



A.S.No.654 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2023

DELIVERED ON: 09.10.2023

CORAM :

The Hon'ble Mr.JUSTICE V.LAKSHMINARAYANAN

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1.K.J.A.S.Ravi
2.K.J.A.A.Vasanth
3.K.J.A.M.Rajakumar ... Appellants

VS

Mohammed Abdul Razack Basha (since deceased)

1. Begum Jan
2.Ameer Basha
3.Iqbal Basha
4.Beema Begum
5.Khader Bash
(defendant 1 to 5 are impleaded as legal heirs of
the deceased Mohammed Abdul Razack Basha by
order dated 26.09.2002 in A.No.39375 of 2002) .. Respondents

Appeal filed Under Section 96 and Order 41 Rule 1 of Civil Procedure
Code against the judgment and decree dated 08.06.2016 made in
O.S.No.14296 of 2010 passed by the learned III Additional Judge, City Civil



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Court, Chennai.

For Appellants :Mr.R.Swaminathan
for Mr.S.Sathish Rajan
For Respondents :Mr.B.K.Srinivasan

JUDGMENT

The plaintiffs in O.S.No.14296 of 2010 (originally presented as C.S.No.675 of 1998 on the file of this Court) are the appellants before me. The suit is for Specific Performance of an agreement of sale entered into between the plaintiffs and the defendant on 28.03.1996.

GIST OF THE PLAINT

2. The plaintiffs alleged that the schedule mentioned property was purchased by one Mohammed Ghouse Basha. Mohammed Ghouse Basha was the father of Mohammed Usman Basha and Mohammed Abdul Razack Basha. Mohammed Ghouse Basha purchased the property on 10.05.1955 in a court auction. Mohammed Ghouse Basha took possession of the property and was in enjoyment of the same till he died in the year 1976. Mohammed Ghouse Basha left behind as legal heirs two sons viz., Mohammed Usman



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Basha and Mohammed Abdul Razack Basha, the defendant herein.

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3. The legal heirs of Mohammed Usman Basha filed a suit in O.S.No.1045 of 1989 before the City Civil Court, Madras. A preliminary decree for partition was granted by the Court on 25.08.1995. The plaintiffs claimed that they were put in possession of the property as tenants for the land in August 1992. They allege that they were paying a monthly rental of Rs.600/-per month. They further stated that prior to them entering into oral tenancy, the plaintiffs' mother was a tenant since 1990 of a Madras terraced hall which stood on a portion of the suit property.

4. They alleged that she put up a tiled room behind the hall connecting the two portions. After the plaintiffs' mother had passed on, the plaintiffs took over the business and re-named it as “ M/s Maruthi Bearings”. Consequent to this, they entered into an oral lease for the site, where the hall and room earlier stood and changed the portions with demarcating walls. They alleged that they spent Rs.2,00,000/- for modification. They relied upon a lease deed dated 19.08.1994.



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5. They further pleaded that a sale agreement was entered into between the plaintiffs and the defendant on 27.03.1996. According to them, the property would be sold for a sum of Rs.5,00,000/-, taking into consideration the plaintiffs would be entitled to the provisions of the Chennai City Tenants Protection Act, 1921. Under the sale agreement, Rs.98,000/-, received as advance towards the lease agreement, was to be adjusted as advance for the sale of the property.

6. They further stated that another sum of Rs.1,00,000/- was paid as sale consideration to be adjusted towards the total sale consideration of Rs.5,00,000/-. In effect, the plaintiffs pleaded that out of Rs.5,00,000/-, they had paid Rs.1,98,000/-, leaving balance of Rs.3,02,000/-. The plaintiffs further alleged that in order to find quietus to this situation between brothers, a partition document was entered into at the instance of the plaintiffs.

7. As per the partition document, the suit schedule mentioned property fell to the share of the defendant. The legal heirs of the defendant took the



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remaining share. The said partition deed was registered as Document No.688/1996 in the Office of Sub Registrar, Triplicane, Madras on 13.06.1996.

8. The plaintiffs stated that in pursuance of the agreement of sale, they sent a telegram on 29.07.1996, demanding execution of the sale deed. They also met the defendant on several dates personally and expressed their readiness and willingness to take the sale deed. Finally on 12.11.1996, the plaintiffs sent a lawyer's notice to the defendant conveying their readiness and willingness to purchase the property. The averment in the lawyer's notice was stoutly denied and a reply was sent by the defendant on 02.12.1996. Being left with no other option, they filed a suit on 27.08.1998.

9. The decree sought for by the plaintiffs are as follows:-

“ i. directing him to execute a sale deed in respect of the suit schedule mentioned property conveying the same in terms of the sale Agreement dated 27.03.1996 within such time as may be fixed and upon such conditions



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as may be fixed in this behalf after receipt of the balance of sale consideration and in case of the failure of the Defendant to comply with the said direction to execute such conveyance by the Hon'ble Court for and on behalf of the Defendant,

ii. in case the Hon'ble Court for any reason is pleased to decide that the plaintiffs are not in actual possession of the item No.11, to direct the Defendant and persons claiming under him to put the plaintiffs in possession of the same,

iii. Granting permanent injunction restraining the Defendant and his men from in any way interfering with the Plaintiff's possession and enjoyment of the suit property.

iv. granting permanent injunction restraining the Defendant from encumbering and or alienating the suit property in derogation of the rights of the plaintiffs.



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v. to award costs of the above suit;

vi. to pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstance of the above suit, and thus render justice.”

GIST OF THE WRITTEN STATEMENT

10. The defendant admitted that the property originally belonged to late Mohammed Ghouse Basha, who passed away on 02.11.1976. They also admitted that the property fell into the hands of Mohammed Usman Basha and the defendant. According to the defendant, the property was under tenancy with one Munuswamy and the adjacent property was occupied by one M/s Rubena Agency. After Munuswamy vacated the premises, it was occupied by one Fathima Rahman and when she vacated the property, it came to be in possession of plaintiffs' father K.A.Joseph and their mother J.Rajaregam Jothiammal. The monthly tenancy was Rs.600/- and the tenancy was entered into in September 1990.



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11. The defendant pleaded that on the demise of plaintiffs' mother, Mrs.J.Rajaregam Jothiammmal, the plaintiffs 1 and 2 became tenants under the defendant in respect of the terraced portion in August 1994 on a monthly rent of Rs.600/-. They further pleaded that no agreement in writing was entered into between them.

12. The defendant admitted the fact that his sister-in-law (brother's wife) and their children filed a suit in O.S.No.1045 of 1989, seeking for partition and separate possession of their share in the property. A preliminary decree was passed in the suit on 25.08.1995 declaring $\frac{1}{2}$ share each to the plaintiffs and the defendant. They accepted that instead of filing a final decree petition in the matter to divide the property, the parties entered into a deed of partition on 13.06.1996.

13. Under the said partition, the eastern portion of the property, consisting of an old building, ground and premises fell to the share of the defendant. The old building was occupied by the plaintiffs 1 and 2 and the



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remaining portion was occupied by one M.A.Hussain. The written statement also spoke about the fact that since the plaintiffs/tenants defaulted in payments of rents from July 1996 onwards, RCOP No.1300 of 1998 was filed before the 16th Court of Small Causes for the purpose of eviction. According to them, the total default period was 22 months from July 1996 to April 1998.

14. The defendant further stated that another RCOP No.1429 of 1998 was filed for fixation of fair rent before the very same Court. With respect to the plea that the building was in a dilapidated condition and the plaintiffs' mother has put up superstructure, the defendant denied the same. He also denied the oral lease. He was emphatic in his assertion that no construction was put up by the plaintiffs and what was partitioned between the brothers was the land together with superstructure.

15. A specific plea was taken by the defendant that the building is more than 75 years and it was this building that had been allotted to them. Crucially with respect to the specific performance status, the defendant stated



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that there was no lease agreement between them on 19.08.1994 and that it is a false and fabricated document. The defendant alleged that the signature has been forged. They also denied the right of the plaintiffs to claim the benefits under the City Tenants Protection Act. He denied the receipt of Rs.98,000/- and also to the fact that Rs.5,00,000/- is a fair value for the property. According to the defendant, the value of the property is Rs.50,00,000/-. The defendant denied the execution of the alleged sale agreement as false and fabricated. The defendant stated that the partition deed dated 13.06.1996 is a result of collusion between the plaintiffs 1 and 2 and the legal heirs of the defendant. They would deny the recitals in the partition document. He specifically denied having instructed his brother's legal heirs or the lawyer, who prepared the deed of partition. The defendant state that the details found therein is totally unnecessary to be incorporated apart from being false.

16. Further, the defendant also denied the payments said to have been made by the plaintiffs pursuant to the agreement of sale. A separate paragraph is dedicated stating that no telegram was ever issued by the plaintiffs. He reiterated the defence taken in the lawyer's notice denying the



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execution of the agreement of sale. They would state that the documents are bogus and invalid in law and not binding on them.

17. On these pleadings, the following issues were framed:-

1. வழக்கு ஒப்பந்தம் மோசடியால் பாதிக்கப்பட்டுள்ளதா?
2. வாதிகளுக்கு ஏற்றதை ஆற்றுக (Specific Performance) பரிகாரம் கிடைக்கக்கூடியதா?
3. ஒப்பந்தப் படி வாதிகள் அவர்களுடைய கடமையை நிறைவேற்ற எப்போதும் விருப்பத்துடனும், தயாராகவும் இருந்து வந்தார்கள் என்பது சரியா?
4. வாதிகளுக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன?
9. பின்பு மாண்புமிகு உயர்நீதிமன்றத்தில் 1ம் பிரதிவாதி தரப்பில் தாக்கல் செய்யப்பட்ட A.No.228/2000 மற்றும் 229/2000 மனுக்கள் அனுமதிக்கப்பட்டதின் பேரில், 1வது எழுவினா நீக்கப்படும், 1ம் பிரதிவாதி தரப்பில் தாக்கல் செய்யப்பட்ட மாதிரி எழுவினாக்கள் கூடுதல் எழுவினாக்களாக வனையவும் மாண்புமிகு உயர்நீதிமன்றம் உத்தரவிடப்பட்டுள்ளது.
10. அதன்படி இந்நீதிமன்றம் பரிசீலிக்கப்படவேண்டிய திருத்தியமைக்கப்பட்ட எழுவினாக்கள்
1. வாதிகளுக்கு ஏற்றதை ஆற்றுக (Specific Performance) பரிகாரம்



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கிடைக்கக்கூடியதா?

2. ஒப்பந்தப்படி வாதிகள் அவர்களுடைய பங்கை நிறைவேற்ற எப்போதும் தயாராகவும், விருப்பத்துடனும் இருந்து வந்தார்கள் என்பது சரியா?

3. வாதிகளுக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன?

11. கூடுதல் எழுவினாக்கள்

1. வழக்குரை 3வது பத்தியில் சொல்லப்பட்டுள்ள 19.08.1994ம் தேதியிட்ட குத்ததை ஒப்பந்தம் உண்மையானதா?

2. வழக்குரை 3வது பத்தியில் சொல்லியவாறு வழக்குச் சொத்தில் ரூ.2 லட்சம் செலவில் வாதிகள் கட்டிடங்கள் கட்டியுள்ளார்கள் என்பது சரியா?

3. வழக்குரை 4வது பத்தியில் சொல்லியவாறு வழக்குச் சொத்தை பிரதிவாதி விற்க ஒப்புக்கொண்டு ரூ.98,000/.முன் பணமாக வாதிகளிடமிருந்து பெற்றுக் கொண்டார் என்பது சரியா?

4. 27.03.1996ம் தேதியிட்ட கிரைய ஒப்பந்தம் உண்மையானதா? செல்லக்கூடியதா? மற்றும் சட்டப்படி நிறைவேற்றக்கூடியதா?

5. வழக்குரை 5வது பத்தியில் சொல்லியவாறு வாதிகள், பிரதிவாதிக்கு ரூ.1,00,000/-. மேலும் முன் பணமாக கொடுத்துள்ளார்கள் என்பது சரியா?

6. வழக்குரை 9வது பத்தியில் சொல்லியபடி 13.06.1006ம் னைஉ (13.06.1996) தேதியன்று பிரதிவாதியின் சகோதரரின் வாரிசுகளுக்கு, பிரதிவாதிக்காக ரூ.50,000/-. கொடுக்கப்பட்டு, அத்தொகை முன்பணமாக தரப்பினர்களால் கருதப்பட்டது என்பது சரியா?



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WEB COPY 18. The 2nd plaintiff was examined as P.W.1 and one Akbar Basha was examined as P.W.2. In addition, one S.Ramachandra Pillai was examined as P.W.3. The plaintiffs marked Ex.A.1 to A.5. Pending the suit, as the sole defendant passed away, his legal heirs were brought on record as defendants. The second defendant Ameer Basha was examined as D.W.1. He marked Ex.B.1 and B.2. The learned trial Judge, after detailed discussion, came to the following conclusions:-

- (i) That the lease deed or agreement of sale have not been proved;
- (ii) That there is no evidence that the plaintiffs have put up the superstructure;
- (iii) The averments in the partition deed are tailor made to suit the plaintiffs;
- (iv) That the plaintiffs had not proved their case that there was readiness and willingness on part of the plaintiffs and dismissed the suit.



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Against the said dismissal, the present first appeal arises.

19. Heard Mr.R.Swaminathan, learned counsel for the appellants and Mr.B.K.Srinivasan, learned counsel for the respondents.

20. The issues I frame for the appeal are:

- i) Whether the document under Ex.A.2 is true and genuine?
- ii) Whether the plaintiffs have proved their readiness and willingness?
- iii) Whether the plaintiffs have proved that they are entitled to the benefits of City Tenants Protection Act?

Issue No.3:-

Whether the plaintiffs have proved that they are entitled to the benefits of City Tenants



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Protection Act?

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21. Taking the last issue first, in order to claim the benefit of City Tenants Protection Act, it is necessary for the plaintiffs to prove that the tenancy that had been entered into between the plaintiffs and the defendant, was entered into before the commencement of Madras City Tenants (Amendment) Act 2 of 1980.

22. It is an admitted case of the plaintiffs that originally their mother had become a tenant in 1990. Therefore, the question of extending the benefit of City Tenants Protection Act will not arise.

23. Apart from that, under Section 1(3) of City Tenants Protection Act, the benefit of the said legislation is available to a person who enters into a tenancy agreement with land alone.

24. In this case, even as per the case of the plaintiffs when their mother entered into a tenancy in the year 1990, there was already in existence a



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building over the property. The mere fact that some alternations had been made in the superstructure does not give right to the plaintiffs to claim the benefit of the Act. If they had entered into a tenancy agreement for the land and building, then, they would be covered under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and not under the provisions of City Tenants Protection Act.

25. Apart from these two vital aspects, no evidence worth its salt has been adduced by the plaintiffs in order to show that they have entered into an agreement of tenancy of the land alone. Therefore, the plea of Mr.R.Swaminathan that the plaintiffs are entitled to the benefit of City Tenants Protection Act does not arise.

26. It is here, Mr.R.Swaminathan points out that the partition deed that had been entered into between the parties has certain averments which would be beneficial for him to invoke the legislation. It has been settled by series of judgments of this Court that mere recital in a document is not enough to confer a right on the party (*See: Ramasamy Gounder and Others vs*



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Chinnapillai and others 2022 5 MLJ 306).

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27. Apart from the recital in the document, the plaintiffs should adduce positive proof to show that they are entitled to the benefits of legislation by showing that what was given was only lands and they had spent money to construct superstructure. In this aspect, there is absolutely no evidence that has been let in by the plaintiffs. **Therefore, I answer this issue as against the plaintiffs.**

Issue No:1:

**i)Whether the document under Ex.A.2 is true
and genuine?**

28. Insofar as this issue is concerned, a careful reading of the written statement shows that the defendant had denied the document viz., the agreement of sale under Ex.A.2. His specific plea is that it is a rank forgery and the agreement has been fabricated by the plaintiffs.



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29. It was argued by Mr.R.Swaminathan that the defendant has not taken any steps to prove that the signature found in the document is a result of forgery. He would refer to the partition document to state that the partition document refers to the agreement of sale and therefore, the burden is on the defendant.

30. Mr.B.K.Srinivasan would point out that the averments made in the partition document are totally alien for the purpose for which the document had been entered into. He would highlight the point that the agreement of sale and the partition document had been written by the same counsel for the plaintiffs. He points out even the suit notice had been issued by the same counsel. He would further state that at the earliest possible point of time, he had denied the existence of the agreement by way of reply notice. He would point out that had the plaintiffs in fact entered into an agreement, the least that they would have done is they would have issued a re-joinder to the defendant. Instead, they presented the plaint for specific performance and that too after considerable delay.

31. I have gone through the oral evidence of the parties. The assertion



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of the third defendant that it was not the signature of his father has not been satisfactorily discharged in the cross examination. Apart from this, the averments regarding the tenancy are totally alien to the purpose for which the partition document has been entered into between the defendant and the legal heirs of his brother. The purpose for which the partition document was entered into was to avoid further litigation in the family. In that document, the reference to the alleged agreement between the plaintiffs and the defendant is absolutely unnecessary.

32. This looms large, because as pointed out by Mr.B.K.Srinivasan, it is the very same counsel, who appeared for the plaintiffs had issued the lawyer's notice earlier and had earlier drafted the partition document. Serious doubt is caused over the same, as the defendant is but a mere tailor and an unlettered person. Had the partition document been true, the plaintiffs who had suggested to the defendant that the original was available with them, would have filed the same before the Court so as to enable the Court to compare the admitted signature in the partition document along with the signature found in the alleged agreement of sale.



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33. It is here that I have to refer to the classic judgment of the Supreme Court in the case of ***Thirvengadam Pillai vs Navaneethammal and Another (2008) 4 SCC 530***. Speaking through **Justice R.V.Raveendran**, consisting of a Bench of Himself and **Justice P.Sathasivam**, His Lordship answered the query as to on whom the burden of proof lies when a document is denied as forged and fabricated. Framing this as a separate issue, **Justice R.V.Raveendran** was pleased to hold as follows:-

“ 19. The trial court had analyzed the evidence properly and had dismissed the suit by giving cogent reasons. The first appellate court reversed it by wrongly placing onus on the defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged.



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that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case plaintiffs came to court alleging that the first defendant had executed an agreement of sale in favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. “

34. Applying the position of law laid down by the Supreme Court in the present case, one can conclude that it is for the plaintiffs to prove that the agreement is true and genuine especially when the defendant has denied it as a false and fabricated. Like in the case before the Supreme Court, in the present case too, the plaintiffs came up with a specific case that the defendant had entered into an agreement. The sale agreement as well as the lease agreement were denied by the defendant. Therefore, the burden lies on the plaintiffs who propounded the two documents to prove it. Unfortunately,



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the plaintiffs have failed to prove the same. The evidence is woefully lacking.

35. As already pointed out, the original of the partition deed is with the plaintiffs. Nothing prevented the plaintiffs from producing the document before the Court and requesting the Court itself to examine the document. However, the plaintiffs did not do so. The fact that the plaintiffs have withheld a crucial document from the Court constrains me to look against them. **Hence, Issue No.1 is answered against the plaintiffs.**

Issue No.2:

ii) Whether the plaintiffs have proved their readiness and willingness?

36. Even if I were to assume that the agreement entered into between the plaintiffs and defendant is true, being a suit for specific performance, I necessarily have to see if the plaintiffs have proved their readiness and



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willingness, as required under Section 16(c) of Specific Relief Act.

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37. Section 16 of Specific Relief Act starts in a negative way stating that Specific Performance of a contract **cannot be** enforced in favour of a person who fails to “aver and prove” he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him.

38. A perusal of the list of dates is sufficient for me to come to the conclusion that the plaintiffs were not ready and willing. The plaintiffs issued a Notice on 12.11.1996. This was suitably replied to by the defendant on 02.12.1996. The specific stand in the reply notice is that the agreement is a fabrication. In other words, the claim of the plaintiffs had been stoutly denied by the defendant. Under such circumstances, it is expected that the plaintiffs would have issued a re-joinder. Even without a re-joinder, I would have expected, as the plaintiffs, whose agreement had been denied, to rush the Court immediately. They did not do so. There is a considerable and



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unexplained delay from the date of notice (12.11.1996) to the presentation of the plaint.(4.9.1998).

39. As to what is the meaning of readiness and willingness in a suit for specific performance has already been laid down by the Supreme Court in the case of *M/s J.P.Builders and Another vs A.Ramadas and Another 2011 1 SCC 429*. The distinction between the readiness and willingness is that in a case of readiness, it refers to the financial capacity of the parties and in a case of willingness, it refers to the conduct of the plaintiffs seeking for specific performance. The Supreme Court opined that “readiness” should be back by “willingness”.

40. A perusal of the documents filed in the present case would go to show that the plaintiffs have not produced any evidence at all to prove their readiness. It is not a case of some gap in evidence, but a total lack of evidence. The plaintiffs, as it is oft-repeated, need not jingle the coins before the Court, but it is expected on their part to show to the Court that



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they had sufficient funds in order to convert the agreement of sale into a sale deed. There is absolutely no evidence to show the plaintiffs had the necessary funds. This readiness and willingness should commence from the date of agreement till the date of decree. I specifically asked Mr.R.Swaminathan as to whether any proof has been adduced by the plaintiffs to show that they had funds during the period when they sought for specific performance. Mr.Swaminathan fairly stated that no documentary evidence to that effect has been let in before the Court. This speaks about the lack of evidence on readiness. I now turn to the aspect of willingness.

41. Though the denial had occurred as early as on 02.12.1996, the suit itself came to be presented only on 04.09.1998. From December 1996 till September 1998, there is absolutely no evidence to show that any steps had been taken by the plaintiffs. Apart from that, the crucial document viz., the telegram, said to have been issued by the plaintiffs to the defendant, which the defendant had denied being received, had not even been produced before the Court.



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42. I take note of the fact that on service of the telegram, the plaintiffs could have easily applied for a certified copy of the same. The Postal and Telegraph Department would have issued a certified copy of the document. It is also known that the Department issues a certified copy only if telegram has been served. The telegram itself having been denied, the plaintiffs should have taken some steps to show that they had in fact issued the same. The lack of production of telegram is another circumstance that I have to hold that the plaintiffs have come up with the story only for the purpose of presentation of the plaint.

43. Mr.R.Swaminathan would then argue that the defendant has not pleaded about the lack of readiness and willingness of the plaintiffs. The position of law on this aspect has been laid down very succinctly by two judgments of this Court and one judgment of the Supreme Court.

44. The first one I have to refer to is the judgment of the Supreme Court in the case of ***Ram Awadh (dead) by LR's v. Achhaibar Dubey, (2000) 2 SCC 428***. The Supreme Court held that it is an obligation of the



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Court **not** to grant the relief of specific performance unless the requirements of Clauses (a), (b) and (c) of Section 16 are specifically met by the plaintiffs.

For ready reference, I am extracting the relevant paragraph:-

“ 6. The obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirements of Clauses (a), (b) and (c) thereof. A Court may not, therefore, grant to a Plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one Defendant and not to another. It is open to any Defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the Court to determine whether it has or has not been complied with and depending upon its conclusion, decree or decline to decree the suit. ”



45. The second judgment, I refer to is the case of ***Balamurugan vs Arumgam 2010 (23) CTCOL 535***. A learned Single Judge of this Court was pleased to hold as follows:-

“ 19. A pertinent argument was advanced by the learned Counsel for the 1st Respondent that despite the averment made by the Plaintiff in the plaint expressing his readiness and willingness, there was no denial by the Defendants, more particularly by the Defendants 1 and 2 and therefore, there was no occasion for him to lead any evidence to prove his readiness and willingness.

20. In a suit for specific performance, it is for the plaintiff to plead and prove his readiness and willingness to perform his part of the contract. That being a mandatory requirement, the Court before passing judgment against the Defendant has to scrutinise the facts set out in the plaint to find out whether the said requirements, specially those indicated in Section 16(1)(c) of the Act have been complied with or not .”



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46. Applying these two judgments, my learned Brother Mr.Justice **R.SUBRAMANIAN**, was pleaded to hold in the case of ***S.Kalianna Gounder (deceased) and others vs S.Periyasamy and others*** (2017) 5 LW 265 as follows:-

“ 30. Therefore, it is clear that de hors the conduct of the defendants in a suit for specific performance, it is incumbent on the plaintiff to prove continuous readiness and willingness. If such readiness and willingness is absent the whole suit would have to fail.....”

I would respectfully follow the judgments rendered above.

47. Mr.Swaminathan submitted that the suit having been filed within a period of 3 years from the date of agreement, I have to presume readiness and willingness. This argument in my view turns the principle on its head. If a suit is filed after the period of limitation, the question of the court probing into, readiness and willingness does not arise. Applying Section 3 of



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Limitation Act, the suit will have to be dismissed as barred by time. If only the suit is presented within 3 years, the issue of the Court looking into the conduct of the parties arises. I cannot decree a suit for specific performance merely because the suit has been filed in time. I have gone through the oral and documentary evidence and do not find that the plaintiffs have proved their readiness and willingness.

Therefore, I answer the Issue No.2 as against the plaintiffs.

48. The relief for specific performance is not mandatory, but it is a discretionary remedy. I can take judicial notice of the fact that the property, which is situated adjacent to the Mount Road, a prime arterial road in the city of Chennai, cannot be sold for a paltry sum of Rs.5,00,000/-. Further, the plaintiffs have come up with a false plea of claiming the benefits under the City Tenants Protection Act. A person who sets up a false case is not entitled to the highly equitable relief of specific performance. The discretion that I can exercise under Section 20(2) of the Act calls upon me to look into the conduct of the parties and also to see whether there will be some hardship on the defendant and his non-performance involves no hardship on the



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plaintiffs.

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49. Assuming the agreement to be true, to decree the suit for a property situated abutting Mount Road for a sum of Rs.2,52,000/- would cause irreparable hardship to the defendant. The plaintiffs entered the property as tenants and defaulted in payment of rents for a period of 27 years. Therefore, I am not inclined to exercise my discretion of granting relief of specific performance as it would not be in the interest of justice nor it would be sound or guided by the principles of equity and hardship.

50. In fine, I am constrained to hold that the plaintiffs have not proved the readiness and willingness (even assuming that the agreement was true and genuine) to get the benefit of a decree for specific performance.

51. In the result, the judgment and decree passed by the learned III Additional Judge, City Civil Court, Chennai in O.S.No.14296 of 2010 dated 08.06.2016 is confirmed and the first appeal A.S.No.654 of 2016 is dismissed. Costs throughout.



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Index: Yes/No
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To

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V.LAKSHMINARAYANAN,J.,

SR

Judgment in
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