

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

REGULAR FIRST APPEAL NO.883 OF 2020

BETWEEN:

SRI N.V. JAYAPRAKASH
S/O. LATE SRI ACHYUTHAN
AGED ABOUT 58 YEARS
RESIDING AT NO.696
7TH CROSS, BEL LAYOUT
3RD BLOCK, VIDYARANYAPURA
BENGALURU-560 097.

...APPELLANT

(BY SRI R. ANIL KUMAR, ADVOCATE)

AND:

SRI K.N. NARASIMHACHAR
S/O. LATE SRI K. NARAYANACHAR
AGED ABOUT 81 YEARS
RESIDING AT NO.15, "VISHRANTHI"
1ST 'A' CROSS, 6TH 'H' MAIN
GAURAVANAGAR
J.P. NAGAR, 7TH PHASE
BENGALURU-560 078.

...RESPONDENT

(BY SRI GIRIDHAR S.V., ADVOCATE)

* * *

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF THE CPC, AGAINST THE JUDGMENT AND DECREE DATED 17-10-2019 PASSED IN ORIGINAL SUIT NO.827 OF 2007 ON THE FILE OF THE X ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, PARTLY DECREETING THE SUIT FOR SPECIFIC PERFORMANCE.

THIS REGULAR FIRST APPEAL HAVING BEEN HEARD AND RESERVED ON 09.06.2026, COMING ON FOR PRONOUNCEMENT, THIS DAY, **VENKATESH NAIK T. J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T)

The present appeal has been filed challenging the judgment and decree dated 17.10.2019 passed in O.S.No.827/2007 by the learned X Additional City Civil and Sessions Judge, Bengaluru (CCH-26) and consequently to decree the suit of the plaintiff. By the impugned judgment, the suit filed for grant of specific performance of contract was dismissed, however, the suit of the plaintiff for refund of earnest amount was decreed.

For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The appellant is the plaintiff and the respondent is the defendant.

2. Briefly, the facts of the case are that, a suit in O.S.No.827/2007 was filed by the appellant/plaintiff seeking the relief of specific performance of contract or in the

alternative to refund of earnest money. The defendant is the owner of suit schedule property bearing Site No.928/1, 4th Cross, 5th Block, Vidyaranyapura, Bengaluru North Taluk, situated in the layout plan approved by the BDA in Sy. Nos.2 to 14, 21 to 25 and 11 of Thindlu Village in the layout formed by M/s. Bharath Electronics Employees Co-operative House Building Society Ltd., Jalahalli Post, Bangalore, measuring East - West 50 feet and North - South 30 feet. Initially, the plaintiff was a tenant under the defendant. On 26.02.2005, the plaintiff and the defendant entered into an Agreement of Sale in respect of suit schedule property for a total sale consideration of Rs.23,00,000/-, wherein the plaintiff paid a sum of Rs.3,00,000/- by way of cash and Rs.1,00,000/- by way of cheque bearing No.010799 dated 26.02.2005, drawn on Vidyaranyapura Branch, Bangalore to the defendant as advance sale consideration and it was agreed that the balance sale consideration amount has to be paid at the time of execution of the sale deed and the sale deed was agreed to be executed by the defendant on 15.04.2005. However, the defendant did not execute the sale deed. On 16.04.2005, once again, the plaintiff and the defendant further entered into an Agreement of Sale (Ex-D4), wherein the defendant agreed to execute the sale

deed on 10.05.2005. As per terms of the agreement, the defendant had agreed to handover the original title deeds and the revenue documents to the plaintiff, but he failed to handover the same, however, he handed over only the photocopies of the documents to the plaintiff. It is averred that the plaintiff was always ready and willing to perform his part of the contract, but, it was the defendant, who postponed the execution of the sale deed, thus on 10.05.2005, the plaintiff called upon the defendant to execute the sale deed. However, the defendant gave an untenable reply. Thus, the plaintiff filed a suit for specific performance of the contract.

3. After institution of the suit, the defendant appeared through his counsel and filed his written statement, denying the claim of plaintiff as false. The execution of Agreement of Sale, receipt of advance sale consideration, the date fixed for execution of sale deed has been admitted. However, the defendant has contended that the plaintiff himself requested the defendant to execute the sale deed on 18.05.2005 and though the defendant and his son were present in the office of Sub-Registrar on 18.05.2005 from 10.30 a.m. to 5.30 p.m., the plaintiff did not turn up to the office of Sub-Registrar and hence, the defendant was unable to execute the sale deed. It

is further contended that in fact the plaintiff was not ready with the balance sale consideration amount, and since time was the essence of the contract, the plaintiff has deliberately failed to get the sale deed registered in his name by paying balance sale consideration amount and hence, the defendant rescinded the contract. Hence, learned counsel for the respondent/defendant prayed for dismissal of the suit.

4. The trial Court, based on the pleadings, framed the following issues:

ISSUES

1. Whether the plaintiff proves that he was and is always ready and willing to perform his part of the contract?
2. Whether the defendant proves that he has validly terminated the sale agreement dated 26.02.2005?
3. Whether the defendant proves that the suit is barred by law of limitation?
4. Whether the plaintiff is entitled for the relief of specific performance of the sale agreement dated 16.04.2005?

5. In the alternative, whether the plaintiff is entitled for the recovery of the advance amount of Rs.6.00 lakhs together with the interest at the rate of 18% p.a. from the defendant from the date of decree to till its realization?

6. What decree or order?

5. The plaintiff, in order to prove his case, examined himself as PW.1 and got examined one witness as PW.2 and got marked documents as per Exs.P1 to P14. For the defence, the defendant was examined as DW.1 and he relied upon 12 documents as per Exs.D1 to D12. The trial Court considering the oral and documentary evidence on record decreed the suit of the plaintiff in-part and declined to grant specific performance of contract. However, the suit of the plaintiff for refund of earnest money was decreed. Hence, being aggrieved by the judgment and decree passed by the trial Court, the appellant/plaintiff has filed this appeal.

6. Heard the learned counsel for the appellant/plaintiff and learned counsel for the respondent/defendant.

7. Sri. R. Anil Kumar, learned counsel for the appellant/plaintiff contended that the trial Court failed to consider the fact that though the respondent/defendant failed to prove that he has validly terminated the Agreement of Sale dated 26.02.2005, but, the trial Court held that the appellant/plaintiff failed to prove his readiness and willingness to perform his part of contract and the trial Court should have taken into consideration the fact that Agreement of Sale has not been validly terminated and it would mean that it is still in force and in order to determine the readiness and willingness of the appellant, the trial Court ought to have directed the appellant to demonstrate his readiness and willingness during the course of trial; the trial Court committed a serious error in holding that the appellant is liable to pay rental arrears, amounting to Rs.1.00 lakh to the respondent and directed the same to be deducted from the advance amount of Rs.6.00 lakh to be returned to the appellant, however, there was no issue in that regard.

8. It is contended that the trial Court committed an error in directing the defendant to deduct a sum of Rs.1.00 lakh from the advance sale consideration of Rs.6.00 lakhs, in the absence of a specific counter claim or set off in the written statement

filed by him, without there being any issue in said regards in the suit. It is contended that the respondent had initiated a separate proceedings for eviction of the appellant from the suit schedule property and rental arrears; the trial Court ought to have considered the said aspect in an ejectment suit and not in the present suit for specific performance of contract. It is contended that the trial Court has not passed any order on I.A.No.10 filed by the appellant under Section 193 of IPC against the respondent for producing a forged and fabricated document in the form of letter viz., Ex-D10, despite having kept it pending for consideration till final disposal of the suit. Therefore, the impugned judgment and decree are liable to be set-aside and hence prayed to allow the appeal.

9. Sri. Giridhar S.V., learned counsel for the respondent vehemently contended that though the defendant was ready and willing to execute the sale deed on 18.05.2005 and in that regard, he and his son were present in the Sub-Registrar office from 10.30 a.m. to 5.30 p.m., however, the plaintiff did not turn up to the Sub-Registrar office for execution of the sale deed by paying balance sale consideration amount. As per the terms of the agreement, time was the essence of the contract. As the plaintiff failed to get the sale deed registered by paying

the balance sale consideration amount, the defendant has rightly cancelled the Agreement of sale. It is further contended that there was no cause of action for the suit and the suit of the plaintiff was barred by limitation. Thus, learned counsel for the respondent/defendant prayed to dismiss the appeal.

10. In the light of the submissions made by both the parties, the points which would arise for our consideration are as under:-

1. Whether the appellant proves that he is/was always ready and willing to perform his part of the contract, thus entitled for specific performance of the contract?
2. Whether the judgment and decree passed by the trial Court, denying specific performance and granting refund of earnest amount in favour of the plaintiff is in accordance with law, or it requires interference by this Court?

11. Insofar as readiness and willingness is concerned, it is an undisputed fact that there are two sale agreements between the appellant and the respondent. The defendant has clearly admitted that he has executed two sale agreements agreeing to

sell the suit schedule property for valuable sale consideration of Rs.23.00 lakhs in favour of the plaintiff. It is also an undisputed fact that the defendant has received advance sale consideration of Rs.6.00 lakhs and the balance sale consideration amount of Rs.17.00 lakhs was agreed to be payable on the date of execution of the sale deed in favour of the plaintiff i.e., on or before 10.05.2005.

12. The fact in issue, according to the plaintiff is, the defendant agreed to execute the sale deed on 18.05.2005. On the other hand, according to the defendant, on 18.05.2005, himself and his son were waiting for the plaintiff in the office of the Sub-Registrar, but the plaintiff neither visited Sub-Registrar Office nor was ready with the balance sale consideration amount and hence, it was incumbent upon the plaintiff to see that he was ready with sufficient funds to meet the balance sale consideration and registration expenses. In this regard, the burden was cast upon the plaintiff to prove that sufficient funds were available in his bank account as on 18.05.2005, but no piece of document has been placed on record by the plaintiff to show that he was ready for execution of sale deed with balance sale consideration. The plaintiff has taken up a specific contention that he had arranged funds from his friends and in

order to prove the same, one of his friends has been examined as PW.2. A perusal of the evidence of PW.2 clearly demonstrates that on 10.05.2005, he visited the Sub-Registrar office along with the plaintiff and earlier to the date of registration of sale deed, the plaintiff had requested him to arrange Rs.10.00 lakhs. Except the said statement, PW.2 has not produced any *iota* of evidence to show that he had arranged Rs.10.00 lakhs as per the request of the plaintiff to meet the balance sale consideration amount and to get the sale deed executed from the defendant. In fact, PW.2 has failed to furnish the details of bank account or statement of account to show that sufficient amount was available in his bank account on the relevant date in order to execute the sale deed. Therefore, the evidence of PWs.1 and 2 with regard to their possession of balance sale consideration is only a mere statement and no documentary proof is produced in support of their self serving statements.

13. It has also come in the evidence that on 18.05.2005, the plaintiff did not submit a copy of draft sale deed for registration; on the other hand, the defendant established the fact that the plaintiff did not turn up to the office of the Sub-Registrar. In order to substantiate the contention of the

plaintiff, he relied upon Ex-P2 telegram notice sent to the defendant on 10.05.2005 at 5.14 p.m. and Ex-P3 notice was sent by post on 10.05.2005 at 5.10 p.m. Ex-P5 is the legal notice dated 16.05.2005 issued by the defendant to the plaintiff, wherein the defendant contended that the plaintiff did not turn up to the office of Sub-Registrar on 10.05.2005 with balance sale consideration, on the contrary, he has stated that he waited for the arrival of the plaintiff in the Sub-Registrar's office. Ex-P7 is the legal notice dated 21.06.2005, wherein, the plaintiff called upon the defendant to execute the sale deed in his favour and Ex-P10 is another legal notice dated 07.07.2005, wherein, the counsel for the plaintiff called upon the counsel for the defendant to execute the sale deed and not to initiate any action for eviction of the plaintiff from the suit schedule property. It is to be seen that the plaintiff got issued legal notice Ex-P3 on 10.05.2005 at 5.10 p.m., therefore, it is not known as to how the plaintiff could be present at the office of the Sub-Registrar office on the same day till 5.30 p.m. Even assuming that the plaintiff had visited the office of Sub-Registrar, mere presence of the plaintiff in the office of the Sub-Registrar by itself will not conclude the registration process.

14. The evidence of PW.1 shows that he had sent the legal notices Exs.P2, P3, P7 and P10 to the defendant personally and through his Advocate in respect of the subject matter, however, the same was done much after the date fixed for registration i.e., 18.05.2005, which shows complete laxity on the part of the plaintiff in pursuing the subject matter.

15. In this regard, it is relevant to refer of clause (c) of Section 16 of the Specific Relief Act, 1963, wherein it states that unless the plaintiff establishes his readiness and willingness to perform his part of the contract, he would not be entitled to a decree of specific performance. Further, readiness and willingness cannot be considered in a straight jacket formula; it has to be inferred on consideration of the entire facts and circumstances of the case and the intention and conduct of the parties concerned. Even if a party to the contract is ready and has the requisite funds, he may not be willing to perform his part of the contract and vice versa.

16. Thus, both readiness as well as willingness has to be established by the plaintiff on whom the burden is cast in a suit for specific performance of an agreement. Therefore, the

question would arise as to whether the plaintiff has discharged such burden in the instant case.

17. In this context, it is relevant to refer to Section 12 of the Specific Relief Act, 1963, which reads as under:

12. Specific performance of part of contract.

(1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(b) does not admit of compensation in money, he is not entitled to obtain a decree for specific performance; but the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b), 1[pays or had paid] the consideration for the whole of the contract without any abatement; and

(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the

deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation.—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject matter existing at the date of the 46 contract has ceased to exist at the time of its performance.

18. The aforesaid provision has been interpreted by the Hon'ble Apex Court in the case of **Jaswinder Kaur v. Gurmeet Singh** reported in **(2017) 12 SCC 810** as under:

"20. Section 12(1) provides that specific performance can be granted on part of a contract only in the circumstances mentioned in the section. Section 12(2) deals with breach the contract if a party is unable to perform the whole of its part and such part bears a small proportion to the whole in value and admits compensation in money. The expression "unable to perform" in Section 12(2) for instance would mean that a part of the property destroyed after contract or act of God or an act by which it would cease to exist. In such a case party to a contract shall be deemed to be unable to perform the whole or its part of the contract. Such a person would come within the words "party in default". The inability to perform may arise by deficiency in quantity of subject matter or deficiencies or some legal prohibition or such other causes. None of such causes is present in the instant case.

21. Section 12 of the Act does not apply where the inability to perform specific performance on part of contract arises because of the plaintiff's own conduct as held in Abdul Rahim v. Maidhar Gazi [Abdul Rahim v. Maidhar Gazi, 1928 SCC OnLine Cal 20 : AIR 1928 Cal 584] . In Graham v. Krishna Chunder Dey [Graham v. Krishna Chunder Dey, 1924 SCC OnLine PC 63 : (192425) 52 IA 90 : AIR 1925 PC 45] it has been laid down that the Explanation in the

section exhaust all the circumstances in which part performance can be granted. Section 12(2) deals with the situation where a party is unable to perform and such part is only a small proportion in value and capable of compensation in form of money. It was not a case covered in Section 12(2) at all. Under Section 12(3) party in default is entitled to specific performance on payment of whole consideration or for the part left unperformed but here in the instant case the plaintiff being in default could not be said to be entitled to invoke Section 12(3) also".

19. From the above, it is clear that there was no inability on part of the parties to perform the rest of the contract or the remaining part was waived. In this case, the purchaser breached the essential condition of the contract, which altogether disentitles him to claim specific performance. There is no doubt that the claim of purchaser is hit by delay and laches on his part as he did not take appropriate measures within the stipulated time. In this context, the Hon'ble Apex Court in the case of ***Rachakonda Narayana v. Ponthala Parvathamma reported in (2001) 8 SCC 173***, has held as under:

"8. A perusal of subsection (3) of Section 12 shows that the first part of the said provisions mandates refusal of specific performance of a contract on certain conditions. However, the latter part of the provisions permits a court to direct the party in default to perform specifically so much of his part of the contract as he can perform if the other party pays or has paid the agreed consideration for the whole of the contract and relinquishes all claims to the performance of the remaining part of the contract and all the rights to compensation for the loss sustained by him. If a suit is laid by the other party, the court may direct the defaulting party to perform that part of the contract which is performable on satisfying two preconditions i.e. (i) the plaintiff pays or has already paid the whole of the consideration amount under the agreement, and that (ii) the plaintiff relinquishes all claims to the performance of

the other part of the contract which the defaulting party is incapable to perform and all rights to compensation for loss sustained by him. Thus, the ingredients which would attract specific performance of the part of the contract, are: (i) if a party to an agreement is unable to perform a part of the contract, he is to be treated as defaulting party to that extent, and

(ii) the other party to an agreement must, in a suit for such specific performance, either pay or has paid the whole of the agreed amount, for that part of the contract which is capable of being performed by the defaulting party and also relinquish his claim in respect of the other part of the contract which the defaulting party is not capable to perform and relinquishes the claim of compensation in respect of loss sustained by him. If such ingredients are satisfied, the discretionary relief of specific performance is ordinarily granted unless there is delay or laches or any other disability on the part of the other party.

20. As discussed earlier, at first instance, Rs.4,00,000/- was paid and thereafter Rs.2,00,000/- was paid by the plaintiff as the earnest money in respect of the transaction at the time of executing the above referred Agreement to Sell (Ex.P-1). The terms and conditions of the said Agreement more particularly in paras 3 and 4, it is stated that "In the event of purchaser defaulting to get the sale deed registered within the stipulated time, the vendors shall cancel this agreement and 15% of the advance amount will be forfeited by the purchaser". Thus, it provides a right to the Vendor of forfeiture of the earnest money. There is no clause in the said Agreement providing automatic forfeiture of the earnest money. Thus,

unless the said right is exercised, the earnest money will not get forfeited. Para 5 of the agreement discloses that, in the event of the vendor defaulting to execute sale deed and the possession in favour of his nominee within the stipulated time after obtaining all clearance, the purchaser shall be entitled to cancel this agreement and the vendor shall pay the amount paid as advance received from the purchaser. The date of registration of sale deed is one and half month from the date of the agreement of sale i.e., within 45 days, within which the plaintiff has to purchase the schedule property by paying the balance sale consideration amount to the defendant.

21. There is nothing to show that after the expiry of the 45 days, the period which was agreed to complete the transaction, the defendant can exercise his right of forfeiture of the earnest money to an extent of 15% of advance sale consideration by informing the plaintiff. As the forfeiture was not automatic on the expiry of stipulated period, unless the defendant expressly exercises his right of forfeiture by his act, the earnest money does not get forfeited. As there is no exercise of the said right by the defendant, the earnest money as referred in the Agreement to Sell (Ex.P1) will have to be refunded by the defendant to the plaintiff. There is an alternate prayer in the

plaint for refund of earnest money with interest @ 18% per annum.

22. Hence, we are of the opinion that the contract was breached due to the conduct of the plaintiff/purchaser, who was not willing to perform the contract after entering into a time sensitive agreement. In any case, it is an admitted fact that the plaintiff had paid only part consideration. Though there is a forfeiture clause in the agreement, this Court with a view of rendering complete justice to the parties, deems it appropriate to direct the vendor/defendant to repay the said amount.

23. We have perused the impugned Judgment and decree. On re-appreciation of the evidence on record, we hold that the trial Court considering the oral and documentary evidence placed on record, was justified in decreeing the suit of the plaintiff in-part, by refusing specific performance and ordering for refunding of earnest money with interest to the plaintiff, which calls for no interference.

Accordingly, we pass the following:-

ORDER

1. The appeal is dismissed.

2. The judgment and decree dated 17.10.2019 passed by the learned X Addl. City Civil & Sessions Judge, Bangalore(CCH-26) in O.S.No.827/2007 is hereby affirmed.
3. Pending IAs, if any, stand disposed of.
4. The Registry is directed to send the trial Court records alongwith copy of this judgment to the trial Court forthwith.
5. No order as to costs.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

MN/-