

AGREEMENT TO SELL

Agreement to sell - Alleged to be signed under influence of liquor - Vendor found to have executed some other sale deeds later in point of time and in favour of vendee only - Plea of defendant rightly rejected. (Smt.Ajit Kaur Vs Smt.Dalbir Kaur) 2004(2) Civil Court Cases 12 (P&H)

Agreement to sell - Co-owners - Three co-owners contracting to convey property - Vendee paying part of consideration - One of co-owners refused to execute sale deed - Other two co-owners already relinquished their rights in favour of vendee - Vendee is entitled to decree for specific performance by paying said Co-owner/Vendor his share of balance consideration. (Krishnan Vs K.S.Krishnan) AIR 2004 Kerala 155

SC **Agreement to sell** - Company - Once a deed is executed on behalf of the company, it is company and not the persons signing can sue or be sued on the contract if the evidence is clear that the signature was only that of the company. (Panchanan Dhara & Ors. Vs Monmatha Nath Maity (Dead) Th. Lrs. & Anr.) 2006(2) Apex Court Judgments 625 (S.C.) : 2006(3) Civil Court Cases 358 (S.C.)

SC **Agreement to sell** - Company - Resolution - Execution of agreement not denied - Even in the absence of resolution contract cannot be held to be invalid or illegal. (Panchanan Dhara & Ors. Vs Monmatha Nath Maity (Dead) Th. Lrs. & Anr.) 2006(2) Apex Court Judgments 625 (S.C.) : 2006(3) Civil Court Cases 358 (S.C.)

SC **Agreement to sell** - Company - Seal of company - Even in absence of a seal, the Company may still be held to be liable having regard to the nature of transaction and the authority of those who had executed it - If the act of the Directors is not ultra vires or no public policy is involved, the parties acting thereupon cannot be left at large. (Panchanan Dhara & Ors. Vs Monmatha Nath Maity (Dead) Th. Lrs. & Anr.) 2006(2) Apex Court Judgments 625 (S.C.) : 2006(3) Civil Court Cases 358 (S.C.)

SC **Agreement to sell** - Consideration - Inadequate consideration - By

itself do not lead to conclusion that agreement was one for loan - Inadequate consideration is also not a ground for refusing to grant a decree for specific performance of contract. (Jai Narain Parasrampuria (Dead) & Ors. Vs Pushpa Devi Saraf & Ors.) 2006(3) Apex Court Judgments 612 (S.C.)

SC **Agreement to sell** - Contract for sale does not confer title in immovable property - It does not by itself create any interest in or charge on such immovable property. (Ramesh Chand Ardawatiya Vs Anil Panjwani) 2003(1) Apex Court Judgments 595 (S.C.)

Agreement to sell - Defendant having entered into agreement cannot insist on plaintiffs to produce documents such as clearance from ULC, Income Tax Department etc. not contemplated under the agreement. (Moparathi Sarojini Devi Vs Kavuru) 2003(1) Civil Court Cases 559 (A.P.)

Agreement to sell - Difference between sale and agreement to sell - Title of property remains with the vendor in case of agreement to sell and in case of sale title to the property vests with the purchaser. (B.R.Koteshwara Rao Vs G.Rameshwari Bai) AIR 2004 A.P. 34

Agreement to Sell - Does not create any title nor it decides any rights in favour of a person entering into agreement to sell. (Hoshiar Singh Vs Ram Kumar & Ors.) 2004(3) Civil Court Cases 186 (P&H)

Agreement to sell - Earnest money - Refund - Cannot be ordered to be refunded in instalments as earnest money is not debt within meaning of Punjab Debtors Protection Act. (Civil Procedure Code, 1908, O.20.R.11, Punjab Debtor Protection At, 1936, Ss.2(6), 11-B, Interest Act, 1978, S.2(c). (Tota Singh Vs Manjit Singh) 2004(2) Civil Court Cases 312 (P&H)

Agreement to sell - Earnest money - Refund - Interest - Whether to be awarded at rate contracted between parties or not is a matter of equity - Refund of earnest money with interest at the rate of 8% per annum (as against 21% p.a. stipulated in agreement) from date of suit till date of refund would serve ends of justice. (Lt.Col.K.C.Bheemaiah Vs Kakamada A.Kuttappa & Ors.) 2004(2) Civil Court Cases 130 (Karnataka)

Agreement to sell - Earnest money - Refund of - Such relief cannot be granted unless specifically sought for - Such relief can be sought for even at appellate stage. (Specific Relief Act, 1963, S.22(2). (Lt.Col.K.C.Bheemaiah Vs

Kakamada A.Kuttappa & Ors.) 2004(2) Civil Court Cases 130 (Karnataka)

Agreement to sell - Execution - Proof - Agreement alleged to be result of fraud - Signatures admitted - No witness examined in whose presence his signatures were obtained - Plea of fraud cannot be accepted. (Mohini Vs Vidhyawati Rathore) 2004(3) Civil Court Cases 480 (M.P.)

Agreement to sell - Execution - Proof - Discrepancy regarding time of execution of agreement to sell - Sole contradiction is not sufficient to discard the agreement when it is otherwise proved by attesting witnesses and deed writer. (Deep Singh & Ors. Vs Amrik Singh & Anr.) 2004(2) Civil Court Cases 560 (P&H)

SC **Agreement to sell** - Extension of time - Date fixed in agreement - Time for performance can be extended - Agreement to extend time need not necessarily be reduced to writing - It can be proved by oral evidence or in some cases, even by evidence of conduct including forbearance on the part of the other party. (Contract Act, 1872, Section 63). (S.Brahmanand & Ors. Vs K.R.Muthugopal (D) & Ors.) 2005(2) Apex Court Judgments 703 (S.C.) : 2006(1) Civil Court Cases 109 (S.C.)

Agreement to sell - However, property sold to some other person - FIR u/s 420 IPC - Civil suit for specific performance also filed - Written statement also filed - No question of harassment or embarrassment from continuing the criminal proceedings - Petition for stay of criminal proceedings dismissed. (Nand Lal Vs State of Punjab) 2002(1) Criminal Court Cases 418 (P&H)

Agreement to sell - Immovable property - Property must be identified with certainty and price fixed based on mutuality. (M/s Mirahul Enterprises Vs Mrs. Vijaya Srivastava) AIR 2003 Delhi 15

Agreement to sell - Joint Family Property - Suit for specific performance - Suit filed against legal representatives of vendor who failed to perform contract during his lifetime - Trial Court holding that specific performance of contract is enforceable only to extent of share of deceased vendor in joint family property but refusing to decree suit even to that extent on its finding that suit property is too small to be divided further and directing refund of earnest money - Finding affirmed by first appellate Court

- Warrants no interference in second appeal. (Khanderao Subbarao Nadagir Vs Hulagavva & Ors.) 2004(2) Civil Court Cases 491 (Karnataka)

Agreement to sell - Limitation - Three years - Such period is to be reckoned from the date fixed for performance of the contract and in case no date for such performance is fixed, then from the date the plaintiff has noticed that performance is refused. (Limitation Act, 1963, Art.54). (Rajana Nagpal alias Ranjana Malik Vs Devi Ram) 2003(2) Civil Court Cases 127 (H.P.)

Agreement to sell - Minor's share also included without permission of Court to sell the same - Specific performance of part of contract - Specific performance allowed after excluding the share of minor on payment of proportionate consideration. (Specific Relief Act, 1963, S.12. (Balkar Singh Vs Mohabat Singh & Ors.) 2004(2) Civil Court Cases 475 (P&H)

Agreement to sell - Oral - Denied - Heavy burden lies upon the party who pleads such an oral agreement to establish its existence as well as its conditions with the support of clinching and admissible evidence. (Yelamati Vs Vejju) AIR 2002 A.P. 369

Agreement to sell - Oral - Earnest money was payable within a week - Simply because plaintiff purchased stamp paper on next day, served notice and also published a public notice in the newspaper are not sufficient to show that there was a concluded agreement of sale between the parties - If plaintiff was willing to pay earnest amount he ought to have paid it on the day he purchased stamp paper - Since earnest money was not paid and agreement was not reduced to writing in accordance with the provisions of Sections 10 and 25 of Contract Act, the contract is not a concluded contract - Agreement is not valid and cannot be enforced. (Abdul Salam & Ors. Vs Sheikh Mehboob & Ors.) 2006(2) Civil Court Cases 134 (Bombay)

SC **Agreement to sell** - Oral - Oral agreement for sale is permissible in law. (Panchanan Dhara & Ors. Vs Monmatha Nath Maity (Dead) Th. Lrs.) 2006(2) Apex Court Judgments 625 (S.C.) : 2006(3) Civil Court Cases 358 (S.C.)

Agreement to sell - Oral - Oral contract between parties for transfer of immovable properties is permissible under law. (Omprakash Nangalia Vs Binod Ku.Goenka & Ors.) 2006(2) Civil Court Cases 694 (Orissa) (DB)

Agreement to sell - Oral - Plaintiff must disclose all material facts, conditions and surrounding circumstances - In instant case oral agreement not proved - Pleadings of plaintiff himself showed that conditions precedent for execution of sale deed were not complied with - Specific performance refused. (Ameer Mohammed Vs Barkat Ali) AIR 2002 Rajasthan 406

Agreement to sell - Oral - Plaintiff was tenant of vendor - Alleged that some instalments of substantial amount of sale consideration were given without insisting for a receipt - Evidence on record revealed that defendant had issued receipts to plaintiff after receiving even rent from him - It shows lack of mutual confidence between parties - Relief of specific performance denied - Order upheld. (Yelamati Vs Vejju) AIR 2002 A.P. 369

Agreement to sell - Oral - Proof - Glaring contradictions in statements of PWs as to oral agreement to sell and also to the place and time of the alleged contract and subsequent discussion with defendant No.1 - Held, oral contract rightly disbelieved. (Omprakash Nangalia Vs Binod Ku.Goenka & Ors.) 2006(2) Civil Court Cases 694 (Orissa) (DB)

Agreement to sell - Person of unsound mind - A person once found to be 'Schizophrenic' is not presumed to be so for ever - It has to be proved that he continued to be 'Schizophrenic' and was a lunatic and not in the capacity to understand the implications of contract on the date of his entering into contract - Mere fact that years ago he was treated for 'Schizophrenic' by itself is not sufficient to declare the contract as invalid. (Contract Act, 1872, Section 12, Civil Procedure Code, 1908, Order 32 Rule 15). (Lakshmi Vs Dr.Ajay Kumar & Ors.) 2006(1) Civil Court Cases 56 (P&H)

Agreement to sell - Proof - Admitted signatures of executant found to be matching with the agreement - Agreement also proved by scribe and other witnesses - One 'Kalia' Advocate also admitted his signatures on agreement but stated that he signed on the asking of his senior advocate - Fact that Kalia appeared as a counsel for the executants after witnessing the agreement to sell is a ground not to rely on his evidence - Finding of Courts below that agreement stands proved, upheld. (Girdhari Lal & Ors. Vs Gian Chand & Ors.) 2005(1) Civil Court Cases 656 (P&H)

Agreement to sell - Property owned by defendant and his sister jointly - Defendant misled plaintiff by representing that he was sole owner

of suit property - Held, no valid agreement to sell had come into existence - Plaintiff not entitled to decree as claimed - However entitled to refund of amount paid and also a sum of Rs.3,50,000/- as damages. (Ramesh Kumar Vs Chaman Lal) AIR 2003 Delhi 202

Agreement to sell - Property owned by mother and minor children - No reference to share of minors - Permission not taken from Court to sell share of minor - Concurrent finding that agreement to sell could not be construed to have been made on behalf of minors and that it was in respect of share of mother alone - Agreement to sell cannot be held to be binding the minors in view of S.8 of Hindu Minority and Guardianship Act - Order passing decree partially to the extent of share of mother - Not liable to be set aside. (Sarup Chand Vs Surjit Kaur) AIR 2002 P&H 54

SC **Agreement to sell** - Ready and willing - Also depend upon the question as to whether defendant did everything which was required of him to be done in terms of the agreement for sale. (P.D'Souza Vs Shondriilo Naidu) 2004(2) Apex Court Judgments 573 (S.C.) : 2005(1) Civil Court Cases 131 (S.C.)

SC **Agreement to sell** - Ready and willing - Defendant accepted Rs.20,000/- from plaintiff in August, 1981 and sought extension of time for registering sale deed till 31.12.1981 - Question as to whether plaintiff ready and willing to perform his part of contract on 5.12.1978 does not survive. (P.D'Souza Vs Shondriilo Naidu) 2005(1) Civil Court Cases 131 (S.C.) : 2004(2) Apex Court Judgments 573 (S.C.)

Agreement to sell - Ready and willing - Defendant denied execution of agreement - Statement of plaintiff is sufficient to infer that he was ready and willing to perform his part of contract. (Specific Relief Act, 1963, Section 16(c). (Santa Singh Vs Binder Singh & Ors.) 2006(4) Civil Court Cases 608 (P&H)

Agreement to sell - Ready and willing - Deposit of balance consideration amount in Court - No such direction given by Court - On failure of plaintiff to deposit adverse inference cannot be drawn. (Dalip Singh Vs Ram Nath) AIR 2002 H.P. 106

Agreement to sell - Ready and willing - Plea is available to subsequent

purchaser. (M/s Ceean International Private Ltd. Vs Ashok Surana) AIR 2003 Calcutta 263

Agreement to sell - Ready and willing - Price fixed 40 lakhs but payment of 8 lakhs only - Failure to establish capacity to pay balance consideration - Vendee company declared sick under SICSP Act and was directed not to alienate any assets - Held, relief of specific performance cannot be granted in favour of plaintiff-company. (P.Purushotham Reddy Vs M/s Pratap Steels Ltd.) AIR 2003 A.P. 141

Agreement to sell - Ready and willing - Proof - Specific pleading supported by statement on oath - Suit for specific performance filed within two months of date fixed for execution of sale deed - Prior thereto suit for injunction filed as defendant intended to sell the property in violation of agreement - It is enough proof to show that plaintiff was ready and willing to perform his part of contract. (Santa Singh Vs Binder Singh) 2006(4) Civil Court Cases 608 (P&H)

Agreement to sell - Ready and willing - Sale was to be executed within three months from the date of agreement - Plaintiff issuing notice to execute registered sale deed in his favour within 15 days - However, plaintiff filing a permanent injunction suit restraining the defendants from alienating or creating document or liability in respect of the suit schedule land instead of filing a suit for specific performance - Conduct of plaintiff shows that he is ready and willing to perform his part of the contract. (N.K.Giriraja Setty Vs N.K.Parthasarathy Setty & Ors.) 2006(3) Civil Court Cases 139 (Karnataka) (DB)

Agreement to sell - Ready and willing - Statement in Court of plaintiff that he was always ready and willing to perform his part of contract - No cross examination of plaintiff on that aspect nor it was suggested to him that he has not possessed of funds - Concurrent finding by Courts below that plaintiff was ready and willing to perform his part of contract - Cannot be interfered in second appeal. (Dalip Singh Vs Ram Nath) AIR 2002 H.P. 106

Agreement to sell - Reduced to writing - Not signed by purchaser - Admissibility - Such contract is enforceable when both parties agree that such contract was in existence, subject to terms agreed. (B.Rajamani Vs Mrs. Azhar Sultana & Ors.) 2005(2) Civil Court Cases 696 (A.P.)

SC **Agreement to sell** - Reference only to house or bungalow - Whether it includes land also? - Held, building includes the land on which it stands, unless by express stipulation it is excluded. (Jai Narain Parasrampuriah (Dead) & Ors. Vs Pushpa Devi Saraf & Ors.) 2006(3) Apex Court Judgments 612 (S.C.)

Agreement to sell - Refund of earnest money - Suit found not specifically enforceable - Court has power to order refund of earnest money - Interest - Is purely on equitable consideration and may not be awarded at the rate contracted between the parties. (Ltd. Col. K.C.Bheemaiah Vs A.Kuttappa) AIR 2004 Karnataka 224

SC **Agreement to sell** - Relief of specific - Provision of damage or compensation in the agreement itself - Not a ground to refuse specific performance. (P.D'Souza Vs Shondriilo Naidu) 2004(2) Apex Court Judgments 573 (S.C.) : 2005(1) Civil Court Cases 131 (S.C.)

SC **Agreement to sell** - Relief of specific performance - Agreement between Commission Agent and farmer - Agreement duly proved - Plea of defendant of obtaining thumb impression on plain paper not proved - Earnest money of Rs.2000/- paid for purchase of 24 kanals at the rate of Rs.10,000/- - High Court reversed decree of Courts below and directed refund of earnest money with reasonable interest - Decision of High Court upheld, but plaintiff allowed costs upto High Court to the extent of his success. (Manohar Lal @ Manohar Singh Vs Maya) 2003(1) Apex Court Judgments 531 (S.C.)

Agreement to sell - Relief of specific performance - Cannot be denied on ground that has been considerable rise in the price of land due to passage of time since agreement. (Dalip Singh Vs Ram Nath) AIR 2002 H.P. 106

Agreement to sell - Repudiation - Total consideration payable within one month from date of agreement and 18% interest payable on unpaid amount - Defendant declaring that she is not liable to pay interest at contract rate - Amounts to repudiation of contract. (Moparathi Sarojini Devi Vs Kavuru) 2003(1) Civil Court Cases 559 (A.P.)

Agreement to sell - Right given to vendors to retain property at their will if sale deed was not executed within stipulated date - Option was exercisable by vendors at their discretion not only upto the date stipulated but

also beyond that - In essence it is not agreement to sell - Such agreement cannot be the basis for decree for specific performance. (Lt. Col. K.C.Bheemaiah Vs. Kakamada A.Kuttappa & Ors.) AIR 2004 Karnataka 224

Agreement to sell - Specific performance - Agreement to sell 8.7.1977 and 17.7.1977 - Sale deed executed and registered on the basis of agreement dated 8.7.1977 - Agreement 8.7.1977 found to be ante dated - Relief of specific performance on the basis of agreement dated 17.7.1977 - Refusing relief of specific performance would result into unfair advantage to defendant as an attempt has been made to ante date a valuable document to defraud plaintiff - Discretionary relief of specific performance, held, rightly given to plaintiff. (Ram Kumar Vs Rattan Parkash & Ors.) 2006(4) Civil Court Cases 189 (P&H)

Agreement to sell - Specific performance - Alternative relief of refund of earnest money - Specific performance of contract is discretionary relief which depends upon facts of each case - If the vendor had entered into an agreement to sell, earlier in time, with some other person qua the same property, then alternative relief of refund of earnest money and liquidated damages cannot be said to be unwarranted. (Saudarshan Kumar Vs Raj Rani) 2003(3) Civil Court Cases 564 (P&H)

Agreement to sell - Specific performance - Can be enforced against subsequent purchaser - Subsequent purchaser can also be directed to pay compensation in addition to specific performance. (Rajendra Kantilal Vs Bombay Builders Co.(P) Ltd.) AIR 2002 Bombay 408

Agreement to sell - Specific performance - Co-sharer - Sale of specific khasra numbers - On sale plaintiff steps into shoes of defendant and becomes co-sharer and does not become owner exclusively for the specific khasra numbers sold - Specific area and khasra numbers have to be decided only in partition proceedings - Merely because limited khasra numbers are mentioned in the agreement of sale and suit for specific performance is filed against share of defendant in total land does not defeat the right of plaintiff. (Piru Vs Fakir Chand) 2006(4) Civil Court Cases 748 (P&H)

Agreement to sell - Specific performance - Decree of specific performance is guided by justice, equity, good conscience and fairness to both the parties - In the instant case possession delivered in pursuance of

agreement to sell and substantial amount paid at the time of agreement to sell and entire balance purchase price deposited in Court - Held, justice, equity and good conscience demand grant of decree of specific performance. (Piara Singh (Dead) through his L.Rs. Vs Ravinder Pal Singh Sidhu & Ors.) 2006(4) Civil Court Cases 613 (P&H)

Agreement to sell - Specific performance - Description of land changed by way of amendment of plaint due to the reason that there was change in the revenue record - No change of cause of action and there was no order restricting the amendment from the date of order - Amendment relates back to the date of filing of suit - Seeking amendment to update khasra numbers in terms of latest revenue record does not amount to negation of contract. (Piara Singh Vs Ravinder Pal Singh Sidhu) 2006(4) Civil Court Cases 613 (P&H)

SC **Agreement to sell** - Specific performance - Discretionary relief - Both parties guilty of serious misconduct - Both of them abused the process of Court and initiated unnecessary and frivolous proceedings against each other - Both the parties took recourse to abuse of judicial process against the other upon suppression of material fact which amounts to fraud on Court - Held, relief of specific performance in such a case cannot be granted - A decree of refund of advance with interest and further a decree for compensation passed. (Jai Narain Parasrampuria (Dead) & Ors. Vs Pushpa Devi Saraf & Ors.) 2006(3) Apex Court Judgments 612 (S.C.)

Agreement to sell - Specific performance - Five specimen signatures given in Court differently, to create confusion, so that they do not tally with signatures on agreement - Courts below holding defendant not reliable witness and that agreement stands executed - No interference warranted - Appeal dismissed. (Telu Vs Fakir Chand) 2006(4) Civil Court Cases 562 (P&H)

SC **Agreement to sell** - Specific performance - Property belonged to Company - Company passed resolution to sell the property - Power of Attorney executed - Power of Attorney holder entering into agreement to sell - Plaintiff having capacity to pay and ready and willing to pay the balance amount - Absence of any material to show that power of attorney was acting in unauthorised manner in view of clear resolution of company - Decree of specific performance, upheld. (Specific Relief Act, 1963, Sections 16, 20, Contract Act, 1872, Sections 23 & 24). (India Financial Assn., Seventh Day

Adventists Vs M.A.Unneerikutty & Anr.) 2006(3) Apex Court Judgments 110 (S.C.)

Agreement to sell - Specific performance - Ready and willing - Word 'willing' not pleaded - Plaint when read as a whole showing willingness of the vendee to perform his part of contract - Even evidence shows readiness and willingness of vendee to perform his part of contract - Held, plaintiff was ready and willing to perform his part of contract. (Piara Singh (Dead) through his L.Rs. Vs Ravinder Pal Singh Sidhu & Ors.) 2006(4) Civil Court Cases 613 (P&H)

Agreement to sell - Specific performance - Relief of - Alternative relief also claimed - Not a ground to deny relief of specific performance. (Santa Singh Vs Binder Singh & Ors.) 2006(4) Civil Court Cases 608 (P&H)

Agreement to sell - Specific performance - Relief of - Changed circumstance or a mitigating factor - Appeal pending since 1982 - Held, this by itself is not a circumstance to decline relief of specific performance. (Ram Kumar Vs Rattan Parkash & Ors.) 2006(4) Civil Court Cases 189 (P&H)

Agreement to sell - Specific performance - Relief of - Suit for specific performance filed after 1-1/4 years of death of the person who entered into agreement to sell with the allegation that deceased avoided to execute sale deed - Plaintiff did not bother to issue notice immediately when executant avoided to execute the sale deed - No documentary proof that plaintiff is having funds with him to pay the balance consideration - Plaintiff cannot be considered to be ready and willing to perform his part of the contract - Order of refund of earnest money with simple interest @ 6% per annum passed. (Mohini Vs Vidhyawati Rathore) 2004(3) Civil Court Cases 480 (M.P.)

Agreement to sell - Specific performance - Relief of - Urban property whose value increasing rapidly from year to year - Earnest money paid only a meagre amount of 1/5th of total consideration - Grant of specific performance after several years of entering agreement - Unjust. (P.Purushotham Reddy & Anr. Vs M/s.Pratap Steels Ltd.) 2003(2) Civil Court Cases 339 (A.P.)

Agreement to sell - Specific performance - Relief of specific performance cannot be denied merely for the reason that there is delay in

decision of suit - Right of parties have to be determined on the date of filing of suit. (Piara Singh (Dead) through his L.Rs. Vs Ravinder Pal Singh Sidhu & Ors.) 2006(4) Civil Court Cases 613 (P&H)

Agreement to sell - Specific performance - Sale deed sent to Sub Registrar for registration - Sub Registrar is duty bound to register the sale deed as sent to him by Court - It is not concern of Sub Registrar to see that the marked value of the property as given in the instrument is not proper or correct - Registration Authority cannot contend that the value of the property shown in the sale deed is not the true consideration. (Smt.Birdhi Devi Vs State of Rajasthan & Ors.) 2005(2) Civil Court Cases 474 (Rajasthan)

Agreement to sell - Specific performance - Suit filed on the last day of limitation - Relief cannot be denied merely for the reason that suit is filed on the last day of limitation. (Piru Vs Fakir Chand) 2006(4) Civil Court Cases 748 (P&H)

Agreement to sell - Specific performance - Suit for - Co-purchaser - Suit filed for specific performance by one out of two purchasers with regard to the entire agreement of sale - Other purchaser had not given up his right in the suit land - Held, vendee or subsequent vendee cannot plead that co-purchaser can enforce the agreement only to the extent of his proportionate share. (Narinder Kaur Vs Nagina Singh) 2003(1) Civil Court Cases 607 (P&H)

Agreement to sell - Specific performance - Suit for - Oral agreement to sell - Day and date of such agreement not specified - Claim of plaintiff that he was put into possession without executing any document and without paying any advance also not proved - Merely because owner admitted receipt of some money but on different account, it would not shift burden of proof on him - Failure to prove existence of oral agreement - Suit rightly dismissed by trial Court. (Kumari Anandan Vs T.Balamukunda Rao) 2003(1) Civil Court Cases 657 (Madras)

Agreement to sell - Specific performance - Suit for - Purchaser in possession of property as tenant is liable to pay rent to owner - Title of property continues and vests with the seller even after execution of the agreement of sale and owner is entitled to receive profits of the property till title or ownership is lost. (Transfer of Property Act, 1882, S.55(3). (Shiddappa

Adivappa Jadi Vs Ramanna) 2003(1) Civil Court Cases 632 (Karnataka)

Agreement to sell - Specific performance - Suit for - Ready and willing - Merely by getting an affidavit attested from an Oath Commissioner without getting presence marked by Sub Registrar does not prove readiness and willingness of plaintiff - Plaintiff did not serve any notice upon defendant till he filed the suit - Held, first appellate Court rightly found that plaintiff was not ready and willing to perform his part of contract. (Gurdial Sarup Vs Kaushalya Kapur) 2003(1) Civil Court Cases 602 (P&H)

Agreement to sell - Specific performance - Suit for - Sale deed was to be executed after partition - Order of partition made on 16.11.1970 and Sanad Taqseem prepared on 20.4.1971 and mutation sanctioned on 15.6.1971 - Limitation to file suit starts to run on 15.6.1971. (Narinder Kaur Vs Nagina Singh) 2003(1) Civil Court Cases 607 (P&H)

Agreement to sell - Specific performance - Suit for - Value of property in question was much more than what was mentioned in agreement to sell - Purchaser was in possession of property as tenant - Purchaser/tenant not paying rent to owner from date of execution of agreement - Mere agreement to sell does not confer any title on purchaser - Purchaser is not entitled to equitable relief - Decree for specific performance without considering facts and evidence on record and without giving cogent reasons - Set aside. (Shiddappa Adivappa Jadi Vs Ramanna) 2003(1) Civil Court Cases 632 (Karnataka)

Agreement to sell - Stamp paper purchased on 27th and agreement executed on 1st of next month - Name of purchaser and for what purpose it is purchased not mentioned - Held, all these contentions are of no merit when once the genuineness of the agreement between the parties is accepted. (Smt.Shanti Bai Vs Udai Raj) 2005(2) Civil Court Cases 56 (Rajasthan)

Agreement to sell - Suit for specific performance - Vendor received earnest money but failed to execute sale deed - Claim of vendor that transaction was in fact money lending and that he had signed on blank stamp paper and repaid amount borrowed by him to vendee's father - Vendor failing to produce any receipt for the same nor did he insist that agreement of sale or blank stamp appear should be returned to him - Vendee is therefore entitled to decree for refund of earnest money with interest. (Sudhakar Rao Shankarrao

Sarnaik Vs Bhanudas N.Deshmukh) AIR 2004 Bombay 350

Agreement to sell - Suit for specific performance - 'Ready and willing' - Plea of ready and willingness is not available to subsequent vendee against the previous vendee. (Baldev Singh Vs Chhota Singh) AIR 2002 P&H 47 - 2001(2) Civil Court Cases (P&H) 503

Agreement to sell - Suit for specific performance - 'Ready and willing' - Pleading - Act does not require any specific phraseology but only that plaintiff must aver that he was ready and willing to perform his part of the contract - The compliance of ready and willingness has to be in spirit and substance and not in letter and form - The substance of pleadings has to be seen as a whole - Once the plaintiff has averred that he was ready and willing to perform his part and has proved that he presented Agreement to sell - Suit for specific performance - Agreement by mortgagor with mortgagee for sale of property - Stipulation in agreement as to deduction of mortgage amount - Plaintiff ready and willing to perform his part of the contract - Defendant defaulted - Defendant did not take concrete steps to execute sale deed - Continued possession of plaintiff is a factor for not denying him decree of specific performance. (Lakshmi Amma Kamalamma Vs Ayyappan) AIR 2004 Kerala 174

Agreement to sell - Suit for specific performance - Advance of Rs.15,000/- paid - On a subsequent date further advance of Rs.50,000/- also paid - Rs.34,000/- remaining amount to be paid at the time of registration of sale deed - Plaintiff purchased stamps for executing sale deed - Defendant failed to appear on the appointed date for executing sale deed - Plaintiff always ready and willing to perform his part of the contract - Defendant put some construction - Plaintiff ready to pay Rs.99,000/- instead of remaining amount of Rs.34,000/- - Decree of specific performance passed by trial Court upheld with modification that remaining amount now payable would be Rs.99,000/- instead of Rs.34,000/-. (Ashok Bhargava Vs Ganpat Singh) 2006(3) Civil Court Cases 187 (Rajasthan)

Agreement to sell - Suit for specific performance - Agreement entered into to pay off debts - Evidence showing that agreement was intended to be acted upon - Specific performance can be decreed - As property was conveyed to seller after debts were cleared as such plaintiff held not entitled to claim damages for delay in execution of sale deed. (Gudurusyamala Devi Vs Attola)

AIR 2002 A.P. 462

Agreement to sell - Suit for specific performance - Agreement for sale executed by Church represented by competent persons - Cannot refuse to execute sale deed on ground that sanction from Curia of Archdiocese has not been received. (Specific Relief Act, 1963, Section 13). (Themma Vs Infant Jesus Church) 2005(3) Civil Court Cases 799 (Kerala)

Agreement to sell - Suit for specific performance - Agreement to sell does not require registration and can be marked in a suit for specific performance. (Registration Act, 1908, Ss.17 & 49). (Javvadi Koteswara Rao Vs Sonti Sambasiva Rao) 2004(3) Civil Court Cases 452 (A.P.)

Agreement to sell - Suit for specific performance - Agreement to sell executed by old, illiterate and rustic villager - Position of such a lady is not better than a pardanashin lady - Execution of agreement by such a lady has to be examined with extra caution and all suspicious surrounding the execution shall have to be dispelled by the person alleging such execution. (Sujan Kaur Vs Chand Singh) 2003(3) Civil Court Cases 254 (P&H)

SC **Agreement to sell** - Suit for specific performance - Agreement to sell land for Rs.one lakh alleged to be of price of Rs.20 lakhs - No such plea raised in written statement - No issue framed - No evidence led that market price of the land was Rs.20 lakhs - In absence of pleading or an issue framed or evidence led, it cannot be held that agreement to sell was unconscionable. (Akbar Ali Vs Vinod Khanna & Anr.) 2004(2) Apex Court Judgments 330 (S.C.) : 2004(3) Civil Court Cases 566 (S.C.)

SC **Agreement to sell** - Suit for specific performance - Alternative plea of refund of earnest amount and damages - By itself not a bar to claim a decree of specific performance. (Specific Relief Act, 1963, Section 20). (P.C.Varghese Vs Devaki Amma Balambika Devi & Ors.) 2006(1) Apex Court Judgments 553 (S.C.) : 2006(1) Civil Court Cases 321 (S.C.)

Agreement to sell - Suit for specific performance - Alternative prayer for redemption of mortgage not barred by S.29 of Specific Relief Act. (Specific Relief Act, 1963, S.29). (Nilkanth Dhondiba Chavan & Ors. Vs Umabai & Ors.) 2005(2) Civil Court Cases 218 (Bombay)

Agreement to sell - Suit for specific performance - Alternative prayer for redemption of mortgage not barred by Section 29 of Specific Relief Act. (Specific Relief Act, 1963, Section 29). (Nilkanth Dhondiba Chavan & Ors. Vs Umabai & Ors.) 2005(2) Civil Court Cases 218 (Bombay)

Agreement to sell - Suit for specific performance - Alternative relief - Merely because plaintiff has asked for alternative relief, he cannot be refused the principal relief of specific performance - Alternative relief is to be granted if party is not found entitled to main relief. (Baldev Singh Vs Chhota Singh) AIR 2002 P&H 47 - 2001(2) Civil Court Cases (P&H) 503

Agreement to sell - Suit for specific performance - Alternative relief claimed as to return of earnest money, compensation and damages - If the plaintiff claims an alternative relief, it does not mean that he has given up his main relief for specific performance - Claim of an alternative relief is permissible in law and no legal or other infirmity can be placed in the suit of the plaintiff on this score. (Raj Kumar Sharma Vs Smt.Pushpa Jaggi) 2006(4) Civil Court Cases 286 (Delhi)

Agreement to sell - Suit for specific performance - As per terms of agreement it has to be performed by a certain date - Agreement stood cancelled as it could not be performed by a specific date - Defendants informed plaintiff by a registered letter at its usual address - Letter returned unserved with endorsement that factory was under lock out - By return of letter a presumption can be drawn that the letter was despatched to the plaintiff - Plaintiff in rebuttal did not lead any evidence that postal endorsement was wrong and incorrect - Mere denial of its receipt by plaintiff not sufficient to rebut the presumption - As agreement stood cancelled, plaintiff not entitled to specific performance. (P.Purushotham Reddy & Anr. Vs M/s.Pratap Steels Ltd.) 2003(2) Civil Court Cases 339 (A.P.)

Agreement to sell - Suit for specific performance - Breach of a contract to transfer immovable property must be specifically enforced - Alternative relief of securing compensation in money would not be adequate. (Specific Relief Act, 1963, Section 10). (Mohini Kapoor & Ors. Vs Deepak Uppal & Ors.) 2006(2) Civil Court Cases 160 (P&H)

Agreement to sell - Suit for specific performance - Claim of alternative relief of damages - Does not amount to waiver of principal relief

of specific performance. (Raj Singh Vs Inder Jeet) 2005(2) Civil Court Cases 690 (P&H)

Agreement to sell - Suit for specific performance - Clause of payment of damages in agreement - Specific performance cannot be refused merely because there is a clause in agreement for payment of damages. (Mohini Kapoor & Ors. Vs Deepak Uppal & Ors.) 2006(2) Civil Court Cases 160 (P&H)

Agreement to sell - Suit for specific performance - Court would be perfectly justified in taking judicial note of phenomenal increase in prices of immovable properties. (Niwas Builders Vs Chanchalaben Gandhi) 2003(3) Civil Court Cases 99 (Bombay)

Agreement to sell - Suit for specific performance - Courts below finding that agreement to sell was in fact a money transaction in order to secure loan - Refund of advance payment allowed though not claimed as Court can always grant relief on the basis of findings recorded by it although the same has not been prayed for. (Civil Procedure Code, 1908, O.7.R.7). (Sawaran Singh Vs Ajit Singh) 2004(2) Civil Court Cases 522 (P&H)

SC **Agreement to sell** - Suit for specific performance - Death of agreement holder - Suit for specific performance filed by sister - Widow of agreement holder not remarried - Suit by sister not maintainable when wife of agreement holder had not remarried. (Dyaneshwar Ramachandra Rao Patange Vs Bhagirathibai) 2006(3) Apex Court Judgments 27 (S.C.) : 2006(4) Civil Court Cases 140 (S.C.)

Agreement to sell - Suit for specific performance - Decree for payment of double the amount of earnest money - Relief of specific performance declined on the ground that plaintiff failed to prove ownership of defendant - Averment in plaint as to ownership of defendant and same proved by registered lease deed in favour of defendant - Held, it is not mandatory for Court to grant decree of specific performance simply for the reason that plaintiff has proved his case and it is lawful to do - However, this discretion is not arbitrary and can be exercised only for sound and reasonable ground - Evidence on record does not support the finding recorded by trial Court - Appeal allowed - Decree for specific performance granted. (Specific Relief Act, 1963, Section 20). (M.K.Sehgal Vs Mohinder Kaur) 2006(4) Civil Court

Cases 396 (Delhi) (DB)

SC **Agreement to sell** - Suit for specific performance - Decree of partition and separate possession of property - Can be granted in addition to decree of specific performance. (Specific Relief Act, 1963, Section 22(1) (a). (P.C.Varghese Vs Devaki Amma Balambika Devi & Ors.) 2006(1) Apex Court Judgments 553 (S.C.) : 2006(1) Civil Court Cases 321 (S.C.)

Agreement to sell - Suit for specific performance - Decree of specific performance - Court is expected to take into consideration circumstances prevailing in each case, conduct of parties and respective interest under the contract. (Niwas Builders Vs Chanchalaben Gandhi) 2003(3) Civil Court Cases 99 (Bombay)

Agreement to sell - Suit for specific performance - Defendant denied execution of agreement and also denied receipt of earnest money - Execution of agreement and receipt of earnest money proved - Plaintiff always ready and willing to perform his part of the contract - There is absolutely no equity in favour of the defendant - If suit remained pending for about seven years then plaintiff should not suffer for the same - Decree of specific performance granted. (Kishan Lal Vs Chandro) 2004(2) Civil Court Cases 91 (P&H)

SC **Agreement to sell** - Suit for specific performance - Delay - Hardship to vendor - Where vendor accepted part payments from time to time without any demur, redeemed mortgage only upon receipt of payment from vendee, he cannot be permitted thereafter to take the plea that Court should not exercise its discretionary jurisdiction in view of hardship which he would face. (P.D'Souza Vs Shondrilo Naidu) 2004(2) Apex Court Judgments 573 (S.C.) : 2005(1) Civil Court Cases 131 (S.C.)

SC **Agreement to sell** - Suit for specific performance - Description of property changed because of consolidation proceedings - There is no bar to a decree of specific performance being granted. (Phool Pata & Anr. Vs Vishwanath Singh & Ors.) 2005(2) Apex Court Judgments 297 (S.C.) : 2005(3) Civil Court Cases 210 (S.C.)

Agreement to sell - Suit for specific performance - Execution of agreement and receipt of part of consideration denied - Vendor had applied for permission under S.157-A of U.P.Zamindari Abolition and Land Reforms

Act and District Collector granted permission - Held, decree granting specific performance, proper. (Indra Nath Vs Smt.Kitabun) AIR 2004 Allahabad 326

Agreement to sell - Suit for specific performance - Execution of agreement proved by witnesses in whose presence defendant thumb marked agreement and received consideration - Sale deed executed by defendant in favour of persons other than plaintiff a sham document as no consideration was paid - Other persons also not bona fide purchasers as they had notice of agreement to sell executed by defendant - Plaintiff proved that he was always ready and willing to perform his part of contract and that he had necessary funds to pay balance sale consideration and that defendant was resiling from agreement - Suit decreed - No interference. (Ramji & Ors. Vs Chokat & Ors.) 2005(2) Civil Court Cases 130 (Allahabad)

SC **Agreement to sell** - Suit for specific performance - Extension of period of performance - Written document not necessarily required - It can be implied also - Conduct of parties in this behalf is relevant. (Panchanan Dhara & Ors. Vs Monmatha Nath Maity (Dead) Th. Lrs. & Anr.) 2006(2) Apex Court Judgments 625 (S.C.) : 2006(3) Civil Court Cases 358 (S.C.)

Agreement to sell - Suit for specific performance - Failure of D.H. to deposit amount within time - Court can extend time - J.D. cannot insist that D.H. can claim only refund of advance and not specific performance. (Kumaresan Vs M.P.Seshadri) AIR 2002 Kerala 198

SC **Agreement to sell** - Suit for specific performance - Grant of decree of specific performance is discretion of Court - Court is not bound to grant such relief merely because it is lawful to do so - In cases where one of the three circumstances mentioned in S.20(2) Specific Relief Act is established, no question of discretion arises. (Sargunam (D) by Lr. Vs Chidambaram & Anr.) 2005(1) Apex Court Judgments 07 (S.C.) : 2005(1) Civil Court Cases 141 (S.C.)

Agreement to sell - Suit for specific performance - Grant of decree of specific performance - Defendant prepared false documents to defeat a valid agreement - Mere filing of suit on the last day of limitation cannot be regarded as delay in isolation - Defendant was required to take certain steps as regards his imperfect title but he not taking any steps which shows his

guilty mind at the inception - Held, plaintiff is entitled to decree of specific performance. (Surendra Singh Vs Lrs. of Bhanwar Lal & Ors.) 2005(3) Civil Court Cases 752 (Rajasthan)

SC **Agreement to sell** - Suit for specific performance - Grant of decree of specific performance is discretion of Court - Court is not bound to grant such relief merely because it is lawful to do so - In cases where one of the three circumstances mentioned in Section 20(2) Specific Relief Act is established, no question of discretion arises. (Sargunam (D) by Lr. Vs Chidambaram & Anr.) 2005(1) Apex Court Judgments 07 (S.C.) : 2005(1) Civil Court Cases 141 (S.C.)

Agreement to sell - Suit for specific performance - Grant of relief of specific performance - Laches on the part of plaintiff in performing their part of the contract - Relief of specific performance rightly refused by Court below - Plaintiff not entitled to damages as he equally responsible for non compliance of the conditions to be fulfilled by them - Since the advance amount was lying with the defendants from the date of agreement as such advance amount ordered to be refunded with interest @ 12% from the date of agreement till the date of refund. (Specific Relief Act, 1963, Sections 16 & 20). (Ratanlal Jain & Ors. Vs Missu Kutubuddin Nasseem & Ors.) 2006(2) Civil Court Cases 577 (A.P.) (DB)

Agreement to sell - Suit for specific performance - If the contract is legal, and enforceable, then even if one of the parties to contract dies leaving no heir, yet the persons, who acquired interest over the subject matter of contract though that deceased party would be bound by the contract and specific performance can be enforced against such persons. (Smt. Basanti Bai Vs Sri Prafulla Kumar Routrai & Anr.) 2006(3) Civil Court Cases 247 (Orissa)

Agreement to sell - Suit for specific performance - In fact it was a money transaction - Agreement was procured fraudulently but it does not mean that advance amount did not pass on to the defendant - Refund of advance money allowed. (Sawaran Singh Vs Ajit Singh) 2004(2) Civil Court Cases 522 (P&H)

Agreement to sell - Suit for specific performance - Inadequacy of price and hardship to party called upon to perform - When hardship is brought

about by vendor himself by inducing third party into property which he had agreed to sell, then vendor cannot be relieved of his obligation to perform contract on ground of such hardship which is created by him. (Specific Relief Act, 1963, Sections 10 Expln.(i) and Section 20(2). (Smt.Saraswathamma Vs H.Sharad Shrikande) 2005(3) Civil Court Cases 409 (Karnataka)

Agreement to sell - Suit for specific performance - Interests of justice can be better served by directing to execute the agreement deed rather than awarding some compensation for breach of the agreement. (Balan Vs Krishnan) 2003(1) Civil Court Cases 227 (Kerala)

Agreement to sell - Suit for specific performance - Joint Family Property - Sale neither for benefit of family nor for legal necessity - Family members earning hand - No necessity to sell property - Specific performance cannot be granted. (Dharmarao Sidhappa Shetgar & Ors. Vs Gopal Shrinivas Shirsikar & Ors.) 2006(3) Civil Court Cases 172 (Bombay)

Agreement to sell - Suit for specific performance - Land mortgaged with Bank - Mortgage stood discharged on account of repayment of loan - Held, plaintiff is entitled to specific performance. (Indrapal Vs Sham Shankar Lal) AIR 2002 Allahabad 243

SC **Agreement to sell** - Suit for specific performance - Limitation - Begins to run from the date on which the contract was to be specifically performed - Performance of a contract when depends upon certain statutory formality then sale deed cannot be registered till the said requirement is complied with - In a given situation, the vendor may not be permitted to take advantage of his own wrong in not taking steps for complying the statutory provisions and then to raise a plea of limitation. (Contract Act, 1872, Section 55, Specific Relief Act, 1963, Sections 20, 21, Limitation Act, 1963, Art.54) (Panchanan Dhara & Ors. Vs Monmatha Nath Maity (Dead) Th. Lrs. & Anr.) 2006(2) Apex Court Judgments 625 (S.C.) : 2006(3) Civil Court Cases 358 (S.C.)

Agreement to sell - Suit for specific performance - Limitation - In a suit for permanent injunction defendants in written statement denied liability to execute sale deed - Suit for specific performance to be filed within three years from date of denial of liability - Grant of injunction in favour of one of defendants in suit for permanent injunction cannot be a excuse to extend period of limitation - Suit filed beyond three years from denial of liability is

barred by limitation. (Abdulaziz Mohammad Isaq Kothiwale Vs Ismailbeg)
AIR 2004 Karnataka 211

Agreement to sell - Suit for specific performance - Limitation - One of the clause in the agreement that on failure plaintiff could file suit within one week of expiry of period of agreement - Held, fixation of period as such does not make stipulation as to time as essence of contract - It only emphasise fact that plaintiff should immediately file suit. (Lakshmi Amma Kamalamma Vs Ayyappan) AIR 2004 Kerala 174

Agreement to sell - Suit for specific performance - Limitation - Specific date stipulated in agreement for payment of full consideration and registration of sale deed - Vendee making part payment after expiry of stipulated date with assurance to pay balance shortly - At the time of making part payment no specific date fixed - Limitation would commence from date of notice of refusal of specific performance by vendor and not from date stipulated in agreement - Second part of Art.54 attracted. (Dutta Seethamahalakshamma Vs Yanamadala Balaramaiah) AIR 2003 A.P. 430

SC **Agreement to sell** - Suit for specific performance - Limitation - Three years - In case no date is fixed for performance, within a period of three years from the date when the plaintiff has notice that performance is refused. (Limitation Act, 1963, Art.54). (R.K.Parvatharaj Gupta Vs K.C.Jayadeva Reddy) 2006(1) Civil Court Cases 719 (S.C.) : 2006(1) Apex Court Judgments 705 (S.C.)

Agreement to sell - Suit for specific performance - Limitation - Vendor agreeing to sell flat to be constructed and complete in all respects, with all facilities and amenities and in habitable condition, within 90 days from date of agreement - Limitation starts to run not on expiry of 90 days but from date when flat is ready as stipulated in agreement. (Limitation Act, 1963, Art.54). (Smt.Saraswathamma Vs H.Sharad Shrikande & Ors.) 2005(3) Civil Court Cases 409 (Karnataka)

Agreement to sell - Suit for specific performance - Minors - Respondent Nos.6 to 8 were minors at the time of execution of agreement to sell - Held, agreement cannot be enforced against the minors. (Swaran Singh (Died) through LRs. Vs Dalip Kaur & Ors.) 2005(2) Civil Court Cases 762

(P&H)

Agreement to sell - Suit for specific performance - Money not offered at the time of execution of sale deed - Merely for this reason plaintiff cannot be held to be not ready and willing to perform his part of contract when there are necessary pleadings to this effect and there is nothing on record to doubt bonafide statement of plaintiff on oath that he is ready and willing to perform his part of the contract - Decree of specific performance granted by trial Court ordered to be restored. (Parmod Bhushan Pal Vs Bachan Singh (Dead) Through his L.Rs. & Ors.) 2005(2) Civil Court Cases 122 (P&H)

Agreement to sell - Suit for specific performance - Mortgagor after mortgaging premises taking it on rent - Subsequently entering into agreement of sale with mortgagee - Entire consideration amount paid - Relationship of landlord and tenant cease to exist - On decretal of suit of specific performance plaintiff is entitled to take delivery of possession. (Abdul Gani Vs Abdul Gafoor) 2006(1) Civil Court Cases 399 (Rajasthan)

Agreement to sell - Suit for specific performance - Oral agreement - A piece of paper produced on which date and amount written in support of oral agreement - Neither oral agreement nor writing on piece of paper proved - Owner executing sale deed in favour of third party - Subsequent purchaser was anterior in point of time than oral agreement and subsequent not aware of pendency of suit at the time of execution of sale deed - He is protected by S.19 of Specific Relief Act - Plaintiff not entitled to relief of specific performance. (Rajan Vs Yunuskutty) AIR 2002 Kerala 339

Agreement to sell - Suit for specific performance - Oral agreement - Payment of 15 lakhs as part payment - No explanation why agreement was not reducing into writing - Evidence of plaintiff and his witnesses found unreliable and untrustworthy - Relief of specific performance not granted. (A.Ganapthy Vs S.Venkatesan) AIR 2002 Madras 203

Agreement to sell - Suit for specific performance - Parties agreed that contract becomes unenforceable in the event defendants fail to obtain requisite permission for the sale of property before the time specified in the contract - Though there is a provision for mutual extension of the said period, it did not materialise - Defendants failed to obtain permission within the specified time as Land Ceiling case was not disposed of by that time -

No evidence to show that defendants were responsible for the delay in the disposal of the case - Held, plaintiff is not entitled to specific performance. (P.Purushotham Reddy & Anr. Vs M/s.Pratap Steels Ltd.) 2003(2) Civil Court Cases 339 (A.P.)

Agreement to sell - Suit for specific performance - Party approaching Court must come with clean hands - Agreement found suffering from artificiality - Discretionary and equitable relief of specific performance cannot be granted. (Basappa Vs Basamma) AIR 2004 Madras 390

Agreement to sell - Suit for specific performance - Plain reading of agreement does not spell out as to how much area is saleable and how much consideration would be payable accordingly - Rate per acre defined in the agreement but applicable to which area not reflected - Held, agreement is vague - Agreement not capable of being specifically enforced - Alternative relief of refund of earnest money granted. (Surjit Singh & Anr. Vs Manohar Lal & Ors.) 2005(1) Civil Court Cases 162 (P&H)

Agreement to sell - Suit for specific performance - Complaint - Need not be strictly as per Forms 47, 48 of CPC - Substantial compliance is sufficient. (Rakha Singh Vs Babu Singh) AIR 2002 P&H 270

Agreement to sell - Suit for specific performance - Plaintiff in his evidence attempting to substitute entirely new agreement - Held, plaintiff is not entitled to relief of specific performance. (P.Retnaswamy Vs A.Raja and another) AIR 2002 Madras 131

Agreement to sell - Suit for specific performance - Plaintiff not approaching with clean hands - Plaintiff not entitled to equitable relief of specific performance. (P.Purushotham Reddy & Anr. Vs M/s.Pratap Steels Ltd.) 2003(2) Civil Court Cases 339 (A.P.)

Agreement to sell - Suit for specific performance - Possession - Executing Court is competent to grant delivery of possession in a case where no such relief is granted by a decree for specific performance of contract for sale. (Velayudhan Vs Chandran) 2004(3) Civil Court Cases 191 (Kerala)

Agreement to sell - Suit for specific performance - Possession delivered - Entire consideration amount paid - Defendant contemplating property to someone else - Decree in favour of plaintiff is proper. (Sankaran

Vs Padmanabha Iyer) AIR 2004 Madras 395

Agreement to sell - Suit for specific performance - Proof of agreement to sell - Date fixed for registration of sale deed after a gap of four years - Clause in agreement that if any of the owners die before execution of sale deed, legal representatives would be bound to execute the sale deed - Held, fixing of long period of execution of sale deed is beyond one's comprehension - Second clause in agreement shows that the agreement was not executed on the date it bears as the owners have died within six months of the alleged agreement and plaintiff in his over zealousness has introduced such a clause. (Sadhu Singh Vs Kuldip Sharma & Ors.) 2004(3) Civil Court Cases 615 (P&H)

Agreement to sell - Suit for specific performance - Property agreed to be sold by mortgagor to mortgagee - As per agreement mortgagee entitled to deduct mortgage amount and to pay balance amount - Plaintiff ready and willing to perform his part of contract - It was defendant who defaulted - Defendant did not take steps to execute sale deed - Plaintiff already in possession - Continued possession of plaintiff is a factor for not denying him decree - Held, plaintiff is entitled to decree of specific performance. (Lakshmi Amma Kamalamma Vs Ayyappan Kunjoonju) 2004(2) Civil Court Cases 590 (Kerala)

Agreement to sell - Suit for specific performance - Property found to have encumbrances - Purchaser seeking clarification from vendor - Termination of contract by vendor - Illegal - Purchaser entitled to relief of specific performance. (Sri Brahadambal Agency Vs Ramasamy) AIR 2002 Madras 352

Agreement to sell - Suit for specific performance - Readiness and willingness - Deficit Court fee - Can be for so many reasons - By itself not a ground to believe that plaintiff had no capacity to pay the amount of consideration - However, if defendant shows that sufficient court-fee was not paid because of the incapacity of the plaintiff, suit can be dismissed. (Bolisetti Venkateswara Rao Vs Nadakuditi Venkateswara Rao) 2003(1) Civil Court Cases 36 (A.P.)

Agreement to sell - Suit for specific performance - Readiness and willingness - Deficit Court fee - Payment of deficit Court fee can be for

numerous reasons - By itself not a ground to believe that plaintiff had no capacity to pay the amount of consideration. (Bolisetti Venkateswara Rao Vs Nadakuditi Venkateswara Rao) 2003(1) Civil Court Cases 36 (A.P.)

Agreement to sell - Suit for specific performance - Readiness and willingness - Must be continuous from the date of agreement till the date of decree. (Specific Relief Act, 1963, S.16(c). (Bolisetti Venkateswara Rao Vs Nadakuditi Venkateswara Rao) 2003(1) Civil Court Cases 36 (A.P.)

Agreement to sell - Suit for specific performance - Reading and willing - Failure to plead that he had money in the Bank and that he had withdrawn money from Bank - Is immaterial - These are matters of evidence and these are not matters to be pleaded. (Rakha Singh Vs Babu Singh) AIR 2002 P&H 270

Agreement to sell - Suit for specific performance - Ready and willing - Averment and proof - Entire sale consideration amount paid and possession delivered - Only legal formalities of registering sale deed was left to be done at future date - Held, when there are no such existing liabilities or obligations, the need to aver and prove readiness and willingness does not arise. (Mallappa Vs Srinivasa Rao) 2003(3) Civil Court Cases 602 (Karnataka)

Agreement to sell - Suit for specific performance - Ready and willing - Has to be gathered from the evidence of parties and the capacity to pay - Plaintiff is not required to exhibit the current notes to show his ready and willingness - Plaintiff should be capable and should have the capacity to pay on demand the sale consideration whether from his account or after arranging the same from reliable sources. (Raj Kumar Sharma Vs Smt.Pushpa Jaggi & Ors.) 2006(4) Civil Court Cases 286 (Delhi)

Agreement to sell - Suit for specific performance - Ready and willing - In the instant case plaint lacking in material aspect of showing continuous readiness and willingness - Want of pleading as to continuous readiness and willingness coupled with demand for refund of money - Decree of specific performance in such circumstances not sustainable. (Specific Relief Act, 1963, Section 16(c). (Lrs.of Bhinva Ram Vs Sohan Ram) 2005(3) Civil Court Cases 686 (Rajasthan)

Agreement to sell - Suit for specific performance - Ready and willing

- No evidence on record about financial capacity and position to pay balance sale consideration - Plaintiff held not entitled to relief of specific performance. (P.Purushotham Reddy & Anr. Vs M/s.Pratap Steels Ltd.) 2003(2) Civil Court Cases 339 (A.P.)

Agreement to sell - Suit for specific performance - Ready and willing
- Objection as to want of pleading - Objection can be raised for the first time even in second appeal. (Specific Relief Act, 1963, Section 16(c). (Lrs.of Bhinva Ram Vs Sohan Ram) 2005(3) Civil Court Cases 686 (Rajasthan)

SC **Agreement to sell** - Suit for specific performance - Ready and willing
- Plaintiff in a suit for specific performance 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 - However, even when exact words in letter and spirit are not used but readiness and willingness can be culled out from reading all the averments in the plaint coupled with the materials brought on record, to the said effect, the statutory requirement of S.16(c) of Specific Relief Act can be held to be complied with. (Specific Relief Act, 1963, S.16(c). (Manjunath Anandappa Urf.Shivappa Hanasi Vs Tammanasa & Ors.) 2003(1) Apex Court Judgments 520 (S.C.) : 2003(2) Civil Court Cases 552 (S.C.)

Agreement to sell - Suit for specific performance - Ready and willing
- Plaintiff to plead and prove - Same not dependent of defendant's defence. (Ameer Mohammed Vs Barkat Ali) AIR 2002 Rajasthan 406

Agreement to sell - Suit for specific performance - Ready and willing
- Pleading - Omission to state the elements as required by Section 16(c) of Specific Relief Act, by itself is not sufficient to deny specific performance if otherwise the plea could be culled out from the pleadings and material on record taken as a whole - Mere claim of refund of purchase price with interest may also by itself is not sufficient to deny specific performance, if otherwise found available. (Specific Relief Act, 1963, Section 16(c). (Lrs.of Bhinva Ram Vs Sohan Ram) 2005(3) Civil Court Cases 686 (Rajasthan)

Agreement to sell - Suit for specific performance - Ready and willing
- Pleading and proof - It is not necessary for the plaintiff to plead or prove that he had tendered the money to defendant on any particular day or had demanded transfer of property by a registered sale deed. (Iqbal Singh & Anr.

Vs Gurdev Kumar & Anr.) 2004(2) Civil Court Cases 415 (P&H)

Agreement to sell - Suit for specific performance - Ready and willing
- Pleading that plaintiff was “ever ready and willing to execute the sale-deed in his favour after making a payment of Rs.200/-” - Amounts to compliance of mandatory provision of S.16(c) Specific Relief Act. (Rambhau Jagoji Garde Vs Shantabai) 2003(2) Civil Court Cases 275 (Bombay)

Agreement to sell - Suit for specific performance - Ready and willing
- Proof - Plaintiff went to office of Sub Registrar on date fixed for execution and registration of sale deed with money - On next day plaintiff gave telegram regarding non appearance of defendant and asked defendant to appear again after five days - Money proved to be deposited with bank - Held, facts are enough to show that plaintiff was ready and willing to perform his part of the contract. (Specific Relief Act, 1963, Section 16(c). (Raj Pal Singh Vs Baldev Singh & Ors.) 2005(3) Civil Court Cases 213 (P&H)

Agreement to sell - Suit for specific performance - Ready and willing
- Proof - Version of the vendee about his readiness and willingness to perform his part of the agreement cannot be disbelieved particularly when vendor even denied the execution of the agreement and receipt of earnest money, which is duly proved by vendee. (Gurbachan Singh & Anr. Vs Gurmit Singh) 2003(3) Civil Court Cases 597 (P&H)

Agreement to sell - Suit for specific performance - Ready and willing
- Remaining present in the office of Sub Registrar for execution of deed on the day fixed for execution and registration of sale deed proves readiness and willingness on the part of the plaintiff. (Iqbal Singh & Anr. Vs Gurdev Kumar & Anr.) 2004(2) Civil Court Cases 415 (P&H)

Agreement to sell - Suit for specific performance - Ready and willing
- Single sentence in plaint read thus, “The plaintiff has always been ready and willing to perform his part of the contract” - Except this nothing said how plaintiff had performed the obligation or he was always ready and willing
- Plaintiff cannot be said to be ready and willing to perform his part of the contract. (Specific Relief Act, 1963, Section 16(c)).(M.Balasubramaniam Vs Gopalakrishna Odayar & Anr.) 2005(2) Civil Court Cases 272 (Madras)

Agreement to sell - Suit for specific performance - Refund of amount

claimed in the alternative - Trial Court granting decree for both relief of specific performance and refund of amount - Plaintiff not making out case for specific performance - Decree for refund of amount upheld while deleting the relief of specific performance. (Specific Relief Act, 1963, So.21, 22). (Lrs.of Bhinva Ram Vs Sohan Ram) 2005(3) Civil Court Cases 686 (Rajasthan)

SC **Agreement to sell** - Suit for specific performance - Relief in terms of Section 22 Specific Relief Act incidental or ancillary to main relief of specific performance and in addition thereto - Ordinarily, proceeding for final decree for partition to be initiated after execution and registration of sale deed and not vice versa. (P.C.Varghese Vs Devaki Amma Balambika Devi & Ors.) 2006(1) Apex Court Judgments 553 (S.C.) : 2006(1) Civil Court Cases 321 (S.C.)

Agreement to sell - Suit for specific performance - Relief of possession not claimed - Suit for specific performance is maintainable without claiming relief for possession. (Specific Relief Act, 1963, Section 22). (Lrs.of Bhinva Ram Vs Sohan Ram) 2005(3) Civil Court Cases 686 (Rajasthan)

Agreement to sell - Suit for specific performance - Relief of specific performance - Clause in agreement that if vendor does not execute sale deed within stipulated date then vendee can get registration of sale deed through Court or receive double the amount - Held, the stipulation in the agreement cannot be taken to mean that vendee has no right to get the specific performance of the agreement by insisting for the execution of the sale deed - Contention of vendor that vendee is entitled to receive double the amount only, repelled. (Jangir Singh Vs Hari Singh) 2004(3) Civil Court Cases 165 (P&H)

Agreement to sell - Suit for specific performance - Relief of specific performance - Delay in deciding suit - Held, once execution of valid agreement, ready and willingness of the vendee is proved and the subsequent vendee is not bonafide purchaser for consideration without notice and that vendor proved to have taken false pleas, Court will not refuse relief of specific performance. (Gurbachan Singh & Anr. Vs Gurmit Singh) 2003(3) Civil Court Cases 597 (P&H)

Agreement to sell - Suit for specific performance - Relief of specific performance - Delay of 19 years due to inaction on part of vendor - Vendor

cannot be permitted to take advantage of his own inaction - Relief of specific performance granted inspite of the fact that there is increase in prices. (Ranjana Nagpal alias Ranjana Malik Vs Devi Ram) 2003(1) Civil Court Cases 93 (H.P.)

Agreement to sell - Suit for specific performance - Relief of specific performance - Discretion of Court - To be based on sound and reasonable judicial principles and not to be arbitrary. (Ameer Mohammed Vs Barkat Ali) AIR 2002 Rajasthan 406

Agreement to sell - Suit for specific performance - Relief of specific performance - Discretion of Court to grant relief of specific performance is not arbitrary and it is required to be exercised in a reasonable and sound manner guided by judicial principles - While exercising the discretion, Court is required to meticulously consider all the facts and circumstances of the case - Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. (P.Purushotham Reddy & Anr. Vs M/s.Pratap Steels Ltd.) 2003(2) Civil Court Cases 339 (A.P.)

Agreement to sell - Suit for specific performance - Relief of specific performance - Grant of relief of specific performance is an equitable relief - Discretion to grant such relief is to be exercised only on the strength of sound judicial principles and not in an arbitrary fashion - Conduct of parties has to be taken into consideration - Plaintiff always ready and willing to perform his part of the contract - Consideration paid - Defendant failed to give reply to legal notices issued - No interfere called for in grant of relief of specific performance. (Sughra Bee Vs Kareez Fatima Qureshi) 2004(2) Civil Court Cases 685 (A.P.)

Agreement to sell - Suit for specific performance - Relief of specific performance - Grant of relief of specific performance is the discretion of Court which is guided by sound and reasonable principles - Plaintiff not getting any undue advantage, defendant not put to undue hardship which he did not foresee at the time of agreement - Sale price admitted by defendant to be reasonable - Decree of specific performance upheld. (Anup Krishna Kaul Vs Jagdish Swaroop Agarwal & Ors.) 2004(2) Civil Court Cases 707 (Rajasthan)

Agreement to sell - Suit for specific performance - Relief of specific

performance - Gross default on part of plaintiff to perform his part of contract
- Relief of specific performance cannot be granted - Specific performance is a remedy that is to be granted to a party who is vigilant in the matter of performance of his own part. (Usman Koya Vs Santha) 2003(2) Civil Court Cases 59 (Kerala)

Agreement to sell - Suit for specific performance - Relief of specific performance - When ever there is proof of execution of agreement to sell and readiness and willingness on the part of plaintiff is proved then unless the enforcement of specific performance result into unfairness, the specific performance has to be ordered. (Raj Singh Vs Inder Jeet) 2005(2) Civil Court Cases 690 (P&H)

SC **Agreement to sell** - Suit for specific performance - Relief of specific performance cannot be denied on ground of unexplained delay in filing suit without framing specific issue and finding thereon as to whether there has been unexplained delay on the part of plaintiff in taking recourse to law in filing suit, though suit is filed within prescribed period of limitation. (Ram Niwas Gupta Vs Mumtaz Hasan) 2003(1) Civil Court Cases 450 (S.C.)

Agreement to sell - Suit for specific performance - Rise in prices - Delay in the performance of contract not attributable to plaintiff - Specific performance of agreement cannot be denied to plaintiff merely on the ground that there has been considerable rise in prices of the real estate during the pendency of litigation. (Rajana Nagpal alias Ranjana Malik Vs Devi Ram) 2003(2) Civil Court Cases 127 (H.P.)

Agreement to sell - Suit for specific performance - Specific performance of a part of contract - When a major portion of the agreement to sell would remain unperformed then decree of specific performance of a part of contract cannot be ordered. (Specific Relief Act, 1963, Section 12). (Gopal Dass Vs Khan Chand (Died) through L.Rs.) 2006(2) Civil Court Cases 336 (P&H)

Agreement to sell - Suit for specific performance - Stipulation in agreement that vendee could file suit within one week from date of expiry of period of agreement - It cannot be characterised as a clause which would disentitle vendee to file suit forever - Fixation of period as such does not make stipulation as to time an essence of contract - It only emphasise fact

that plaintiff should immediately file suit. (Lakshmi Amma Kamalamma Vs Ayyappan Kunjoonju) 2004(2) Civil Court Cases 590 (Kerala)

Agreement to sell - Suit for specific performance - Subsequent purchaser - Sale consideration 1.75 lacs - Subsequent purchaser purchased property for a consideration of Rs.27,500/- - Reason not explained as to why suit property sold for a meager amount - No amount paid before Sub Registrar - Finding of Courts below that subsequent purchaser failed to prove that sale deed was executed for consideration - Decree granting specific performance upheld. (Rajinder Kumar Vs Ram Sarup & Anr.) 2006(4) Civil Court Cases 215 (P&H)

SC **Agreement to sell** - Suit for specific performance - Subsequent vendee - Plaintiff ready and willing to perform his part of the contract - In a collusive suit by way of compromise decree subsequent vendee obtained sale deed in his favour - Agreement of sale in favour of plaintiff was prior in time - Plaintiff had inserted advertisement in newspaper that he is the purchaser of the property in dispute - Plaintiff ready and willing to perform his part of the contract - Plaintiff had purchased the stamp paper - These facts show that there is not much equity left in favour of subsequent vendee - Decree of specific performance granted in favour of plaintiff - However, plaintiff to take appropriate proceedings for eviction of subsequent vendee and take possession of suit premises in accordance with law. (Devalsab (D) by Lrs. Vs Ibrahimsab F.Karajagi & Anr.) 2005(1) Apex Court Judgments 651 (S.C.) : 2005(2) Civil Court Cases 177 (S.C.)

Agreement to sell - Suit for specific performance - Subsequent vendee - Sale deed was to be executed by 21.8.1990 - Sale of land to third party before the stipulated date of execution of sale deed - Filing of suit for injunction restraining vendor from executing sale deed before 21.8.1990 in favour of third party would have been of no meaning, because vendee would have got cause of action for suit for specific performance only after 21.8.1990. (Baldev Singh Vs Chhota Singh) AIR 2002 P&H 47 - 2001(2) Civil Court Cases (P&H) 503

Agreement to sell - Suit for specific performance - Subsequent vendees - Decree for refund of earnest money with interest allowed - Subsequent vendees constructed a house over the land in dispute - Not a ground to deny relief to plaintiff if house is constructed during pendency

of suit - Finding that subsequent vendees are bonafide purchasers for value without knowledge of previous agreement given without pleading and issue - Sale to subsequent vendees made even within period available to plaintiff for specific performance - Plaintiff doing his best to perform his part of the contract - Defendant admitting that he apprised subsequent vendees of her prior agreement with plaintiff - Suit by plaintiff within one month from date of refusal on part of defendant - Decree of Courts below set aside and plaintiff's suit for specific performance decreed. (Specific Relief Act, 1963, S.19(b). (Deendayal Vs Smt.Harjot Kanwar) 2003(2) Civil Court Cases 567 (Rajasthan)

Agreement to sell - Suit for specific performance - Subsequent vendees constructing a house during pendency of suit - Deserves to be ignored while considering relief to the plaintiff - Rights of parties are to be considered as they existed on the date when the suit was filed. (Deendayal Vs Smt.Harjot Kanwar) 2003(2) Civil Court Cases 567 (Rajasthan)

Agreement to sell - Suit for specific performance - Substantial amount of the agreement paid to vendor and vendor continued to be in possession - Extension of time duly proved by evidence of plaintiff and deed writer - Plaintiff ready and willing to perform his part of the contract also duly proved - Mere rise in prices due to pendency of litigation is not a ground to deny relief of specific performance - Decree of specific performance rightly granted by first appellate Court. (Des Raj Vs Bhim & Anr.) 2004(2) Civil Court Cases 551 (P&H)

SC **Agreement to sell** - Suit for specific performance - Suit filed after six years of agreement to sell - No material to prove that plaintiff asked for execution of sale deed - Held, plaintiff is not entitled to discretionary relief of specific performance. (Specific Relief Act, 1963, S.20). (Manjunath Vs Tammanasa) 2003(2) Civil Court Cases 552 (S.C.)

Agreement to sell - Suit for specific performance - Suit instituted within period of limitation - Ingredients required to be made out in a suit for specific performance established - Delay in filing suit, though suit filed within period of limitation, is not a ground to non suit the plaintiff. (Rambhau Jagoji Garde Vs Shantabai) 2003(2) Civil Court Cases 275 (Bombay)

Agreement to sell - Suit for specific performance - Time is not

essence of contract unless specifically provided - Mutation in favour of vendor sanctioned but notice thereof not given to vendee though required under agreement - Vendor also not calling upon vendee to get sale deed executed - Conduct of vendor shows that according to him time was not essence of the contract. (Ranjana Nagpal alias Ranjana Malik Vs Devi Ram) 2003(1) Civil Court Cases 93 (H.P.)

SC **Agreement to sell** - Suit for specific performance - Unable to perform whole of contract - Minor's share - Nothing in agreement that in the event of permission to sell minor's share is not obtained within specified period same shall become invalid or otherwise unenforceable in law - Permission to sell minor's share rejected during pendency of suit - Contract thus not contingent contract - Vendor having definite share in property excluding minor's share - It was not composite contract - Decree of specific performance excluding share of minor can be passed - Moreso, when purchaser relinquished his claim in respect of share of minor by way of amendment. (Specific Relief Act, 1963, Sections 12(3), 20). (P.C.Varghese Vs Devaki Amma Balambika Devi & Ors.) 2006(1) Apex Court Judgments 553 (S.C.) : 2006(1) Civil Court Cases 321 (S.C.)

Agreement to sell - Suit for specific performance - Uncertainty in agreement of sale alleged - Terms and conditions agreed between parties not uncertain - Actual extent could not be given because of happening of expected road widening - Agreement cannot be said to be unenforceable. (Contract Act, 1872, S.29). (Sughra Bee Vs Kareez Fatima Qureshi) 2004(2) Civil Court Cases 685 (A.P.)

Agreement to sell - Suit for specific performance - Validity and legality of agreement - Can be questioned by subsequent purchaser. (P.Retnaswamy Vs A.Raja and another) AIR 2002 Madras 131

Agreement to sell - Suit for specific performance - Value of property much more than that mention in agreement - Plaintiff in possession of property as tenant - From date of execution of agreement tenant not paying rent - Mere agreement to sell does not confer any title on purchaser - Plaintiff is not entitled to equitable relief - Decree of specific performance set aside. (Shiddappa Vs Ramanna) AIR 2002 Karnataka 416

Agreement to sell - Suit for specific performance - Vendor had option

to retain property by returning with interest, advance received within one year from date of execution of agreement - Such clause in agreement confers on vendor right not to part with property and to terminate agreement at his option - Offer to sell is not unconditional and absolute - As time stipulated in agreement is not essence of contract, option to terminate agreement can be exercised even after expiry of time stipulated - Contract which is in its nature revocable cannot be enforced and suit for its enforcement is not maintainable. (Lt.Col.K.C.Bheemaiah Vs Kakamada A.Kuttappa & Ors.) 2004(2) Civil Court Cases 130 (Karnataka)

Agreement to sell - Suit for specific performance - Vendor received an advance of Rs.56,000/- out of consideration amount of Rs.66,000/- and thereafter vendor refused to perform the agreement - Held, trial Court rightly decreed the suit granting a decree of specific performance. (Smt.Shanti Bai Vs Udai Raj) 2005(2) Civil Court Cases 56 (Rajasthan)

Agreement to sell - Suit for specific performance and compensation - Jurisdiction - When suit is filed not only for specific performance but also for alternative relief of compensation then suit can be filed at the place where defendant resides and carries on business, or personally works for gain. (Civil Procedure Code, 1908, Section 16). (Karan Mahendru & Ors. Vs M/s.Vatika Plantations (P) Ltd.) 2004(3) Civil Court Cases 606 (Delhi)

Agreement to sell - Suit for specific performance by vendor - Vendor not appearing in witness box - Adverse inference that case set up by vendor is not true has to be drawn - Husband of vendor appeared as defence witness as her attorney cannot be treated as having appeared in capacity as defendant. (Ranjana Nagpal Vs Devi Ram) AIR 2002 H.P. 166

Agreement to sell - Suit for specific performance in forma pauperis - Balance amount yet to be paid - Held, suit for specific performance is not maintainable. (Specific Relief Act, 1963, S.16(c). (Bolisetti Venkateswara Rao Vs Nadakuditi Venkateswara Rao) 2003(1) Civil Court Cases 36 (A.P.)

SC **Agreement to sell** - Time the essence of contract - It does not depend only upon express stipulation made by the parties, but it also depends upon the intention of the parties - Intention can be ascertained from (i) the express words used in the contract; (ii) the nature of the property which forms the subject matter of the contract; (iii) the nature of the contract; and (iv) the

surrounding circumstances. (Smt.Swarnam Ramachandran Vs Aravacode Chakungal Jayapalan) 2004(2) Apex Court Judgments 521 (S.C.) : 2004(3) Civil Court Cases 703 (S.C.)

SC **Agreement to sell** - Time the essence of contract - Onus to plead and prove that time was the essence of the contract is on the person alleging it - In case where notice is given making time of the essence, it is duty of Court to examine the real intention of the party giving such notice by looking at the facts and circumstances of each case - A vendor has no right to make time of the essence, unless he is ready and willing to proceed to completion and secondly when the vendor purports to make time of the essence, the purchaser must be guilty of such gross default as to entitle the vendor to rescind the contract. (Smt.Swarnam Ramachandran Vs Aravacode Chakungal Jayapalan) 2004(2) Apex Court Judgments 521 (S.C.) : 2004(3) Civil Court Cases 703 (S.C.)

Agreement to sell - Transaction entered into with intention to defeat statutory provisions - Court will not enforce such an agreement even if it is true and valid. (B.R.Koteshwara Rao Vs G.Rameshwari Bai) AIR 2004 A.P. 34

Agreement to sell - Two purchasers - Agreement providing if one purchaser backs out the other has a right to purchase the entire land - One purchaser backing out and took his earnest money - Held, the other purchaser has right to purchase the entire land on payment of entire sale consideration. (Baj Singh & Ors. Vs Ravinder Singh & Ors.) 2006(2) Civil Court Cases 490 (P&H) (DB)

Agreement to sell - Uncertainty as regard to the subject matter, the parties to the contract or the price or other terms - If from evidence such uncertainty in the terms of contract is not capable of being made certain then contract becomes unenforceable. (N.K.Giriraja Setty Vs N.K.Parthasarathy Setty & Ors.) 2006(3) Civil Court Cases 139 (Karnataka) (DB)

Agreement to sell - Vague - Date of execution of sale deed not mentioned in agreement - Held, Courts blow rightly declined to pass a decree of specific performance. (Swaran Singh (Died) through LRs. Vs Dalip Kaur & Ors.) 2005(2) Civil Court Cases 762 (P&H)

Agreement to sell - Vendee not approaching Court with clean hands
- Specific performance refused. (B.R.Koteshwara Rao Vs G.Rameshwari Bai) AIR 2004 A.P. 34

Agreement to sell - Vendee not approaching Court with clean hands and taking false pleas - Not entitled to equitable relief. (P.Purushotham Reddy Vs M/s Pratap Steels Ltd.) AIR 2003 A.P. 141

Agreement to sell - Vendor had option of putting end to entire transaction by paying to vendee amount mentioned in agreement as substitute for performance of agreement or sale of property - Dismissal of suit for specific performance - Proper. (Lt. Col.K.C.Bheemaiah Vs A.Kuttappa) AIR 2004 Karnataka 224

Agreement to sell - With tenant - In absence of a clause in the agreement that tenancy will come to an end and tenant will not be liable to pay rent thereafter there is no question of any surrender of tenancy, either expressly or impliedly - Tenant will still be liable to pay rent and liable to ejectment for non payment of rent. (Harkaran Singh & Ors. Vs Financial Commissioner Haryana) 2003(3) Civil Court Cases 622 (P&H)