view to defraud the plaintiff evading for any sort of arrangements to clear the bank debts.

Whether the plaintiff is ready and willing to perform the contract from the date of agreement till the date of plaint?

The Plaintiff submits that even the Plaintiff was approached the Manager of the Tamil Nadu Mercantile Bank for One Time Settlement, but the 1st Defendant was refused to co-operate for the OTS Scheme of the Bank. The Plaintiff submits that the 1<sup>st</sup> Defendant might once again try to alienate the suit property in to third Parties and therefore, the Plaintiff was constrained to issue a Legal Notice to both the Defendants on 1<sup>st</sup> October 2018 and the Defendants has received the Legal Notice and refused to give any Reply till date. The Plaintiff submits that therefore, he has no other option except to file this Suit for Specific Performance of the contract dated 7th August 2017 by directing the 1st defendant to Execute the Sale Deed in respect of the entire Schedule Mentioned Properties after receiving the Balance of Sale Consideration of Rs. Sixty seven lakhs ten thousand Only.

Whether the plaintiff is entitled to specific performance relief?

For Specific Performance of the Contract of the Registered Sale Agreement dated 7<sup>th</sup> August 2017, by directing the 1<sup>st</sup> Defendant to execute the Sale Deed in favor of the Plaintiff in respect of the entire Schedule Mentioned Properties after receiving the Balance of Sale Consideration or Rs. Sixty-Seven Lakhs Ten Thousand and in default, this Hon'ble Court may deduct the Bank Debt in the Balance Consideration and to Execute and register the Sale Deed in respect of the Schedule Mentioned Properties on behalf of the 1st Defendant in favor of the Plaintiff at the Expense of the Plaintiff. For Recovery of the Advance Amount, direct the 1st Defendant to pay the Advance Amount of Rs. Twenty-Two Lakhs together with Interest from the Date of the Plaint till the Date of Realization at the Rate of 12% per Annum. For Permanent Injunction restraining the 1st Defendant, his Men should not alienate the Schedule Mentioned Property and not to make any Encumbrance over the Schedule Mentioned Property till the Execution of the Sale Deed. And also, for the cost of suit and other equitable remedies.

To what other relief the plaintiff is entitled to?

## **V. LITERATURE REVIEW**

The Madras High Court cases highlights the following issues

3.1

Plaintiff: V. Ramesh

Defendant: Smt. Bhavani

Judge: The Honorable Justice S.M. Subramaniam

Court: High court of Judicature at Madras

Case no: A.S.No.1026 of 2019 & C.M.P. no.27726 of 2019

Dated on: 13th February, 2020

Issue: Breach of sale agreement of property

V. Ramesh vs Smt. Bhavani . A suit for specific performance establishing readiness and willingness is a mandatory one and the plaintiff has to prove the same beyond any pale of doubt. However, there is no finding in this regard in the judgment and therefore, an enquiry in this aspect is also imminent. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised there in nor such document shall be received as evidence of any transaction affecting such property. In the result, the appeal Suit stands allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.

3.2

Plaintiff: J. Vincent

Defendant: S. Srinivasan

Judge: The Honorable Justice G. Chocka lingam

Court: High court of Judicature at Madras (Judgment reserved on 6<sup>th</sup> August 2015)

Case no: Civil suit No.413 of 2011.

Dated on: 1<sup>st</sup> October 2015<sup>8</sup>

Issue: Is the plaintiff is in possession of the suit property in pursuance of the agreement.

Since the plaintiff has not come forward before this court with clean hands, he is not entitled for getting the relief of equity from this court, and hence, resultantly, he is also not entitled to get the relief of specific performance, as it is not clearly established and proved by oral and documentary evidence that the plaintiff has been ready and willing to pay the entire balance sale consideration, and there is no bona-fide on the part of the plaintiff in fulfilling his obligations in performing his part of the contract of execution of sale agreement. This is the exact case in A. Murali V Mr. S. Ranganathan, I.A No. 564 of 2018 in O.S No. 139 of 2018 before the District Judge No. II at Kanchipuram district, there was no exact evidence that the plaintiff was willing to perform his part of contract. There is no evidence to establish that the plaintiff has always been ready and willing to perform his part of the contract, when the fact remains that he is not even entitled to the equitable relief, as he has not come to Court with

---

<sup>8</sup> J. Vincent S. Srinivasan, The Honorable Justice G. Chocka lingam High court of Judicature at Madras (Judgment reserved on 6th August 2015), Civil suit No.413 of 2011, 1st October 2015

clean hands. The Civil suit is dismissed. In view of the facts and circumstances of the case, both parties are directed to bear their costs.

### 3.3

Plaintiff: G. Manoharan

Defendant: R. Edwin Solomon

Judge: The Honorable Justice S.M. Subramaniam

Court: High court of Judicature at Madras,

Case No: A.S.No.634 of 2019 and C.M.P.No.19116 of 2019

Dated on: February 25<sup>th</sup> 2020<sup>9</sup>

Issue: Suit for performance of contract by limitation

The defendant in the suit is the appellant in the appeal suit. The respondent plaintiff instituted the suit for Specific Performance of the contract, directing the defendants to execute and register the sale deed with regard to the suit property in favor of the plaintiff as per suit sale agreement dated 23<sup>rd</sup> July 2010 after receiving the balance sale consideration of Rs. Eight lakhs fifty - seven thousand nine hundred only and a relief of permanent injunction is also sought for. However, there shall be no order as to costs. Consequently, connected civil miscellaneous petition is closed.

### 3.4

Plaintiff: P. Sankar

Defendant: Sundaramoorthy

Judge: The Honorable justice S.M. Subramaniam

Court: High court of Judicature at Madras

Case no: Appeal suit No.567 of 2013 & M.P.No.1 of 2013

Dated on: 3<sup>rd</sup> January 2020

Issue: Is the sale agreement legally sustainable by law-breach of contract

The Plaintiff P.W.1 deposed that the first defendant offered to sell the plaint schedule property for a sum of Rs. Five lakhs fifteen thousand only and both of them entered into a sale agreement and on that day, he paid an advance amount of Rs. Two lakhs. P.W.2

---

<sup>9</sup> G. Manoharan V R. Edwin Solomon The Honorable Justice S.M. Subramaniam, High court of Judicature at Madras, A.S.No.634 of 2019 and C.M.P.No.19116 of 2019, February 25th 2020

corroborates the testimony of P.W.1 by saying that the first defendant Ex.A.1 sale agreement dated 11<sup>th</sup> February 2004 was attested by D.W.2, wife of D.W.1. Therefore, the Trial court found that the agreement entered into between the plaintiff and the defendant i.e., Ex.A.1 since the plaintiff has not come forward before this Court with clean hands, he is not entitled for getting the relief of equity from this Court, and hence, resultantly, he is also not entitled to get the relief of specific performance, as it is not clearly established and proved by oral and documentary evidence that the plaintiff has been ready and willing to pay the entire balance sale consideration, and there is no bona-fide on the part of the plaintiff in fulfilling his obligation.

3.5

Plaintiff: K. Periyasamy

Defendant: Selvakumar

Judge: The Honorable Justice R. Mala

Court: High court of Judicature at Madras

Case no: C.R.P(pd). No .1751 of 2014 and M.P.No.1 of 2014

Dated: 25<sup>th</sup> July 2014<sup>10</sup>

Issue: Assignment of right need not be registered, if the sale agreement doesn't need registration.

Trial Court, after hearing both sides, dismissed the application, stating that additional issue as sought for by the petitioners is not necessary to decide the main issues in the case. Further it was held that the unregistered sale agreement of immovable property does not amount to conveyance as per Section 2(10) of the Indian Stamp Act and the assignment does not require registration under Section 17 of the Registration Act, against which, the defendants 1 and 2/revision petitioners preferred this revision petition.

3.6

Plaintiff: G. Ramakrishnan

Defendant: L. Murugan

Judge: Coram the Honorable Justice S. Tamilvanan

Court: High court of Judicature at Madras

---

<sup>10</sup> K. Periyasamy V Selvakumar, The Honorable Justice R. Mala, High court of Judicature at Madras, C.R.P(pd). No .1751 of 2014 and M.P.No.1 of 2014, 25th July 2014

Case no: S.A. No.629 of 2008 and M.P.No.1 of 2008 and M.P.No.1 of 2011

Dated on: 30<sup>th</sup> October 2014<sup>11</sup>

Issue: Seeking delivery of possession and other consequential relief

It is seen that the sale agreement, Ex. A1 dated 10<sup>th</sup> January 2002 is an unregistered document and the period for performance of contract is between 10<sup>th</sup> January 2002 and 10<sup>th</sup> January 2004, for two years. The respondent/plaintiff who was examined as P.W.1 has deposed in his cross-examination that the said agreement had not been registered since he had to spend money for registration of the sale agreement. Subsequently, legal notice dated 01.05.2003 was sent by the respondent/plaintiff to the appellant/defendant and a copy of the same has been marked as Ex.A2, wherein, the respondent/plaintiff has stating that he was ready and willing to pay the balance of sale consideration of Rs. One lakh fifty thousand only. However, the appellant/defendant was not ready, hence, he issued a notice demanding the appellant/defendant to perform his part of contract. He had to execute the sale deed after receiving the balance of sale consideration at Rs. One lakh fifty thousand from the respondent/plaintiff. Postal acknowledgment for the receipt of legal notice was also marked as Ex.A3. The plaintiff is directed to pay the cost, that was received by him from the defendant, pursuant to the judgment and decree passed by the first appellate court. So far as the second appeal is concerned, both of the parties are directed to bear their own cost.

The Supreme court cases highlights the following issues

3.7

Appellant: Thulasidhara

Respondent: Narayanappa

Court: The Supreme court of India,

Case no: Civil appellate jurisdiction, Civil appeal No. 784 of 2010

Dated on: 1st May 2019<sup>12</sup>

Issue: Without registration a written document on family settlement can be used as corroborative evidence

That the respondent here in- original plaintiff instituted the suit in the Court of Munsiff and JMFC at Gubbi being Original Suit No.141 of 1984 praying for the Judgment and Decree in

---

<sup>11</sup> G. Ramakrishnan V L. Murugan ,Coram the Honorable Justice S. Tamilvanan,High court of Judicature at Madras S.A. No.629 of 2008 and M.P.No.1 of 2008 and M.P.No.1 of 2011,30th October 2014

<sup>12</sup> Thulasidhara V Narayanappa ,The Supreme court of India, Civil appellate jurisdiction, Civil appeal No. 784 of 2010, 1st May 2019

his favor to the effect that he be declared as the owner of the suit schedule property and also for permanent injunction restraining the appellants here in- original defendants from interfering with his peaceful possession and enjoyment of the suit schedule property. It was the case on behalf of the original plaintiff that he has become an owner of the suit property having purchased the same under a registered Sale Deed and therefore the defendants have no right to interfere with his peaceful possession and enjoyment of the suit schedule property. The suit was resisted by the defendants by filing a written statement. It was also the case on behalf of the defendants that no Sale Deed has been executed by the defendants in favor of the plaintiff and it was also said that the alleged Sale Deed is fabricated by the plaintiff. The Judgment and Order passed by both the Courts below dismissing the suit, are hereby restored and consequently the suit filed by the original plaintiff is dismissed and no costs.

3.8

Appellant: State of Jharkhand Department

Respondent: Surendra Kumar Srivastava

Court: The Supreme court of India

Case: Civil appellate jurisdiction, Civil appeal no. 21 of 2019 [arising out of S.L.P. (c) no. 26645 of 2015]

Dated on: 3rd January 2019<sup>13</sup>

Issue: Failed to demarcate the suit property in the plaint-Breach of sale agreement

According to the Writ Petitioners/Respondent Nos. 1 to 3 herein, their mother, late Smt. Shyal Devi had purchased about 3.61 acres of land 1 (suit property) from Raju Gour and Shatrughan Gour by way of two unregistered Sale Deeds dated 30<sup>th</sup> April 1958. According to Respondent Nos. 1 to 3, late Smt. Shyal Devi had raised a structure over a part of the suit property, and was cultivating the rest of it. The said land was 1 Recorded in R.S. Khatian of 1937 under Khata No. 19 Khata No. 21, Khata No. 33. The Additional Munsif Judgment and Decree dated 18/27.02.1999 decreed the Suit in favor of the Plaintiff late Smt. Shyal Devi, and confirmed her possession since the year 1958. The Bihar State Road Transport Corporation was restrained from interfering with the peaceful possession of Smt. Shyal Devi. However, the District Judge held that the Plaintiff had failed to establish her title, and it would be open for the Bihar State Road Transport Corporation to file a suit against late Smt. Shyal Devi for declaration of title over the land, and to seek her eviction.

---

<sup>13</sup> State of Jharkhand Department V Surendra Kumar Srivastava ,The Supreme court of India,Civil appellate jurisdiction, Civil appeal no. 21 of 2019 [arising out of S.L.P. (c) no. 26645 of 2015] 3rd January 2019

## 3.9

Appellants: V.N. Krishna Murthy

Respondents: Sri Ravikumar

Court: The Supreme court of India

Case no: Civil appellate jurisdiction, Civil appeal Nos. 2701-2704 of 2020 (arising out of special leave petition (c) Nos. 6952-6955 of 2020).

Dated on: 21<sup>st</sup> August 2020<sup>14</sup>

Issue: Allegations on the suit property and cannot execute the sale agreement.

Respondent Nos. 5 and 6 are the recorded owner of the land in dispute executed a registered agreement of sale of the land in dispute in favor of Respondent, Karnataka State Khadi and Village Industries Worker's House Building Co-operative Society Ltd. Besides executing registered agreement to sale dated 31<sup>st</sup> October 1989 and 5<sup>th</sup> August 1992 side by side they also executed a General Power of Attorney in favor of office bearers of the respondent society authorizing them to enter into sale transaction of the suit property on their behalf. It is to be taken note of that General Power of Attorney was executed giving absolute rights to the Attorney to do all such acts which are necessary for sale of the property. The appeal, accordingly, stand dismissed. However, left the parties to bear their own costs.

## 3.10

Appellants: Ameer Minhaj

Respondents: Dierdre Elizabeth (Wright) Issar

Court: The Supreme court of India, Civil appellate jurisdiction, Civil appeal no. 18377 of 2017

Dated on: 4th July, 2018<sup>15</sup>

Issue: Documents of which registration is compulsory.

The plaintiff had entered into a sale agreement with respondent No.3 on 12<sup>th</sup> November, 1995 agreeing to sell the said property either to the second defendant or to its nominees. It is further asserted by the appellant that in furtherance of the said agreement to sell the second defendant was put in possession of the property agreed to be sold, in

---

<sup>14</sup>V.N. Krishna Murthy V Sri Ravikumar, The Supreme court of India, Civil appellate jurisdiction, Civil appeal Nos. 2701-2704 of 2020 (arising out of special leave petition (c) Nos. 6952-6955 of 2020) 21st August 2020

<sup>15</sup>Ameer Minhaj V Dierdre Elizabeth (Wright) Issar, The Supreme court of India, Civil appellate jurisdiction, Civil appeal no. 18377 of 2017, 4th July, 2018

part performance of the agreement of sale and that fact has been recited in the agreement of sale itself. The agreement also authorized the second defendant, at its discretion, to develop the property by constructing dwelling units thereon for which the predecessor in title of respondent Nos.1 & 2 (the original first defendant) was to cooperate and give consent, whenever and wherever necessary, for the unhindered development of the property.

### 3.11

Appellant: Omprakash

Respondent: Laxminarayan & Others

Court: Supreme court of India

Case no: Civil appellate jurisdiction, Civil appeal No.9032 of 2013 @Special leave petition (c) No. 20721 of 2008,

Issue: Suit for Specific performance, possession and permanent injunction

Dated on: 7<sup>th</sup> October, 2013<sup>16</sup>

Plaintiffs filed a suit for specific performance of contract, possession and permanent injunction in respect of un-irrigated land having an area of 0.506 hectares bearing Survey No. 16012 in Village Arniapitha situated within Tahsil Jaora in District Ratlam in the State of Madhya Pradesh. It is founded on an agreement to sell on 27<sup>th</sup> December 2000. It is the case of the plaintiffs that the properties in question were delivered to them on payment of the part consideration money in pursuance of the agreement to sell and such a recital finds place in the aforesaid agreement. If in a given case, if there is an absolute unregistered sale deed and the parties say that the same is not required to be registered then we don't think that the Court would be entitled to admit the document because simply the parties say so. In the result, the appeal is allowed, the impugned order of the High Court is set aside and that of the trial court is restored but without any order as to costs.

The common law cases are listed below

### 3.12

Plaintiff: Conklin

Defendant: Davi

---

<sup>16</sup> Omprakash V Laxminarayan & Others, Supreme court of India, Civil appellate jurisdiction, Civil appeal No.9032 of 2013 @Special leave petition (c) No. 20721 of 2008, 7<sup>th</sup> October, 2013.

Court: The Supreme Court of New Jersey

Case no: Citation No. 76 N.J. 468, 388 A.2d 598, 1978 N.J.

Dated on: June 6<sup>th</sup> 1978 <sup>17</sup>

Issue: Sale of a portion of property without misrepresentation of any proper documents or deed

The plaintiff, Conklin contracted for the sale of a piece of residential property to the defendants Davi. Here, the plaintiff obtained the property through adverse possession. Added to this, the plaintiff did not secure the deed to this portion prior sale. The defendant refused to complete the sale urging that there is a misrepresentation in the title on the part of the plaintiff. The plaintiff sued for specific performance and the defendants countered for rescission. The court of appeal held that, Firstly the Plaintiffs must ensure that the portion of the land obtained by adverse possession is legally in possession of the plaintiff, prior to a determination made on that the title is marketable. The court held that, land obtained through adverse possession does not mean that the title is marketable. But the plaintiff must prove that the title is legally in possession of the plaintiff. Only then the plaintiff can sue for specific performance.

3.13

Plaintiff: Lohmeyer

Defendant: Bower

Court: Supreme court of Kansas

Case no: Citation No. 170 Kan. 442, 227 P.2d 102, 1951 Kan.

Dated on: 27<sup>th</sup> January 1951<sup>18</sup>

Issue: Sale of a house which was in violation of restrictions of city ordinance

The Plaintiff Lohmeyer, entered into a contract with the Defendants, Mr. and Mrs. Bowers and another party (Defendants), to buy a lot with a house on it. The Plaintiff's barrister found that the house which was decided to purchase by the plaintiff was in violation. The violation is, there was a minimum space between lot divisions. Further, the lot was in violation of a restriction in the deed requiring two story structures to be placed on the lot. Plaintiff brought attention to the defendant about this violation in restriction and asked them to set up an

---

<sup>17</sup> Conklin V Davi ,The Supreme Court of New Jersey Citation No. 76 N.J. 468, 388 A.2d 598, 1978 N.J.,June 6th 1978

<sup>18</sup> Lohmeyer V Bower,Supreme court of Kansas,Citation No. 170 Kan. 442, 227 P.2d 102, 1951 Kan.,27th January 1951

adjacent property to rid the lot of ordinance violation. The plaintiff refused and filed to rescind the contract. The court of appeal held that, violation of city ordinance makes this title unmarketable. The court found that the Plaintiff was correct in basing his case on violations and not restrictions contained in the deed. Public ordinances and zoning are not restrictions that make a title unmarketable. They only do so, when the property in question is already in violation of them.

## **VI. COMPARISON: INDIAN COURTS V FOREIGN COURTS**

Indian courts follow the principles that are listed below

1. A suit for specific performance establishing readiness and willingness is a mandatory one and the plaintiff has to prove the same beyond any pale of doubt.
2. An agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
3. The evidence submitted by the respondent is that the reply for the legal notice given by the petitioner has a lapse of 14 months to the sale agreement demanding to register the sale deed.
4. Since the plaintiff has not come forward before this Court with clean hands, he is not entitled for getting the relief of equity from this Court, and hence, resultantly, he is also not entitled to get the relief of specific performance,

Foreign courts follow the underlying principles

1. Land obtained through adverse possession does not mean that the title is marketable. But the plaintiff must prove that the title is legally in possession of the plaintiff.
2. A marketable title to real estate is one, which is free from reasonable doubt and a title is doubtful and unmarketable if it exposes the party holding it to the hazard of litigation.
3. Public ordinances and zoning are not restrictions that make a title unmarketable.

## **VII. SUGGESTIONS AND RECOMMENDATIONS**

According to The Indian Evidence Act 1872, it was clearly known that the unregistered sale deed by the plaintiff and his lapse of the stipulating period of the legal notice shows that the plaintiff was not ready to perform the contract. A suit for specific performance establishing readiness and willingness is a mandatory one and the plaintiff has to prove the same beyond

all doubts. The sale deed was alleged and found to be a fabricated one. Since the plaintiff has not come forward before this Court with clean hands, he is not entitled for getting the relief of equity from this Court, and hence, resultantly, he is also not entitled to get the relief of specific performance, as it is not clearly established by documentary evidence that the plaintiff has been ready and willing to pay the entire balance sale consideration, and there is no bona-fide on the part of the plaintiff in fulfilling his obligation. Thus, the plaintiff cannot get any costs according to The Indian Evidence Act 1872, and to pass on fair judgements and to close the pending case on an earlier period The Alternate Dispute Resolution act, 2010 can be put forth by the District Judge No. II at Kanchipuram district.

### **Limitations of The Study**

Focusing on the limitation of the study, in this case A. Murali vs Ranganathan I.A No.564 of 2018 in O.S.No.139 of 2018 before the District Judge No. II at Kanchipuram district. The point that we could not research was, since the plaintiff had not come with neat hands and the sale deed was alleged and a fabricated one, he cannot claim compensation under Specific performance act. But the plaintiff had paid a sum of Rs. Twenty – two lakhs as an advance amount to the defendant. Now in what way, the plaintiff can demand the paid amount to the defendant. Defendant also tried to sell a part of the property to the third parties and lagged without paying the received advance amount, But the point that we could not research was in what way the plaintiff can demand his advance amount. This is the main limitation of this study.

## **VIII. CONCLUSION**

On analysing the principles of both Indian courts and foreign courts, it leads us to the fact that the judges have taken cognizance in Indian courts based on the abovesaid principles and Indian courts are more stronger in their opinion and their interpretation of the precedent cases of Madras High Court and Supreme Court of India is fair and follows the principles of natural justice. They have proved that the plaintiff is not entitled to get specific performance on the basis of The Indian Evidence Act 1872 and The Alternate Dispute Resolution act, 2010 and the principle that, a suit for specific performance establishing readiness and willingness is a mandatory one and the plaintiff has to prove the same beyond any pale of doubt is more relevant and reasonable for the present case and this pending case can be closed at an earlier period if it follows the abovesaid suggestions and analysis.

### **Areas for Future Research**

The areas in which the future researchers should focus will be, the plaintiff approached the

Tamilnadu mercantile bank for one time settlement scheme, but the defendant didn't accept for the scheme too. Adding to the defendant tried to sell a part of the property to the third parties and he was lagging to execute sale deed in favor of the plaintiff. Hence the plaintiff sued for specific performance. But the plaintiff was not in neat hands, hence he cannot claim compensation under Specific performance Act. Therefore, he cannot demand his paid advance amount. But there is a part of mistake by the defendant too. Hence the suggestion for future researchers would be, in what way the plaintiff can claim his advance paid amount since there is a part of mistake on the defendant side too. And the rights available to the plaintiff, in proving the mistake committed by the defendant.

\*\*\*\*\*

**IX. REFERENCES**

1. Alkhadhari Abdulwahab, Remedies for the Breach of a Commercial Contract for the Sale of Goods: A Comparative Analysis between the English Sale of Goods Act 1979 and the Contract of Sale of Goods in Saudi Law, Microsoft word,31/05/2018.
2. Anderson v Ryan [1967] IR 34, 37.
3. Contractual Alternate Dispute Resolution, Law Now,15/04/2003.
4. Gates K&L, The Legal Consequences of COVID-19 on Your Contracts Jdsupra, Christopher Tung 02/03/2020.
5. India law legal database online, manupatra.
6. I. Kumar Karuna, Appreciation in evidence of suits Karuna Kumar.
7. Kenton Will Definition of Breach of Contract, Investopedia,19/11/2020.
8. Kogelenberg Van Martin, Deliberate Breach of Contract and Consequences for Remedies: Exploration of a Neglected Area in the Law of Contract, Research gate,01/03/2014.
9. Limitations on Contract Remedies, Saylor org.
10. Rai Diva, Remedies for breach of contract ipleaders, 30/03/2020.
11. Rowan Solene, Remedies for Breach of Contract: A Comparative Analysis of the Protection of Performance, Research gate, 03/2012 .
12. Sharma Kushi, Introduction to Specific Relief act, ipleaders, Diya Rai.
13. Shiferaw Demelash and Kifelew Mesganav, The purpose and scope of contract law, Abyssinia law, 06/03/2012.
14. Types of breach of contract, Wikipedia, 27/01/2021.
15. Unregistered agreement of sale.

\*\*\*\*\*