



A.S.(MD)No.179 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
19.09.2025	26.09.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**A.S.(MD)No.179 of 2019
and
C.M.P.(MD)No.9267 of 2019**

P.Krishnamoorthy

... Appellant / Plaintiff

vs.

V.Rayar

... Respondent / Defendant

PRAYER : Appeal Suit filed under Section 96 Civil Procedure Code against the judgement and decree dated 10.06.2019 passed in O.S.No.167 of 2013, on the file of II Additional District Court, Tiruchirapalli, dismissing the suit filed by the appellant / plaintiff.

For Appellant

: Mr.S.Ramakrishnan
for Mr.K.S.Vamsidhar



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For Respondent

: Mr.P.Subbiah

JUDGMENT

C.V.KARTHIKEYAN, J.

The plaintiff in O.S.No.167 of 2013, aggrieved by the judgment of the II Additional District Court at Tiruchirapalli, dated 10.06.2019, dismissing the suit, has preferred the present Appeal Suit.

O.S.No.167 of 2013 [II Additional District Court, Tiruchirapalli]:-

2. O.S.No.167 of 2013 was filed by the plaintiff [P.Krishnamoorthy], seeking a judgment and decree against the defendant [V.Rayar], for specific performance of the agreement dated 08.08.2011, by directing the defendant to execute a sale deed and deliver possession of the suit property. In the alternative, the plaintiff sought a decree directing the defendant to pay a sum of Rs.5,00,000/- together with interest at 12% per annum from the date of realization, with a charge over the suit property.

3. The suit property, being nanja land, was described in the schedule as situated in Tharanallur Village, Tiruchirapalli, originally in S.No.10/A1 and after



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sub-division, assigned New Survey No.89/1, measuring a total extent of 1.96 acres, out of which the agreement pertained to 0.93 cents.

4. In the plaint, it was stated that the plaintiff and the defendant had entered into an agreement on 08.08.2011 with respect to the suit property, whereby the defendant agreed to sell and the plaintiff agreed to purchase the property for a total consideration of Rs.2,52,78,864/-. An advance amount of Rs.5,00,000/- was paid by the plaintiff. The defendant agreed to receive the balance sum of Rs.2,47,78,864/- within a period of six months and, upon receipt of the said amount, to execute the sale deed in favour of the plaintiff or his nominee, and also to deliver vacant possession of the suit property.

5. It was further contended that, at the time of entering into the agreement of sale, the registration of the sale deed under which the defendant had acquired title to the property was not complete and was pending before the Revenue Divisional Officer (Stamp Duty) for adjudication of the correct stamp duty payable on the instrument. This fact was specifically recorded in the agreement of sale itself.



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6. It was further contended in the plaint that the plaintiff was always ready and willing to pay the balance sale consideration of Rs.2,47,78,864/- and to have the sale deed executed in his favour. The defendant had assured the plaintiff that he would inform him once the proceedings before the Revenue Divisional Officer were completed.

7. It was further stated that in April 2013, the plaintiff came to know that the sale deed had already been released by the Revenue Divisional Officer, and that the defendant was attempting to alienate the suit property to a third party. Consequently, the plaintiff issued a legal notice dated 16.04.2013, calling upon the defendant to be ready to execute the sale deed and to receive the balance sale consideration.

8. However, the defendant did not comply with the said demand. Instead, he issued a reply notice dated 02.05.2013, raising various contentions. The defendant claimed that time was the essence of the contract, and that the agreement was not enforceable as the plaintiff allegedly did not have the necessary funds to complete the purchase.



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9. The plaintiff disputed these claims, asserting that the contentions raised by the defendant were false and that he had always been ready and willing to perform his part of the contract. Under these circumstances, the plaintiff filed the present suit seeking the reliefs as stated above.

10. The defendant filed a written statement denying and disputing the averments made by the plaintiff. While admitting the execution of the agreement dated 08.08.2011, the defendant contended that the plaintiff was under an obligation to pay the balance sale consideration of Rs.2,47,78,864/- within a period of six months from the date of the agreement.

11. The defendant denied having ever stated that the registration of the sale deed was pending before the Revenue Divisional Officer for adjudication under Section 47A of the Indian Stamp Act. It was specifically contended that the sale deed had been released by the Revenue Divisional Officer in December 2011, and that this fact was duly communicated to the plaintiff. The defendant asserted that the plaintiff was never ready and willing to pay the balance sale consideration.



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12. The defendant also specifically denied the plaintiff's claim that he became aware of the release of the sale deed only in April 2013. Though the plaintiff issued a legal notice, the defendant responded with a reply notice dated 02.05.2013, setting out what he claimed to be the correct facts.

13. It was further contended that at the time of entering into the agreement, the market value of the property was Rs.624/- per sq. ft., while the guideline value was Rs.550/- per sq. ft. As on the date of filing the written statement, *i.e.*, 06.03.2014, the market value had risen to Rs.3,000/- per sq. ft., and the guideline value as of 01.04.2012 was Rs.1,200/- per sq. ft.

14. The defendant alleged that the plaintiff was attempting to acquire the property for a grossly inadequate consideration, and reiterated that the plaintiff was never ready and willing to pay the balance sale consideration. On these grounds, it was contended that the suit should be dismissed.

15. On the basis of the above pleadings, the following issues were framed for trial:-



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"(i) Whether the plaintiff is entitled for the relief of specific performance as prayed for or not?

(ii) Whether the plaintiff is entitled for the alternative relief of refund of advance amount or not?

(iii) To what other relief?"

16. During trial, the plaintiff examined himself as P.W.1 and marked Exs.A.1 to A.8.

17. Ex.A.1 dated 08.08.2011 was the unregistered Agreement of Sale between the plaintiff and the defendant. Exs.A.2 and A.4 were the notices exchanged between the parties. Exs.A.5 to A.7 were Income Tax Return Verification Form in the name of Sureshkumari, for the Financial Years 2011-2012, 2012-2013 and 2013-2014 respectively. Ex.A.8 was the xerox copy of the certificate given by the Chief Manager, Indian Bank, Trichy.

18. The defendant examined himself as D.W.1 and marked Ex.B.1, which was a certified copy of the decree in O.S.No.353 of 2008 on the file of the District Munsif Court, Trichirapalli.



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19. The learned Trial Judge examined the pleadings and the evidence adduced by both parties and placed specific reliance on the cross-examination of P.W.1 (the plaintiff). In particular, it was noted that the plaintiff admitted that Ex.A1 (the agreement) did not contain any clause specifically stating that the balance sale consideration was to be paid only after the sale deed in favour of the defendant was released by the Revenue Divisional Officer.

20. The plaintiff further stated that he did not remember whether he had issued any written communication to the defendant regarding the release of the sale deed by the Revenue Divisional Officer, although he claimed to have made such a request orally.

21. However, he also admitted that this oral claim was not mentioned in the plaint, in the advocate's notice, or in his proof affidavit. Additionally, he stated that he had made enquiries at the Office of the Revenue Divisional Officer regarding the status of adjudication under Section 47A of the Indian Stamp Act, but could not recall either the date of such enquiry or the response received from the said Office.



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22. The learned Trial Judge further observed that the agreement was executed on 08.08.2011, whereas the legal notice (Ex.A2) was issued only on 16.04.2013, *i.e.*, after a lapse of one year and eight months. The suit itself was filed on 08.11.2013, which was seven months after the issuance of the notice.

23. The learned Trial Judge also took note of the admission made by P.W.1 during cross-examination, wherein he acknowledged that the balance sale consideration was to be paid within a period of six months from the date of the agreement. He also claimed that the balance was payable only after the document was released from the office of the Revenue Divisional Officer; however, he admitted that this condition was not recorded in the agreement. On the contrary, the agreement specifically stipulated that the balance sale consideration was to be paid within six months, clearly indicating that the parties intended to complete the transaction within that timeframe.

24. The learned Trial Judge further placed reliance on further admissions made by P.W.1 during cross-examination, wherein he stated that the details of the transaction were known only to his father and that he did not possess the balance



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sale consideration himself. He admitted that it was his father who had the requisite funds, and it was correct to suggest that he (P.W.1) never personally had the balance amount. He further stated that he signed the agreement only because his father had asked him to do so, and that it was, in fact, his father who had caused the agreement to be entered into.

25. The learned Trial Judge further observed that the plaintiff ought to have examined his father, who was admittedly involved in the execution of the agreement, to speak about the circumstances surrounding the transaction. It was also observed that Exs.A5 to A7, being Income Tax Returns, stood in the name of the plaintiff's mother, Sureshkumari, who likewise was not examined as a witness.

26. The learned Trial Judge further noted that Ex.A8, a certificate issued by the Chief Manager of Indian Bank, Trichy, pertained to the funds available in the account of the plaintiff's father. However, the plaintiff had not averred or established that his parents were ready and willing to lend him the funds required to pay the balance sale consideration.



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27. It was further noted that the Agreement of Sale was dated 08.08.2011, whereas Exs.A6 and A7 related to the financial years 2012-2013 and 2013-2014, and Ex.A8 was dated 08.09.2016. The Trial Court held that these documents, being subsequent in time, would not come to the aid of the plaintiff in proving his financial capacity as on the date of the agreement, though they may suggest that his family had the means at a later point of time.

28. The learned Trial Judge also found that the plaintiff had failed to produce any documentary evidence to establish that he himself was possessed of sufficient funds to pay the sale consideration. In fact, he had admitted in his cross-examination that he did not have the requisite amount.

29. In view of the above findings and admissions, the learned Trial Judge dismissed the suit for specific performance. However, the alternate relief sought by the plaintiff was allowed. The Trial Court directed the defendant to repay the advance amount of Rs.5,00,000/- paid at the time of entering into the agreement, along with interest at 12% per annum from the date of the agreement (08.08.2011) till the date of actual payment.



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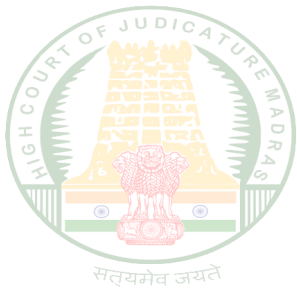
30. Aggrieved by the findings of the learned Trial Judge, the plaintiff has filed the present Appeal Suit.

31. Heard arguments advanced by Mr.S.Ramakrishnan for Mr.K.S.Vamsidhar, learned counsel for the appellant and Mr.P.Subbiah, learned counsel for the respondent and perused the material records.

32. The following points arise for consideration in this Appeal Suit, as required under Order XLI Rule 31 of the Code of Civil Procedure:

(i) Whether the Trial Court properly appreciated the evidence on record in concluding that the plaintiff/appellant had failed to prove his readiness and willingness to perform his part of the contract within the stipulated time, as required for the grant of specific performance?

(ii) Whether the Trial Court was justified in granting the alternate relief by directing the defendant/respondent to refund the advance amount received under the Agreement of Sale, along with interest at 12% per



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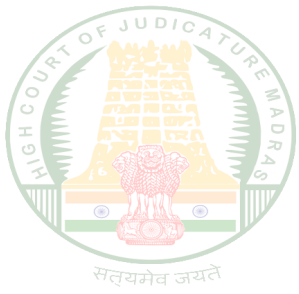
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annum from the date of the suit till the date of decree, and subsequent interest at 6% per annum from the date of decree till the date of realization, and in creating a charge over the suit property for securing the said amount?

Point No.(i):-

33. The appellant had filed the suit seeking specific performance of an Agreement of Sale dated 08.08.2011, entered into with the respondent for the conveyance of the property described in the schedule to the plaint, measuring 0.93 cents out of a larger extent of 1.86 acres, situated in Survey No.10/A1, Re-survey No.89/1 at Tharanallur Village, Trichy.

34. The total sale consideration was fixed at Rs.2,52,78,864/-, calculated at the rate of Rs.624/- per sq. ft., which, according to the agreement, was the prevailing market value as on the date of execution. The guideline value was stated to be Rs.550/- per sq. ft. An advance of Rs.5,00,000/- was paid by the appellant at the time of the agreement.



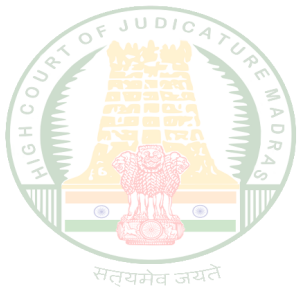
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35. It was specifically covenanted that the balance sale consideration of Rs.2,47,78,864/- was to be paid by the appellant to the respondent within a period of six months from the date of the agreement, *i.e.*, on or before 08.02.2012. The appellant was also required to purchase the necessary stamp papers. Upon receipt of the full sale consideration, the respondent was obligated to execute a sale deed either in favour of the appellant or in favour of his nominee.

36. The agreement also recorded that the sale deed dated 31.12.2009, under which the respondent had purchased the suit property, had been kept pending before the Office of the Revenue Divisional Officer for adjudication of stamp duty under Section 47A of the Indian Stamp Act.

37. In the plaint, the appellant contended that the respondent had stated that the sale deed was still pending before the Revenue Divisional Officer, and that the execution of the sale deed in favour of the appellant would be completed only after the release of the said document. The appellant further asserted that he came to know only in April 2013 that the adjudication had been completed and the sale deed had been released. Consequently, the appellant issued a legal notice dated



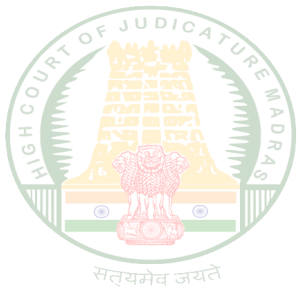
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16.04.2013, calling upon the respondent to indicate a date, within 15 days from the date of receipt of the notice, on which the appellant would present himself with the balance sale consideration and a draft sale deed for execution and registration before the Sub-Registrar.

38. It was contended that the respondent issued a reply notice, wherein he asserted that the sale deed had been released by the Office of the Revenue Divisional Officer as early as December 2011, and that the appellant had not taken any steps to pay the balance sale consideration or to have the sale deed executed thereafter.

39. In view of the above, the central issue that arises for determination is, whether the appellant was aware of the release of the document from the Revenue Divisional Officer after adjudication of stamp duty, and more importantly, whether the appellant was ready and willing to tender the balance sale consideration as required under the Agreement.



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40. It must be noted that the total sale consideration was fixed at Rs.2,52,78,864/-, of which only Rs.5,00,000/- was paid as advance. A substantial amount of Rs.2,47,78,864/- remained due and payable by the appellant within six months from the date of the agreement, *i.e.*, on or before 08.02.2012.

41. Though the Agreement specifically mentioned that the respondent's sale deed (dated 31.12.2009) was pending adjudication before the Office of the Revenue Divisional Officer under Section 47A of the Indian Stamp Act, the parties had nonetheless expressly covenanted that the balance consideration was to be paid within six months, without linking it to the release of the document.

42. A crucial factor to be considered is that no documentary evidence was placed on record by the appellant to show that he had, within the six-month period, called upon the respondent or taken any step to enquire about the status of adjudication or to perform his part of the contract.

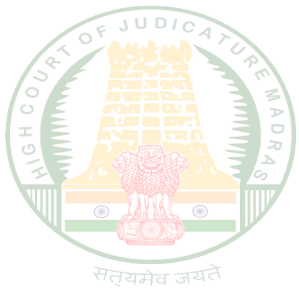
43. During cross-examination, the appellant, who was examined as P.W.1, stated that he had personally visited the Office of the Revenue Divisional Officer



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and enquired about the status of the document. The learned Trial Judge had extracted the relevant portion of the cross-examination in the judgment. The vernacular version reads as follows:

"வா.சா.ஆ.1 ஆவணத்தில் ஆர்.டி.ஓ. விடம் உள்ள பிரதிவாதியுடைய அசல் ஆவணம் திரும்ப கிடைத்த பிறகுதான் கிரையத்தை முடித்துக் கொள்ள வேண்டும் என்று குறிப்பிடப்படவில்லை என்று சொன்னால் சரிதான். ஆர்.டி.ஓ.விடம் உள்ள அசல் ஆவணத்தை திரும்ப பெறுமாறு பிரதிவாதிக்கு நான் கடிதம் அனுப்பினேனா என்றால், எனக்கு ஞாபகம் இல்லை. நான் நேரடியாக பிரதிவாதியை பார்த்து கேட்டேன். அவ்வாறு நான் நேரடியாக பிரதிவாதியை அணுகி கேட்டது குறித்து அவருக்கு அனுப்பிய வழக்கறிஞர் அறிவிப்பிலோ, அல்லது வாதுரையிலோ அல்லது என்னுடைய பிரமாண வாக்குமூலத்திலோ தெரிவித்துள்ளேனா என்றால் அவ்வாறு தெரிவிக்கவில்லை. ஒப்பந்தத்தில் உள்ள ஆறு மாத காலம் முடிந்தபின்பு, பிரதிவாதிக்கு ஆர்.டி.ஓ.விடம் உள்ள ஆவணம் திரும்ப பெறப்பட்டதா என்பது குறித்து உடனடியாக அறிவிக்கை அனுப்பினேனா என்றால் நேரடியாக கேட்டேன். அவ்வாறு நேரடியாக கேட்டது குறித்து அவருக்கு அனுப்பிய வழக்கறிஞர் அறிவிப்பிலோ, அல்லது வாதுரையிலோ அல்லது என்னுடைய பிரமாண வாக்குமூலத்திலோ குறிப்பிட்டுள்ளேனா என்றால் குறிப்பிடவில்லை. ஒப்பந்த கால கெடுவிற்குள் பிரதிவாதி ஆர்.டி.ஓ.விடம் இருந்து ஆவணத்தை திரும்ப பெற்று விட்டாரா என்பதை தெரிந்து கொள்ள நான் தனிப்பட்ட முயற்சி எடுத்தேனா என்றால், தனிப்பட்ட முயற்சி எடுத்தேன். என்ன முயற்சி என்றால் ஆர்.டி.ஓ. அலுவலத்தில் சென்று நான் விசாரித்தேன். எப்போது விசாரித்தேன் என்றால் எனக்கு ஞாபகம் இல்லை. என்ன பதில்



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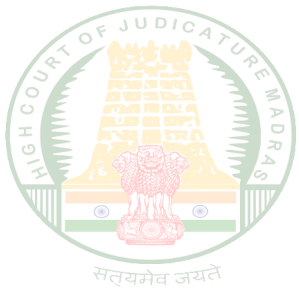
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கூறினார்கள் என்றால், சாட்சி மிகவும் திணறியவாறு என்ன பதில்
கூறினார்கள் என்று தனக்கு ஞாபகம் இல்லை என்று கூறுகிறார்."

44. A rough translation of the appellant's admission during cross-examination reveals the following:-

The appellant admitted that the Agreement of Sale (Ex.A.1) did not specifically covenant that the sale deed would be executed only after the earlier sale deed was released by the Office of the Revenue Divisional Officer. He further stated that he does not remember whether he had sent any written communication to the respondent requesting him to obtain the document from the Revenue Divisional Officer. However, he claimed that he had orally asked the respondent to do so. He also conceded that this oral request was not mentioned in the notice issued by him, nor it was reflected in the plaint or the affidavit of evidence.

45. The appellant also admitted to having personally visited the Office of the Revenue Divisional Officer to enquire about the status of the adjudication, but he did not recall the date of such visit, nor the response received from the Office. The learned Trial Judge noted the appellant's hesitant demeanour and his failure



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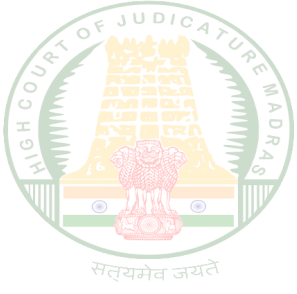
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to remember the reply given by the Revenue Divisional Officer.

46. It is pertinent to observe that the notice (Ex.A.2) dated 16.04.2013 was issued by the appellant only after a delay of one year and eight months from the date of the agreement (08.08.2011). The suit itself was filed on 08.11.2013, approximately seven months after the issuance of the notice.

47. Regarding the appellant's readiness to pay the balance sale consideration of Rs.2,47,78,864/-, he categorically admitted that he did not have the requisite amount in his possession. He stated that the said amount was with his father and that he had never possessed the said amount at any time from the date of the agreement. This admission clearly indicates that the appellant lacked the financial means to complete the purchase as agreed. His evidence on this point during cross-examination was as follows:-

"தற்போது என்னிடம் மீத கிரைய தொகையான ரூ.2,52,78,864/- தொகை என்னிடம் உள்ளதா என்றால் என்னிடம் இல்லை. எனது தந்தையிடம் உள்ளது. வா.சா.ஆ.1 ஆவணத்தை ஏற்படுத்திய நாளில் இருந்து தற்போது வரை மீத கிரைய தொகையான ரூ.2,52,78,864/- தொகை என்னிடம் இல்லை. எனது தந்தையிடம் தான் உள்ளது என்று



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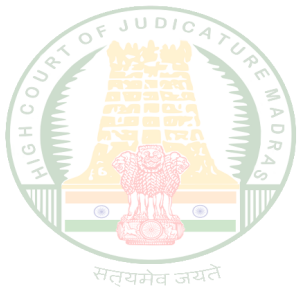
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சொன்னால் சரிதான். "

48. He stated that the amount was solely with his father. During cross-examination, the appellant further admitted that it was his father who had instructed him to sign the Sale Agreement. He also acknowledged that it was his father who had been actively involved in negotiating and discussing the terms of the Agreement of Sale. His evidence on this point during cross-examination is as follows:-

"வா.சா.ஆ. 1 ஆவணத்தில் எனது தந்தை கையெழுத்து போடுமாறு என்னிடம் கோரிய காரணத்தினால் நான் கையெழுத்து செய்தேன் என்று சொன்னால் சரிதான். ஆகையினால் வா.சா.ஆ.1 ஆவணத்தை பற்றி எனக்கு எதுவும் தெரியாது என்று சொன்னால் எனது தந்தை தான் வா.சா.ஆ.1 ஆவணத்தை முழுமையாக ஏற்படுத்தினார்."

49. This admission indicates that there was no direct consensus or meeting of minds between the appellant and the respondent. The terms of the agreement were discussed and negotiated solely by the appellant's father and not by the appellant himself. It was the father who had the financial means to



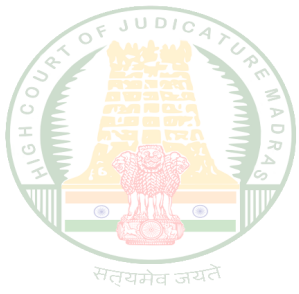
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purchase the property, whereas the appellant did not possess the requisite funds or any source of finance to meet the balance sale consideration of Rs.2,47,78,864/-.

50. During the trial, the appellant made a vain attempt to establish his financial capacity to pay the balance consideration by marking Exs.A.5 to A.7, which were Income Tax Returns for the Assessment Years 2011-2012, 2012-2013, and 2013-2014 pertaining to his mother, Mrs.Sureshkumari. However, Mrs.Sureshkumari was not examined as a witness, and Exs.A.6 and A.7 relate to a period after the date of the Agreement, thereby, rendering these documents ineffective to support the appellant's case.

51. Additionally, the appellant marked Ex.A.8, a certificate dated 08.09.2016 issued by the Chief Manager of Indian Bank, Trichy, attesting to the financial status of the appellant's father. This certificate, too, was issued well after the Agreement date of 08.08.2011 and thus, it does not assist the appellant's claim of financial readiness at the relevant point of time. It is thus seen that the appellant had not established either possession of the necessary funds to pay the



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balance sale consideration or produced any evidence to show that he would obtain the funds from other sources particularly, from his mother and father, whom he failed to examine. Moreover, the documents filed in this regard were submitted much after the date of the agreement and well beyond the time period stipulated therein. Therefore, it cannot be held that the appellant was ready and willing to purchase the suit property.

52. Section 16 of the Specific Relief Act, 1963, as it stood at the material time (prior to amendment with effect from 01.10.2018), *inter alia*, provides as follows:-

"16. Personal bars to relief.- *Specific performance of a contract cannot be enforced in favour of a person-*

(a) who would not be entitled to recover compensation for its breach; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the



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contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.- For the purposes of clause (c), -

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

53. In **U.N.Krishnamurthy vs. A.M.Krishnamurthy** reported in **(2023) 11 SCC 775**, the Hon'ble Supreme Court examined the requirements for proving readiness and willingness to perform an obligation to pay money, and held as follows:-

"23. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, Explanation (ii)



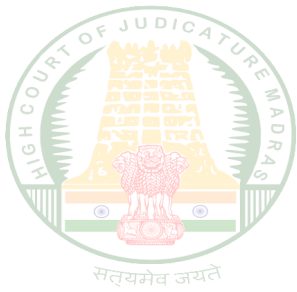
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says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.

24. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.

25. In *Man Kaur v. Hartar Singh Sangha* [(2010) 10 SCC 512 : (2010) 4 SCC (Civ) 239], this Court held that : (SCC p. 531, para 40)

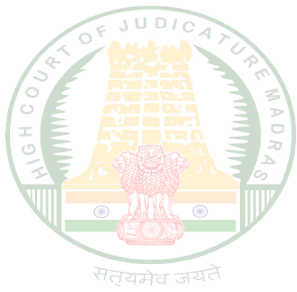
"40. ... A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of



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which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs 10 lakhs and earnest money of Rs 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he



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proves breach by the defendant, as he was not “ready and willing” to perform his obligations.”

26. In *Prem Raj v. DLF Housing Co. Construction (P) Ltd.* [1968 SCC OnLine SC 151 : AIR 1968 SC 1355] cited by Mr.Venugopal, this Court speaking through Ramaswamy, J. held that : (AIR p. 1357, para 5)

“5. ... It is well settled that in a suit for specific performance the plaintiff should allege that he is ready and willing to perform his part of the contract...”

*and if the fact is traversed, he is required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. For such conclusion the learned Judge relied upon the opinion of Lord Blanesburgh, in *Ardeshir Mama v. Flora Sassoon* [1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 at p. 372 : AIR 1928 PC 208].*

27. In *Prem Raj v. DLF Housing Co. Construction (P) Ltd.* [1968 SCC OnLine SC 151 : AIR 1968 SC 1355] , in the absence of an averment on the part of the plaintiff in the plaint, that he was ready and willing to perform his part of the contract, it was held that the plaintiff had no cause of action so far as the relief for specific performance was concerned. In this case, of course, there is an averment in the plaint that



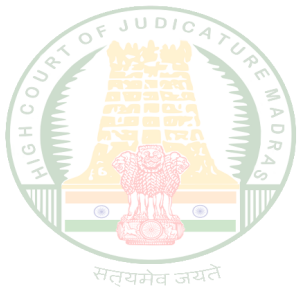
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the respondent-plaintiff was all along ready and willing to perform his obligations under the contract. The question is whether the respondent-plaintiff had proved his readiness and willingness to perform his obligations under the contract.

*28. In **N.P. Thirugnanam v. R.Jagan Mohan Rao [(1995) 5 SCC 115]**, this Court reiterated that Section 16(c) of the Specific Relief Act, 1963 envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which were to be performed by him other than those terms, the performance of which has been prevented or waived by the defendant. In **N.P. Thirugnanam v. R.Jagan Mohan Rao [(1995) 5 SCC 115]**, this Court said that the continuous readiness and willingness on the part of the plaintiff was a condition precedent for grant of the relief of specific performance.*

*29. This Court, in effect, held that for determining whether the plaintiff was ready and willing to perform his part of the agreement it is necessary for the Court to consider the conduct of the plaintiff prior and subsequent to filing the suit for specific performance. The relevant part of the judgment is extracted hereinbelow : [**N.P. Thirugnanam v. R.Jagan Mohan Rao, (1995) 5 SCC 115]**, SCC pp. 117-18, para 5)*

"5. ... Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or



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has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief."

30. In **Umabai v. Nilkanth Dhondiba Chavan [(2005) 6 SCC 243]**, this Court held that a finding as to whether the plaintiffs were all along and still ready and willing to perform their part of the contract, was a mandatory requirement under Section 16(c) of the Specific Relief Act. The Court would necessarily have to arrive at the finding that the plaintiff all along were, and still are ready and also willing to perform their part of the contract, taking into account the entirety of the pleadings as also the evidence brought on record. To quote this Court : (SCC p. 258, para 38)

"38. ... '5. ... So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the



*Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.' [Ed. : As observed in **Pushparani S. Sundaram v. Pauline Manomani James** [(2002) 9 SCC 582, p. 584, para 5.] "*

(emphasis supplied)

31. In **K.S. Vidyanadam v. Vairavan** [(1997) 3 SCC 1], B.P.Jeevan Reddy, J. said that grant of the relief of specific performance is discretionary and the Court is not bound to grant it. This Court further held that though time is not of essence to a contract relating to transfer of property, such contracts need to be completed within a reasonable time period. Thus, the time element cannot be completely ignored.

32. In a suit for specific performance of a contract, the Court is required to pose unto itself the following questions, namely:

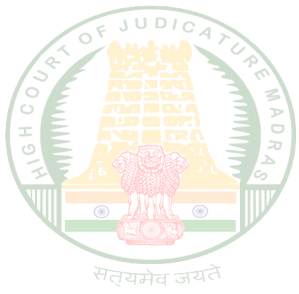
32.1. Whether there is a valid agreement of sale binding on both the vendor and the vendee.



32.2. *Whether the plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16(c) of the Specific Relief Act, 1963.*

33. *There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of specific performance. In **Acharya Swami Ganesh Dassji v. Sita Ram Thapar [(1996) 4 SCC 526]** cited by Mr.Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff. The same view was taken by this Court in **Kalawati v. Rakesh Kumar [(2018) 3 SCC 658 : (2018) 2 SCC (Civ) 609]** .*

34. *Even in a first appeal, the first appellate court is duty-bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract. This proposition finds support from **Balraj Taneja v. Sunil Madan [(1999) 8 SCC 396]** and **H.P. Pyarejan v. Dasappa [(2006) 2 SCC 496]** where this Court approved the views taken by the Privy Council in **Ardeshir Mama v. Flora Sassoon [1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 at p. 372 : AIR 1928 PC 208]** .*

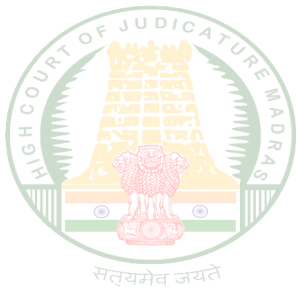


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35. In **Malluru Mallappa v. Kuruvathappa [(2020) 4 SCC 313 : (2020) 2 SCC (Civ) 686]**, this Court observed and held : (SCC pp. 317-19, paras 13-14 & 18)

*"13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions (see : **Santosh Hazari v. Purushottam Tiwari [(2001) 3 SCC 179]**, **Madhukar v. Sangram [(2001) 4 SCC 756]**, **B.M.Narayana Gowda v. Shanthamma [(2011) 15 SCC 476 : (2014) 2 SCC (Civ) 619]**, **H.K.N. Swami v. Irshad Basith [(2005) 10 SCC 243]** and **Sri Raja Lakshmi Dyeing Works v. Rangaswamy***



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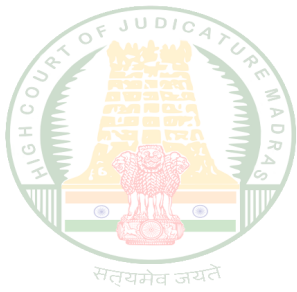
Chettiar [(1980) 4 SCC 259].

14. A first appeal under Section 96 CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.

* * *

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice." "

54. It is thus seen that it is imperative for the appellant not only to aver that he was in possession of the balance sale consideration at all relevant times



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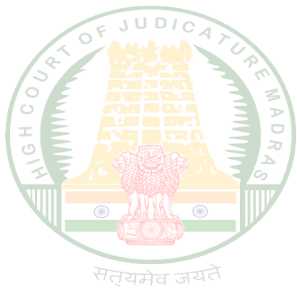
but also to prove such possession. He must also aver that he was willing to part with the balance sale consideration and substantiate that willingness with evidence.

55. In the instant case, the appellant has miserably failed to either plead or prove both readiness and willingness.

56. In view of this specific finding, we hold that Point No.(i) must be answered in the affirmative, and that the trial Court had correctly appreciated the evidence and rightly concluded that the appellant was neither ready nor willing to perform his part of the contract under the agreement.

Point No.(ii):-

57. Even in the plaint, the appellant had sought an alternative relief by praying for a direction against the respondent to refund the advance amount of Rs.5,00,000/- received under the agreement. However, the appellant filed the suit after considerable delay. The date of the agreement (Ex.A.1) was 08.08.2011, the notice (Ex.A.2) was issued on 16.04.2013, and the suit was filed only on 08.11.2013. This delay must be considered in conjunction with the stipulation in Ex.A.1, which required the appellant to pay the balance sale consideration of



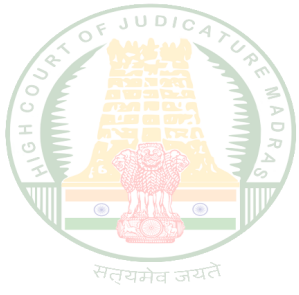
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Rs.2,47,78,864/-. As already held in the discussion on Point No.(i), the appellant was neither ready nor willing to pay the said balance sale consideration. Nevertheless, there is no legal bar to the grant of the alternative relief sought.

58. We accordingly hold, in respect of Point No.(ii), that the trial Court had correctly adjudicated the matter and rightly held that the appellant was entitled to the return of the advance amount of Rs,5,00,000/-, along with interest at the rate of 12% per annum from the date of the suit till the date of the decree, and thereafter, at 6% per annum from the date of the decree till the date of realization.

59. The date of the decree shall be the date on which the judgment in this Appeal Suit is pronounced. We further hold that a charge shall remain over the suit property until the respondent satisfies the aforesaid direction. Point No.(ii) is answered accordingly.

60. In the result, the Appeal Suit is dismissed with costs. Consequently, connected Miscellaneous Petition is closed.



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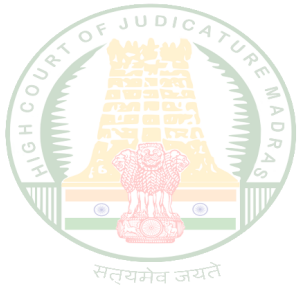
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Index : Yes
NCC : Yes
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[C.V.K., J.] & [R.V., J.]
26.09.2025
(1/2)

To

- 1.The II Additional District Judge,
Tiruchirapalli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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A.S.(MD)No.179 of 2019

C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

smn2

PRE-DELIVERY JUDGMENT MADE IN
A.S.(MD)No.179 of 2019

26.09.2025
(1/2)