BRIJ MOHAN AND ORS.

v.

SMT. SUGRA BEGUM AND ORS.

JULY, 19, 1990

[L.M. SHARMA AND N.M. KASLIWAL, JJ.]

Specific Relief Act—Specific performance of contract of sale of immovable property on basis of oral agreement alone—Heavy burden lies on plaintiff to prove consensus ad idem.

Transfer of Property Act—Section 55—Provision not applicable where parties consciously negotiated but failed in respect of any term or condition resulting in agreement not being concluded.

The appellants-plaintiffs are four brothers. They filed a suit against defendant No. 1, Smt. Mahboobunnisa Begum, (Since deceased and represented by legal heirs) for specific performance of oral contract of sale of a building in Hyderabad. The property was later sold by defendant No. 1 to defendants Nos. 3 and 4.

The plaintiffs' case was that plaintiffs Nos. 1 and 2, on behalf of themselves and their younger brothers, plaintiffs Nos. 3 and 4, had preliminary negotiations for the purchase of the suit property through Shri Arif Ali, advocate; that eventually on 3rd May, 1979 they met Arif Ali and offered to pay Rs.10,00,000, which was the price demanded by the owner; that Arif Ali, after getting the confirmation of the said offer from the first defendant on phone, said that the plaintiffs should meet the first defendant on 6th May, 1979 and that she would in the meanwhile purchase the stamp papers for making the formal agreement of sale incorporating the oral agreement arrived at on 3rd May, 1979; that on 6th May, 1979 the plaintiffs met the first defendant in the presence of Arif Ali and other, wherein the amount of earnest money to be paid, time for registration of the sale deed etc. were decided; that at that meeting Shri Arif Ali, prepared first and the final drafts of the receipt in his own handwriting and handed over these drafts to the first plaintiff to get the final draft typed and duly stamped; that Arif Ali also delivered the stamp papers to the first plaintiff for typing the formal agreement of sale; that at the meeting held on 6th May, 1979 the plaintiffs Nos. 1 and 2 were also permitted to proceed with the publication of the notices in the newspapers; that after the public notice was published, the first defendant got a reply notice published and got

issued a legal notice dated 8.5.79 through her advocate, alleging that there was no agreement for sale; that thereafter, the first and second plaintiffs made sincere and repeated attempts to convince the first defendant that there was in existence a concluded contract for sale of the suit property, and that the execution of the agreement of sale was a mere formality. On these allegations, the plaintiffs sought the relief of specific performance of the agreement.

The first defendant in her written statement stated that certain negotiations had taken place between her and plaintiffs Nos. 1 and 2, but the negotiations had failed. It was further stated that there was no concluded or enforceable contract between the parties; that no price was settled or agreed upon and even the condition for advance payment and other terms and conditions were not agreed upon; that no final receipt or document had been prepared; and that the first defendant never asked for the purchase of stamp papers.

The Trial Court found that on the facts and circumstances of the case, it was established that the plaintiffs had entered into an oral contract of sale with the first defendant on 3.5.79. The Trial Court accordingly decreed the plaintiffs' suit for specific performance.

Two separate appeals, were filed in the High Court. A Division Bench of the High Court allowed the appeals and set aside the decree passed by the trial court. The High Court held that in order to determine the binding nature of a contract between the parties, the mere acceptance of sale price was not sufficient. The High Court further observed that in the absence of evidence that the other terms also were discussed over the phone and settled on 3.5.79, it could not be said that there was a concluded contract on 3rd May, 1979, and that it was obviously for that reason that a further meeting was fixed at the house of the 1st defendant on 6th May, 1979. The High Court did not agree with the contention of the plaintiffs that all the terms of contract, including the stipulation with regard to the payment of advance amount and the vendor's responsibility to obtain the permission from the Urban Land Ceiling Authority, had been settled by 3.5.79 and what was left to be done on 6.5.1979 was merely to incorporate the terms already arrived at into a formal document on stamp paper.

Before this Court it was contended on behalf of the appellants that an agreement for sale of immovable property could be made orally; that in the facts and circumstances of the case all the fundamental and vital terms of the contract were settled and concluded on 3.5.1979 itself and

even if the other details like mode of payment of consideration, obtaining of no objection certificate from Land Ceiling Authorities etc. remained unsettled, the same could be settled subsequently or determined in accordance with sec. 55 of the Transfer of Property Act; that the only vital terms for a valid agreement of sale of an immovable property were the identity of the property and the price; that both these vital terms were settled and concluded on 3.5.79; and that the act of purchasing stamps on 3.5.79 by defendant No. 1 and the draft receipts, prepared by Shri Arif Ali, clearly lent support to the case of the plaintiffs.

Kollipara Sriramulu v. *T. Aswathanarayana & Ors.*, [1968] 3 SCR 387 and *Nathulal* v. *Phoolchand,* [1970] 2 SCR 854, relied upon.

On the other hand, it was contended on behalf of the respondents that no vital or fundamental terms of the contract were discussed, agreed or settled on 3.5.79; that neither any earnest/advance money to be paid was settled, nor, any time for the payment of such money or time for execution of agreement of sale or final sale deed and its registration, was settled; that even if time may not be an essence of a term of contract for sale of immovable property, it was a vital term without which no concluded contract could be arrived at; that any agreement in the third week of April, 1979 to the effect that defendant No. 1 would bring the no objection certificate from the Urban Land Ceiling Authorities was found not proved by the High Court and as such there was no question of applying the principles contained in section 55 of the Transfer of Property Act; that a no objection certificate was necessary to be obtained from Urban Land Ceiling Authorities and the defendant No. 1 and her husband being old persons had clearly taken the stand that they would not bring such certificate; and that therefore no final and concluded contract took place on any date.

Dismissing the appeals, this Court,

HELD: (1) There is no requirement of law that an agreement or contract of sale of immovable property should only be in writing. However, in a case where the plaintiffs come forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement along, heavy burden lies on the plaintiffs to prove that there was consensus ad-idem between the parties for a concluded oral agreement for sale of immovable property. Whether there was such a concluded oral contract or not would be a question of fact to be determined in the facts and circumstances of each individual case. It

A has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties orally and a written agreement if any to be executed subsequently would only be a formal agreement incorporating such terms which had already been settled and concluded in the oral agreement. [429B-D]

B

(2) From a perusal of the evidence it would be abundantly clear that nothing was settled on 3.5.79 except the fact that the plaintiffs had conveyed their offer to purchase the suit property for Rs.10,00,000 and Shri Arif Ali, after speaking to defendant No. 1 on phone conveyed that she was willing to sell the property for Rs.10,00,000. [431B]

C (3) No averment was made in the plaint that defendant No. 1 had agreed to obtain the permission from the Urban Land Ceiling Authority in the meeting held in the third week of April, 1979. The High Court was right in concluding that it was unbelievable that in the third week of April, 1979 when still there was a wide gap of Rs.2,00,000 in the price D payable for the suit building, the parties would have stipulated about the condition as to who should obtain the permission under the Urban Land Ceiling Act. [431C-F]

(4) The High Court rightly believed the contention of defendant No. 1 that the agreement fell through because the plaintiffs insisted that E defendant No. 1 should obtain the permission from the Urban Land Ceiling Authority while defendant No. 1 did not agree for the same. [432C]

(5) The general principles contained in section 55 of the Transfer of Property Act regarding rights and liabilities of buyer and seller can only apply in the absence of a contract to the contrary and not in a case F where the parties consciously negotiated but failed in respect of any term or condition, as a result of which the agreement itself could not be settled or concluded. [432E]

(6) Once it is held/established in the present case that no agreement was finally concluded or settled on 6.5.79 and negotiations failed, G as before this date it was never setted that defendant No. 1 would bring the no objection certificate from Urban Land Ceiling Authority, there was no question of applying general principles contained in section 55 of the Transfer of Property Act. [432F]

Kollipara Sriramulu v. *T. Aswathanarayana & Ors.*, [1968] 3 H SCR 387, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1893 and 1894 of 1989. A

From the Judgment and Order dated 24.9.1987 of the Andhra Pradesh High Court in C.C.C.A. No. 152 of 1984 and C.C.C.A. No. 150 of 1984.

B

K. Parasaran, Shanti Bhushan, A.D.N. Rao and A. Subba Rao for the Appellants.

M.C. Bhandare, K. Madhava Reddy, Subodh Markandeya, Mrs. Chitra Markandeya, W.A. Nomani, G.S. Giri Rao, A.K. Raina and D. Prakash Reddy for the Respondents.

C

The Judgment of the Court was delivered by

KASLIWAL, J. The Plaintiffs by Special Leave have filed these appeals against the Judgment of Andhra Pradesh High Court, Hyderabad, dated 24th September, 1987. D

The four plaintiffs who are brothers filed the present suit on 17th July, 1979 for specific performance of oral contract for sale of a building known as "Roshan Manzil" located in an area of 4165 sq. yards in Saifabad, Hyderabad. M/s. Gopi Hotel was the tenant in the premises. According to the case as set up in the plaint the first plaintiff Brij Mohan learnt some time in the first week of April, 1979 that the defendant No. 1 Smt. Mahboobunnisa Begum (since deceased) was contemplating the sale of the property in question and that Shri Arif Ali, her Advocate and income tax practitioner was assisting her in finding a purchaser. Shri Arif Ali had mentioned the above intention of the first defendant to Sh. Ibrahim Moosa of M/s. J. Moosa & Company who was known to the first plaintiff. On learning from Shri Ibrahim Moosa the first and second plaintiffs, namely, Brij Mohan and Jagmohan along with Sh. Ibrahim met Sh. Arif Ali. Sh. Arif Ali gave the details of the property and also showed the plans of the property to them. Sh. Arif Ali stated that the defendant was expecting the price of Rs.10,00,000. The plaintiffs Nos. 1 and 2 offered Rs.7,00,000. Shri Arif stated that he will ascertain from the defendant her reaction to the said offer. A fortnight later i.e. in the third week of April, 1979 the plaintiffs Nos. 1 and 2 along with Sh. Ibrahim Moosa and Sh. Arif Ali went to the residence of the defendant, who was insisting on the payment of Rs.10,00,000 as the sale price. At the said meeting the husband of the defendant was also present. The plaintiffs Nos. 1 and 2 E F G H

increased their price from Rs.7,00,000 to Rs.8,00,000. The first defendant said that she would think over and inform the plaintiffs Nos. 1 and 2 throught Sh. Arif Ali. On 3rd May, 1979 the plaintiffs Nos. 1 and 2 along with Shri Ibrahim Moosa met Sh. Arif Ali. Arif Ali stated that the defendant was agreeable to sell the property to plaintiffs only for Rs. 10,00,000 and not a pie less. Thereupon the plaintiffs agreed to pay Rs. 10,00,000 as the sale price. Shri Arif Ali after getting the confirmation of acceptence of the said offer of the plaintiffs Nos. 1 and 2 from the first defendant said that the plaintiffs Nos. 1 and 2 should meet the defendants on 6th May, 1979 and that she would in the meanwhile purchase the stamp papers for making the formal agreement for sale incorporating the oral agreement arrived at.

It was further alleged in the plaint that on 6th May, 1979 the first and second plaintiffs along with Shri Ibrahim Moosa met the first defendant and her husband in the presence of the said Sh. Arif Ali. In the said meeting the amount of earnest money to be paid, time for registration of the sale deed etc., were decided. The said Shri Arif Ali prepared in his own handwriting a draft of the receipt incorporating the terms of the orally concluded agreement for sale. The draft was scrutinised by the husband of the first defendant who suggested some alterations. The said Shri Arif Ali thereupon prepared final draft of the receipt in his own hand. He handed over the first and the final draft to the first plaintiff to get the later typed and duly stamped. He also delivered the stamp papers to the first plaintiff for being used for typing of the formal agreement of sale.

It was further stated in the plaint that during the said meeting held on 6th May, 1979, the plaintiffs Nos. 1 and 2 were permitted to proceed with the publication of the notices in the newspapers. Accordingly, the contents of the publication were got prepared by them bonafidely anticipating that the first defendant will execute the receipt after receiving the stipulated earnest money in the course of the day, ie. 6.5.79. However, for reasons known to herself the first defendant deliberately and wantonly evaded meeting the first and second plaintiffs to receive the advance and execute the receipt.

It was further stated in the plaint that after the public notice was published in the newspapers taking advantage of her wanton and deliberate act of evasion, the first defendant got a reply notice published in the newspaper and got issued a legal notice dated 8.5.79 through her Advocate, falsely alleging that there was no agreement for sale. Thereafter the first and second plaintiff made sincere and repeated attempts

to convince the first defendant that the false and baseless pleas taken by her were detrimental to the interest of all concerned and there is inexistence a concluded contract for sale of the suit property and that the execution of the agreement of sale was a mere formality as well the receipt for the advance. Since the first defendant persisted in her illegal conduct, the plaintiffs got issued a final notice dated 27th June, 1979 calling upon the first defendant to execute the agreement, receive the earnest money and issue a valid receipt within three days of the receipt of the notice thus giving the first defendant one more oportunity. The plaintiffs neither recieved any reply nor the first defendant complied with the demands made in the notice. It was further alleged in the plaint that the plaintiffs Nos. 1 and 2 had negotiated for the purchase of the property on behalf of themselves and plaintiffs Nos. 3 and 4 who were their younger brothers. The concluded contract for sale entered into with the first defendant was for the benefit of all the four plaintiffs. Hence all the four plaintiffs had joined in the filing of the suit.

The second defendant was M/s Gopi Hotel who was the tenant of the first defendant in the suit premises. The plaintiffs further avered that they have been and are ready and willing to pay to the first defendant the sale consideration of Rs. 10,00,000. The plaintiffs undertake to deposit the same in the court at any time during the pendency of the suit or within a time fixed by the Hon'ble Court for the deposit of the same after passing the decree or at the time of execution and registration of the sale deed. The plaintiffs on the above allegations sought the relief of specific performance of the agreement of sale in respect of the suit property after payment of sale consideration of Rs. 10,00,000

The first defendant Smt. Mahaboobunnisa Begum filed a written statement on 21st January, 1980 stating that certain negotiatioins took place between her and plaintiffs Nos. 1 and 2, but no contract was finalised with them and the negotiatioins failed. According to her, under an agreement of sale dated 22nd June, 1979 she agreed to sell the property in question to defendants Nos. 3 and 4, namely, Smt. Sugra Begum and Smt. Saira Banu. It was submitted in the reply that it was wholly incorrect to suggest of an oral contract of sale on 3rd May, 1979 in respect of sale of the suit property, in favour of the plaintiffs. There was a proposal of sale of the suit property and plaintiffs did approach for negotiations. However, the allegation of the plaintiffs approaching during first week of April, 1979 with Arif Ali, Income Tax practitioner, was wholly erroneous. In fact plaintiff No. 1 approached

No. 1 with Arif Ali and Ibrahim Moosa for negotiations, and plaintiffs Nos. 1 and 2 came along with them somewhere during the last week of April, 1979 and tried to negotiate, and thereafter, again they approached on 6th May, 1979, but negotiations could not be finalised and the answering defendant did not agree to sell the suit property to the plaintiffs Nos. 1 and 2. In fact, details have been mentioned in the counter, filed in I.A. pertaining to injunction bearing No. 679/79, which may be read as part of the written statement. There was no concluded or enforceable contract, arrived at on 3rd May, 1979, as alleged and contended. It was further alleged that there was no price settled or agreed and even the payment for advance was not settled and other terms and conditions were not agreed upon, even on 6th May, 1979 and the negotiations failed and nothing was settled. There was no concluded contract and the plaintiffs had no cause of action to file the present suit for specific performance. The parties never intended to have an oral agreement, and the negotiations if any, never resulted in a concluded contract, and even if the negotiations had been finalised, it had to be reduced into a written agreement, and the writing contemplated was not formal as alleged and contended by the plaintiffs, but was a condition and a term of contract. The plaintiffs with ulterior motive had taken the plea of oral contract

It was further submitted in the written statement that it was true that plaintiffs Nos. 1 and 2 did approach the answering defendant on 6th May, 1979 along with Ibrahim and Arif, and even in the said meeting negotiations failed and the parties did not and could not arrive at a concluded contract; and even in the said negotiations on 6th May, 1979 matters remained unsettled and were not concluded. It was plaintiff No. 1 who attempted to prepare receipt, it was wholly erroneous to suggest of any draft receipt or a final receipt being prepared after scrutiny made by the husband of the answering defendant. There was no final document prepared and there was no final settlement of terms and conditions of contract. The answering defendant was not aware of the purchase of stamp paper and she never asked for the purchase of the stamp papers. The blank stamp papers and incomplete and unsigned draft receipts in no way spell out a concluded contract and the suit is untenable.

It was also alleged in the reply that even on 6th May, 1979 there was no completed or concluded contract and negotiations failed. Consequently, the plaintiffs took away the blank incomplete papers, and rushed with utmost haste to get it published in the newspaper, making false allegations of having paid Rs.50,000 as advance under the sale

agreement etc., and immediately, the answering defendant sent a suitable reply contradicting the said allegations. There was no *bonafides* in their action. It was done with ulterior motive to cause loss and damage to the defendant. When no earnest money had been paid or received, the plaintiffs Nos. 1 and 2 had no right to make false allegations and mislead the public and consequently the answering defendant suffered heavy loss.

The second defendant M/s. Gopi Hotel only took the plea in the written statement that he was a tenant in the building. Defendants Nos. 3 and 4 supported the case of the first defendant and claimed ownership in the suit property by virtue of a registered sale deed dated 19th November, 1979 executed in their favour. It may be made clear at this stage that according to defendant No. 1 an agreement to sell the property in question was made by the first defendant in favour of defendants Nos. 3 and 4 on 22.6.79. After the injunction being vacated by the High Court the first defendant sold the suit property for a sum of Rs.10,00,000 in favour of defendants Nos. 3 and 4 by a registered sale deed dated 19th November, 1979. Defendant No. 1 died on 3rd November, 1982 during the pendency of the suit as such defendants Nos. 5 to 9 were impleaded as legal representatives of defendant No. 1.

The Learned Trial Court recorded the summary of the findings which are reproduced in its own words.

49. Summary of the findings:

> "On the facts and circumstances of the case, it is established that the plaintiffs entered into an oral contract of sale with D. 1 on 3.5.79. The terms settled were that D. 1 should sell the suit property for a sum of Rs. 10,00,000 and D. 1 should obtain permissions from the authority under Land Ceiling Act and also Income Tax Act. The sale deed should be executed within six months from 6.5.79. It is also settled that vacant possession was not to be given on the date of contract of sale, and the parties are aware that the defendant No. 2 was only a tenant in the premises. The only aspect left open on 3.5.79 is that mode of payment should be fixed on 6.5.79. On 6.5.79 it was agreed tht D. 1 should receive Rs.50,000 as advance and these terms were reduced into writing in Exs. A. 1 and A. 2, but, before the ink could dry, the defendant No. 1 on the evening of

6.5.79, refused to receive the amount. This resulted in the breach of contract on the part of D. 1. So the plaintiffs are entitled to specific performance of oral contract of sale concluded on 3.5.79. Subsequent sale to defendants 3 and 4 do not create any rights in favour of them and in order to prevent D. 3 and D. 4 from claiming any rights in future, they should also be made to join D. 5 to D. 9 in executing the registered sale deed. Defendant No. 2 is admittedly not entitled to any proprietory rights in the property and he is only a tenant. As to whether D. 2 is liable to be evicted or not it is held that the Plaintiffs are entitled to seek eviction at an appropriate time when they become full owners of the property. Defendants 3 and 4 shall not be liable to contribute any thing towards expenses for the executing of the registered sale deed and defendants 5 to 9 as legal representatives of D. 1 are bound to perform their part of contract by obtaining permission required under the Urban Land Ceiling Acts and Income Tax act and any other Act required execute the sale deed and register the sale upon receiving the entire consideration of Rs. 10,00,000. The expenses for registration of the sale deed shall be borne out in equal halfs by defendants 5 to 9 on the one hand and the plaintiffs on the other hand".

As a result of the above findings the trial court decreed the plaintiffs suit for specific performance. Two separate appeals, one by defendants Nos. 5 to 9 and the other by defendants Nos. 3 and 4 were filed in the High Court challenging the decree passed by the trial court. A Division Bench of the High Court by Judgment dated 24th September, 1987 allowed both the appeals and set aside the decree passed by the trial court. As two separate appeals Nos. 150 and 152 of 1984 were disposed of by one single order the plaintiffs filed the above two civil appeals before this Court by Special Leave.

The High Court observed that the only question which arose for consideration in both the appeals was whether there was a concluded oral contract between the parties, namely, plaintiffs 1 and 2 on one side and the first defendant on the other, on 3rd May, 1979 as alleged by the plaintiffs? According to the High Court to decide this question, the only available oral evidence was that of P.W. 1 Brij Mohan, P.W. 3 Jagmohan and D.W. 2 Arif Ali. As regard the negotiations which took place between the parties in the third week of April, 1979, the High Court observed that the negotiations which took place between the

parties in the third week of April, 1979 were not in dispute and which were to the effect that when the first defendant was insisting on payment of Rs.10,00,000, plaintiffs 1 and 2 increased their offer from Rs.7,00,000 to Rs.8,00,000 and the first defendant promised them to think over and inform the plaintiffs through Arif Ali. The High Court then considered the bargain that took place between the partis on 3rd May, 1979. The plaintiffs apart from their own statements as P.W. 1 and P.W. 3 had also examined P.W. 2, the Income Tax Inspector B-Ward Circle No. 4, Hyderabad to show that defendant No. 1 was an income tax and wealth tax assessee and Sh. Arif Ali, Advocate and Income tax practitioner used to look after her tax matters. The plaintiffs had also examined P.W. 4, Mohd Yusuf a stamp vendor to prove Exhibit X-25 sales register of stamps and Exhibit X-26 an entry of sale of Ex. A. 3 non judicial stamps for Rs.5 to defendant No. 1 Smt. Mahboobnissa Begum. Similarly plaintiffs had examined P.W. 5 Sheikh Ismail another stamp vendor for having sold a stamp Exhibit A-4 to one Abdul Khalik on behalf of Smt. Mehboobnissa Begum vide entry Ex. X-27 in the register of stamps. The plaintiffs by the aforesaid evidence wanted to establish that one stamp was purchased by Smt. Mehboobnissa Begum herself and another through Mohd. Khalik for executing the agreement for sale in favour of plaintiffs. The High Court in this regard observed that it was not necessary to discuss the evidence of P.W. 4 as to whether the first defendant personally went to him and purchased the stamp paper. The first defendant who is a lady from aristocratic family would not have gone all the way to Chotta Bazar to purchase a non-judicial stamp worth Rs.5. P.W. 4 deposed that he cannot identify whether the person who came for purchase of the stamp paper was Smt. Mehboobnissa Begum or not. It may be that some person by name Smt. Mehboobnissa purchased the stamp papers. P.W. 5 simply stated that he sold exhibit A-4 to one Adbul Khalik on behalf of Smt. Mehboobnissa Begum. D.W. 2, Arif Ali however said that neither any transaction nor talks took place between the plaintiffs 1 and 2 and himself on 3rd May, 1979. The High Court did not agree with the submission of the Learned counsel for the plaintiffs made before them that the purchased of the stamps Exhibit A-3 and A-4 was a strong cricumstance in favour of a concluded contract. The High Court in this regard observed that first of all it was not firmly established that the purchase of the stamps was for the purpose of this transaction only. In view of the evidence of D.W. 2 much weight cannot be given to the evidence of P.Ws. 4 and 5. The High Court further observed that even assuming that these two stamps were purchased pursuant to the talks that took place between D.W. 2 and P.Ws. 1 and 3 it would not improve the case of the plaintiffs. The

A B C D E F G H

A stamps were blank and nothing was engrossed on them. This circumstances, at the most would show that meeting on 6th May, 1979 was fixed between the plaintiffs 1 and 2 and the first defendant for further negotiations. The High Court then observed that as regards the meeting which took place on 6th May, 1979 and the fact that the negotiations fell through was admitted by both the parties. Therefore, the B crucial question for determination was whether all the terms of the oral contract were entered into between the parties on 3rd May, 1979 or any terms were left open to be discussed and determined in the meeting to be held on 6th May, 1979.

The High Court then considered the argument of the plaintiffs according to whom Exhibit A-1 draft receipt was written by D.W. 2 C Sh. Arif Ali on 6th May, 1979 stating that the suit premises was agreed to be sold for Rs. 10,00,000 and the permission for Urban Land Ceiling Authority will be obtained by the first defendant and the registration will be completed within six months from that date. The plaintiff's further case was that the first defendant's husband who was present D suggested some alterations basing on which Exhibit A-2 fair draft was prepared and that when the plaintiffs took the agreed advance amount of Rs.50,000 in the evening, the first defendant refused to accept the advance amount and resiled from the contract. As against the above contentions of the plaintiffs, D.W. 2 Sh. Arif Ali who is the representative of the first defendant deposed that in the meeting between E the parties which took place in April, 1979 the vendor did not take the responsibility of obtaining clearance under the Urban Land Ceiling Act. He denied the suggestion that in the third week of April, 1979 the first defendant offered to sell the suit property for Rs. 10,00,000 and that she would obtain the clearance under the Urban Land Ceiling Act. On the other hand he deposed that when the plaintiffs offered F Rs.8,00,000 the first defendant told them that she would consider and communicate her view through D.W. 2 some time later. The High Court in this regard clearly observed that the contention of the plaintiffs that even in the third week of April, 1979 before the parties could agree upon the sale price for the suit building, there was discussion about the obtaining of clearance under the Urban Land Ceiling G Act and that the first defendant undertook to obtain that clearance certificate cannot be believed. The High Court further observed as under:

> "As seen from their own evidence, by the 3rd week of April, 1979 plaintiffs 1 and 2 increased their offer from H Rs.7,00,000 to Rs.8,00,000. At the time of the earlier

negotiations when the plaintiffs offered Rs.7,00,000 (seven lakhs) and the 1st defendant was not willing to accept that offer, there was no stipulation as to who should obtain the clearance under the Urban Land Ceiling Act. If so, it is unbelievable that in the 3rd week of April, 1979 when still there was a wide gap of Rs.2,00,000 in the price payable for the suit building, the parties would have stipulated about the condition as to who should obtain the permission under the Urban Land Ceiling Act. Therefore, the evidence of P.Ws. 1 and 3 can be believed to the extent that they approached Arif Ali on 3.5.1979 and Arif Ali in his turn communicated their willingness to pay the price of Rs.10,00,000 for the suit premises and the 1st defendant accepted that offer."

The High Court on the basis of the above finding then held that in order to determine the binding nature of the contract between the parties, the mere acceptance of sale price is not sufficient. It was not the case of the plaintiffs that the other terms of the contract were also discussed by D.W. 2 over the phone and their acceptance was communicated to them by the 1st defendant through D.W. 2. It was obviously for that reason that a further meeting was fixed at the house of the 1st defendant in the morning of 6th May, 1979 which had admittedly taken place.

The High Court further held that it must be remembered that this agreement is in respect of a valuable property and the main intention was to reduce the terms of agreement into writing and when the parties are very much relying on the alleged oral agreement dated 3rd May, 1979, there would definitely have been a reference in Exhibits A-1 and A-2 to the oral agreement said to have taken place on 3rd May, 1979. The absence of the same in Exhibits A-1 and A-2 against throws a serious doubt about the alleged agreement, dated 3rd May, 1979. In any event the mere fact that there was a meeting between the plaintiffs Nos. 1 and 2 and D.W. 2 on 3rd May, 1979 does not establish that there was a concluded contract between the parties on that day because admittedly the first defendant was not present at that time. What all had happened according to P.Ws. 1 and 3 is that they offered to pay Rs.10,00,000 for the suit building and D.W. 2 having contacted the 1st defendant over the phone conveyed to them her acceptance of the price fixed. In the absence of evidence that the other terms also were discussed over the phone and settled at that time and the 1st defendant agreed for the terms, it cannot be said that there is a con-

A cluded contract on 3rd May, 1979. The fixation of price is only one of the terms of the contract and by mere acceptance of the price it cannot be said that there is a concluded contract between the parties in the absence of proof of fixation of other conditions mentioned in Exhibits A-1 and A-2, viz., undertaking by the 1st defendant to obtain permission from Urban Land Ceiling Authority and the amount of advance to B be paid. It is not the case of the plaintiffs 1 and 2 that prior to 6.5.79 there was an agreement between the parties as to the amount of advance to be paid. The High Court thus held that in the absence of any consensus being arrived at between the two contracting parties about these important aspects of the agreement it cannot be said that there is a concluded oral contract between the parties on 3.5.79.

C It is important to note that even exhibit B-4 an agreement of sale dated 22.6.79 executed between the 1st defendant and defendants Nos. 3 and 4 does not impose the condition that the 1st defendant, the vendor, should obtain the clearance from the Urban Land Ceiling Authority within the stipulated period of six months. The High Court D in this regard observed that this evidence showed that the contention of the 1st defendant that the agreement fell through by reason of the plaintiffs insisting on her obtaining the permission from the Urban Land Ceiling Authority and the expression of her inability to comply with that demand appeared to be correct. The High Court clearly held that there was no clinching evidence to show that this stipulation was E thought of by the parties on any day prior to 6.5.79. The High Court, therefore, did not agree with the contention of the Learned Counsel for the plaintiffs that all the terms of contract including the stipulation with regard to the payment of advance amount and that the vendor alone should obtain the permission from the Urban Land Ceiling Authority were settled by 3.5.79 and what was left to be done on F 6.5.79 was merely to incorporate the terms already arrived at into a formal document on Exhibits. A-3 and A-4 stamp papers. It was further observed that had there been a meeting between plaintiffs Nos. 1 and 2 and the first defendant on 3.5.79 and there was a direct conversation between them, there may be a possibility for drawing such an inference. But, as observed already, what all had happened on 3.5.79 G was that plaintiffs Nos. 1 and 2 expressed their willingness to pay a consideration of Rs.10,00,000 for the suit building and the first defendant expressed her acceptance of that offer through D.W. 2. The other terms could not have been settled between the parties in the third week of April, 1979 because by that time there was no agreement between the parties with respect to the sale consideration. Without the H price being settled, and especially when there was a gap of Rs.2,00,000

in the price accepted by the first defendant and the price offered by the first plaintiff, the parties would not have discussed the other terms of the agreement such as the advance money to be paid and the responsibility of the vendor to obtain the permission from the Urban Land Ceiling Authority.

It was submitted by the learned counsel for the appellants that the High Court itself has arrived to a finding that D.W. 2 Sh. Arif Ali on 3.5.79 after having a talk with defendant No. 1 on phone had conveyed her acceptance to sell the property for a sum of Rs. 10,00,000. It was submitted that an agreement for sale of immovable property could be made orally and so far as mode of payment of consideration is concerned, can be settled subsequently. It was submitted that in the facts and circumstances of the present case all the fundamental and vital terms of the contract were settled and concluded on 3.5.79 itself and even if the other details like mode of payment of consideration, obtaining of no objection certificate from Land Ceiling Authorities etc. remained unsettled, the same could be determined in accordance with Sec. 55 of the Transfer of Property Act. Oral contract is permissible and so far as other terms which remain unsettled, the same can be determined by operation of law. It was contended that the only vital terms for a valid agreement of sale of an immovable property were the identity of the property and the price. Both these vital terms were settled and concluded on 3.5.79 and when the plaintiffs were always ready and willing to perform their part of the contract, a decree for specific performance should have been passed in their favour. It was further contended that the stand taken by the defendant No. 1 and tried to be supported by Sh. Arif Ali D.W. 2 that no meeting took place on 3.5.79 at all was held not believable by the High Court itself. It was further contended that the act of purchasing stamps on 3.5.79 by defendant No. 1 and the draft receipts Exhibits A-1 and A-2 prepared by Sh. Arif Ali D.W. 2 himself clearly lend support to the case of the plaintiffs. Reliance in support of the above contention was placed on *Kollipara Sriramulu* v. *T. Aswathanarayana & Ors.*, [1968] 3 SCR 387 and *Nathulal* v. *Phoolchand*, [1970] 2 SCR 854.

On the other hand it was contended on behalf of the respondents that no vital or fundamental terms of the contract were discussed, agreed or settled on 3.5.79. It was contended that even if the case of the plaintiffs is believed, all that happened on 3.5.79 was that plaintiffs had agreed to purchase the property for Rs. 10 lakhs to which the defendant N. 1 had conveyed her acceptance through D.W. 2. Neither

A any earnest/advance money to be paid was settled, nor, any time for the payment of such money or time for execution of agreement of sale or final sale deed and its registration, was settled. It was argued that even if the time may not be an essence of a term of contract for sale of immovable property, it is a vital term without which no concluded contract can be arrived at. Admittedly no meeting was held on 3.5.79 B in the presence of the defendant No. 1 and it was agreed to have a meeting of the plaintiffs and defendant No. 1 on 6.5.79. It was also an admitted position that neither any consideration passed nor any documents were signed by the parties on 3.5.79. So far as 6.5.79 is concerned admittedly the negotiations failed between the parties on that day. It was further contended that if the terms had already settled on 3.5.79 itself where was the necessity of executing draft receipts on C 6.5.79 and in any case if it was a mere formality then the plaintiffs should have brought a typed agreement on the stamps for formal signature of the parties. It was also argued that the plaintiffs failed to examine Ibrahim Moosa who was an independent and a very important witness in the whole transaction and an adverse inference should D be drawn against the plaintiffs for not examining Ibrahim Moosa. The defendant No. 1 had produced a counter affidavit Exhibit C-1 dated 27.7.79 in reply to injunction application filed by the plaintiffs and she had taken a clear stand that no terms were settled or concluded on 3.5.79. It was further argued that admittedly the plaintiffs had not paid any earnest/advance money to the defendant No. 1 towards the alleged E transaction but still they malafidely stated in the notice of 7.5.79 published in the Newspaper that an amount of Rs.50,000 had been paid to defendant No. 1. The defandant No. 1 in these circumstances had immediately got published a contradiction on 8.5.79 and this clearly goes to show the malafide and ulterior motive of the plaintiffs. It was also argued that any agreement in the third week of April, 1979 F to the effect that defendant No. 1 would bring the no objection certificate from the Urban Land Ceiling Authorities was found not proved by the High Court and as such there is no question of applying any principles contained in Sec. 55 of the Transfer of Property Act. It was also contended that the findings recorded by the High Court are supported by evidence and this Hon. Court should not interfere against G such finding in the exercise of its jurisdiction under Article 136 of the Constitution of India. It was also argued that Sh. Arif Ali was not holding general power of attorney on behalf of defendant No. 1 and he had no authority to settle or conclude any terms in respect of a transaction of immovable property on behalf of defendant No. 1. No objection certificate was necessary to be obtained from Urban Land Ceiling H Authorities and the defendant No. 1 and her husband being old person

had clearly taken the stand that they would not bring such certificate and no final and concluded contract took place on any date. A

We have given our careful consideration to the arguments advanced by Learned Counsel for the parties and have thoroughly perused the record. We agree with the contention of the Learned counsel for the appellants to the extent that there is no requirement of B law that an agreement or contract of sale of immovable property should only be in writing. However, in a case where the plaintiffs come forward to seek a decree for specific performance of contract of sale of immovable property on the basis of an oral agreement alone, heavy burden lies on the plaintiffs to prove that there was consensus *aa-idem* between the parties for a concluded oral agreement for sale of immovable property. Whether there was such a concluded oral contract or C not would be a question of fact to be determined in the facts and circumstances of each individual case. It has to be established by the plaintiffs that vital and fundamental terms for sale of immovable property were concluded between the parties orally and a written agreement if any to be executed subsequently would only be a formal agree- D ment incorporating such terms which had already been settled and concluded in the oral agreement.

Now we shall examine the facts and circumstances of the present case in order to find whether the plaintiffs have been able to prove that there was a concluded oral agreement between the parties on 3.5.79 in E order to seek decree for specific performance of contract in their favour. Admitted facts of the case are that the transaction in question related to a sale of an immovable property for no less than a sum of Rs. 10,00,000 in May, 1979. 3.5.79 is the crucial date on which the oral agreement is alleged to have been concluded. Admittedly on that date even earnest/advance money had not been settled. It was also not F settled as to when the earnest/advance amount and the balance amount of sale consideration would be paid. It was also not settled as to when the final sale deed would be executed and registered. No talk with regard to any terms of the oral agreement took place in the presence of the vendor defendant No. 1 on 3.5.79. It was also not decided whether actual possession or only symbolical possession of the G premises in question would be given by the vendor. No consideration actually passed even on 6.5.79 and negotiations failed. Apart from the above admitted facts of the case we would consider as to what happened on 3.5.79. The plaintiffs have alleged in the plaint that in the 3rd week of April, 1979 plaintiffs Nos. 1 and 2 along with Sh. Ibrahim Moosa and Sh. Arif Ali went to the residence of the defendant who H

A was insisting on the payment of Rs.10,00,000 as the sale price. At the said meeting the husband of the defendant was also present. The plaintiffs Nos. 1 and 2 increased their price from Rs.7,00,000 to Rs.8,00,000. The first defendant said that she would think over and inform the plaintiffs Nos. 1 and 2 through Sh. Arif Ali. On 3.5.79 the plaintiffs 1 and 2 along with Shri Ibrahim Moosa met Shri Arif Ali. He B stated that the defendant was agreeable to sell the plan schedule property to plaintiffs only for Rs.10,00,000 and not a pie less. Thereupon the plaintiffs agreed to pay Rs.10,00,000 as the sale price. Shri Arif Ali after getting the confirmation of acceptance of the said offer of the plaintiffs No. 1 and 2 from the first defendant said that the plaintiffs Nos. 1 and 2 should meet the defendants on 6.5.79 and that she would C in the meanwhile purchase the stamp papers for making the formal agreement for sale incorporating the oral agreement arrived at. Then there is an averment with regard to the meeting of 6.5.79 between the first and second plaintiffs along with Shri Ibrahim Moosa and the first defendant and her husband in the presence of Sh. Arif Ali. It has been alleged that in the said meeting of 6.5.79 the amount of earnest money D to be paid, time for registration of the sale deed etc. were decided. Now it is an admitted case of the plaintiffs themselves that negotiations failed on 6.5.79 and the defendant No. 1 resiled to sign any of the receipts nor accepted any earnest/advance money nor any agreement was even typed on the stamp papers nor signed by defendant No. 1.

E In the oral evidence P.W. 1 Shri Brij Mohan, plaintiff No. 1 stated that in the meeting arranged in the 3rd week of April, 1979 Shri Ibrahim and Shri Arif Ali came to the plaintiff's shop and then they all went to the residence of defendant No. 1. The second plaintiff also accompanied them. The husband of defendant No. 1 Shri Yunus was also present at the meeting. He was introduced to them as the retired F Law Secretary. Defendant No. 1 insisted for Rs.10,00,000 as consideration of the suit property and told the plaintiffs that she would obtain the permission from the ceiling authority. Shri Brij Mohan then stated that they raised their offer to Rs.8,00,000 defendant No. 1 told them that she would think over for two or three days and inform them through Shri Arif Ali. Thereafter Shri Brij Mohan states regarding the G bargain held on 3.5.79. According to him he himself, second plaintiff and Mr. Ibrahim Moosa went to Shri Arif Ali on 3.5.79. Shri Arif Ali told them that defendant No. 1 was not willing to sell the suit property for less than Rs.10,00,000. And if they were willing to purchase for Rs.10,00,000 then they were welcome to do so at any time. Shri Brij Mohan then said that they agreed to purchase the suit property for H Rs.10,00,000 and asked Shri Arif Ali to get the confirmation from

defendant No. 1. Shri Arif Ali spoke to defendant No. 1 on telephone and then informed that defendant No. 1 was willing to sell the property to them for Rs. 10,00,000. Shri Arif Ali then said that they would buy the stamps for agreement and fixed 6.5.79 morning for a meeting with defendant No. 1. From a perusal of the above evidence it would be abundantly clear that nothing was settled on 3.5.79 except the fact that the plaintiffs had conveyed their approval to purchase the suit property for Rs. 10,00,000 and Shri Arif Ali after speaking to defendant No. 1 was willing to sell the property for Rs. 10,00,000. Admittedly at the same time a meeting was fixed with defendant No. 1 on the morning of 6.5.79. According to the case set up by defendant No. 1 she had never agreed to obtain the permission from the ceiling Authority. It would be important to note that no averment was made in the plaint that defendant No. 1 had agreed to obtain the permission from the ceiling Authority in the meeting held in the third week of April, 1979. However, Shri Brij Mohan plaintiff has sought to introduce this fact for the first time in his statement in the Court that defendant No. 1 had told them in the meeting held in the third week of April, 1979 that she would obtain the permission from the ceiling Authority. We are unable to accept the above statement of Shri Brij Mohan that in the meeting held in the third week of April, 1979 itself the defendant No. 1 had agreed that she would obtain the permission from the ceiling Authority. It is an admitted position that till the meeting held in the 3rd week of April, 1979 the plaintiffs had offered Rs.8,00,000 and the first defendant had told them that she would consider and communicate her views through Shri Arif Ali some time later. We agree with the conclusion of the High Court in this regard that without first determining the sale price, it was quite unlikely that the parties would have bargained as to who should obtain the clearance under the Urban Land Ceiling Act. It was known to the parties that until the clearance under the Urban Land Ceiling Act and the Income Tax clearance, the property will not be registered. The High Court was right in concluding that it is unbelievable that in the third week of April, 1979 when still there was a wide gap of Rs. 2,00,000 in the price payable for the suit building the parties would have stipulated about the condition as to who should obtain the parmission under the Urban Land Ceiling Act. It is further pertinent to mention that even in Exhibits A-1 and A-2 which are drafts of agreement of sale there is no reference to the oral agreement said to have taken place on 3.5.79. In case all the terms had already been concluded in the oral contract between the parties on 3.5.79 and only a formal agreement was to be reduced in writing on 6.5.79, then in that case there ought to have been a mention in the draft agreement exhibits A-1 and A-2 regarding the oral agreement of

A B C D E F G H

A 3.5.79. According to the statement of Shri Brij Mohan plainfiff No. 1 himself, nothing was discussed with defendant No. 1 herself and for that reason a further meeting was fixed at the house of the first defendant in the morning of 6.5.79. Shri Arif Ali may have been an Income Tax Advocate looking after the income tax and wealth tax matters of defendant No. 1 but he was not a General Power of B Attorney holder to negotiate or settle any terms with regard to any transaction of immovable property belonging to defendant No. 1. It is further important to note that even in the agreement to sell exhibit B-4 dated 22.6.79 between defendent No. 1 and defendants Nos. 3 and 4, no responsibility had been taken by the defendant No. 1 for obtaining the clearance from the Urban Land Ceiling Authority. The High C Court in these circumstances righty believed the contention of the defendant No. 1 that the agreement fell through because the plaintiffs insisted that defendant No. 1 should obtain the permission from the Urban Land Ceiling Authority while defendant No. 1 did not agree for the same. There was no clinching evidence to show that this stipulation was thought of by the parties on any day prior to 6.5.79. Thus in the D above circumstances when the parties were consciously negotiating about the bringing of no objection certificate from the Urban Land Ceiling Authority and the case put forward by defendant No. 1 in this regard has been believed there is no question of applying the principle contained in Section 55 of the Transfer of Property Act. The general principle contained in Sec. 55 of the Transfer of Property Act regard- E ing rights and liabilities of buyer and seller can only apply in the absence of a contract to the contrary and not in a case where the parties consciously negotiated but failed in respect of any term or condition, as a result of which the agreement itself could not be settled or concluded. Once it is held, established in the present case that no agreement was finally concluded or sattled on 6.5.79 and negotiations F failed and before this date it was never settled that defendant No. 1 would bring the no objection certificate from Urban Land Ceiling Authority, there is no question of applying general principles contained in Sec. 55 of the Transfer of Property Act.

In *Kollipara Sriramula* v. *T. Aswathanarayana & Ors.* (supra) G was a case where in 1953 respondent No. 1 filed a suit alleging that all the partners of the firm except the appellant had entered into an oral agreement with him on July 6, 1952 to sell 137 shares in the site except the 23 shares belonging to appellant No. 1, that 98 shares had actually been sold to him, that 39 shares had not been sold to him and had been instead sold to appellant No. 1. Respondent No. 1 in these circum- H stances claimed specific performance of the agreement to sell the

aforesaid 39 shares by their owners and contended that the sale of those shares in favour of appellant No. 1 was not binding upon him. The Trial Court decided against respondent No. 1 but the High Court decided in his favour. On the basis of above facts this Court held that the High Court was right in holding that there was an agreement to sell 137 shares in the site to respondent No. 1. A mere reference to a future formal contract does not prevent the existence of a binding agreement between the parties unless the reference to a future contract is made in such terms as to show that the parties did not intend to be bound until a formal contract is signed. The question depends upon the intention of the parties and the special circumstances of each particular case. The evidence did not show that the drawing up of a written agreement was a pre-requisite to the coming into effect of the oral agreement, nor did the absence of a specific agreement as to the mode of payment necessarily make the agreement ineffective, since the vital terms of the contract like the price and area of the land and the time for completion of the sale were all fixed. The facts of the above case clearly show that it related to sale of 137 shares and that in pursuance of the agreement partners who owned 98 shares had already executed sale deeds in favour of the plaintiffs/respondents and the other partners owning 39 shares did not do so. The High Court as well as this Court believed the evidence of the plaintiff/respondent for conveying the entire 137 shares by an oral agreement dated July 6, 1952. This Court also found that the plaintiff respondents had built a valuable cinema theatre building on the disputed site and yet very strong reasons to make an outright purchase of the site otherwise he would be placed in a precarious legal position. Negotiations for purchase were going on for several years passed and considering this background, the case of the respondent with regard to the oral agreement appeared highly probable.

In the above background this Court on Page 394 observed as under:

> "It is, therefore, not possible to accept the contention of the appellant that the oral agreement was ineffective in law because there is no execution of any formal written document. As regards the other point, it is true that there is no specific agreement with regard to the mode of payment but this does not necessarily make the agreement ineffective. The mere omission to settle the mode of payment does not affect the completeness of the contract because the vital terms of the contract like the price and area of the land and the time for completion of the sale were all fixed."

A Thus even in the above case the time for completion of the sale was considered as one of the vital terms of the contract. Further in the above case part of the agreement had been performed i.e. partners having 98 shares had already executed sale deeds and this Court had believed the oral agreement for sale of 137 shares. Thus the above case is totally distinguishable and renders no assistance to the appellants in B the case before us.

Thus we find no force in these appeals and the same are dismissed. In the facts and circumstances of the case we make no order as to costs.

C R.S.S. Appeals dismissed.