



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-07-2026

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CORAM

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

AS No. 82 of 2019

AND

CMP NO. 3335 OF 2019

V.S.Veerapandiyan  
S/o.Sundaramurthy Gounder,  
No.764/37 Periya Street, Virinchipuram,  
Vellore Taluk.

..Appellant/Defendant

Vs

K.Krishnaraj  
S/o.V.M.Karunagaran,  
No.794, Periya Street, Virinchipuram, Vellore  
Taluk, Vellore.

..Respondent/Plaintiff

First Appeal filed under Section 96 of CPC to set aside the judgment and decree dated 17-09-2018 passed in O.S.No.85 of 2014 on the file of the Additional District Court (FTC), Vellore.

For Appellant(s):

For Respondent(s):

Mrs.A.Arulmozhi

Mrs.Vasudha Thiagarajan  
for Mr.N.Selvaraju



**JUDGMENT**  
(Delivered by N.Sathish Kumar J.)

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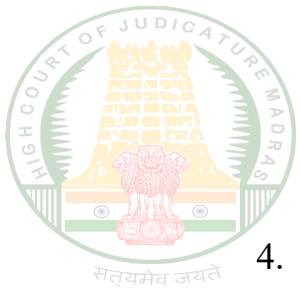
Yesterday, when the matter was taken up for hearing, this Court heard both sides at length and was about to allow the appeal expressing the opinion that the specific performance will not lie. At that time, the learned counsel appearing for the respondent/plaintiff sought time to get instructions from her client. Therefore, this appeal suit was adjourned to 01.07.2026, *i.e.* today, for orders. The proceedings dated 30.06.2026 reads as follows:

*“Heard the learned counsel for the appellant/defendant and the learned counsel for the respondent/plaintiff. When we were about to allow the appeal expressing our opinion that the specific performance will not lie, the learned counsel for the respondent seeks time to get instructions from his client.*

*2.Post on 01.07.2026 for orders.”*

2. Today when the matter was taken up, the learned counsel appearing for the respondent/plaintiff sought time, but, as the matter was heard in full yesterday, this Court rejects the request of the learned counsel appearing for the respondent/plaintiff and proceeds to pass orders.

3. Challenging the judgment and decree dated 17-09-2018 passed in O.S.No.85 of 2014 on the file of the Additional District Court (FTC), Vellore, the appellant/defendant has filed the present appeal.



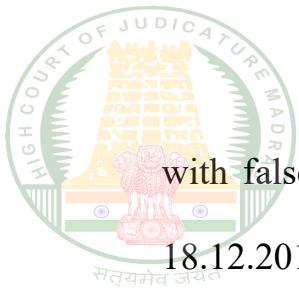
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4. The parties are arrayed as per the ranking in the trial Court.

5. The brief facts of the case, which are relevant, are under:

5.1 The suit property was agreed to be conveyed to the plaintiff by the defendant for a total sale consideration of Rs.43,74,000/- *i.e.* Rs.18,000/- per cent by way of an agreement of sale (Ex.A1) dated 07.06.2012. On the date of the agreement (Ex.A1), Rs.15,00,000/- was received by the defendant. Though time was fixed as four months in the agreement (Ex.A1) to complete the transaction, the time was never intended as an essence of the contract.

5.2 It is the case of the plaintiff that immediately after the agreement (Ex.A1), the possession of the land was also handed over to him and he made development in the land such as levelling the land and thereby, spent a sum of Rs.10,00,000/- and such development was also known to the defendant. There was a specific understanding between the plaintiff and the defendant that necessary steps to be taken jointly by them to remove the high tension overhead electric lines passing through the land and the defendant promised to take steps to remove the said high tension overhead electric lines. However, without taking any steps, the defendant delayed the transaction. The plaintiff was always ready and willing to perform his part of the contract. When the matter stood thus, the defendant issued legal notice (Ex.B3) to the plaintiff on 03.12.2012



with false allegation, for which, the plaintiff sent a reply notice (Ex.A12) on 18.12.2012.

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5.3 It is the further case of the plaintiff that as the defendant has failed to hand over the original documents and also not taken any steps to remove the high tension overhead electric lines and continuously promised to remove the same, there was a delay in filing the suit. However, the suit was filed within the period of limitation and sought the relief of specific performance.

5.4 Admitting that the defendant agreed to sell the property for Rs.43,74,000/- and received Rs.15,00,000/- in advance, as per the agreement (Ex.A1) dated 07.06.2012, it is the contention of the defendant that the time agreed between the parties is the essence of the contract, but, the plaintiff was evading to perform his part of the contract with the remaining sale consideration. The plaintiff was waiting for the profitable purchaser to the land in order to get huge commission for the transaction and only for that reason the plaintiff was delaying in performing his part of the contract. The defendant issued the legal notice (Ex.B3) on 03.12.2012 calling upon the plaintiff to pay the remaining sale consideration and get the documents executed in his favour. Despite such notice, remaining amount has not been paid and the suit has been filed after two years. Hence, it is the contention of the defendant that possession was never handed over to the plaintiff and there was no development, as alleged

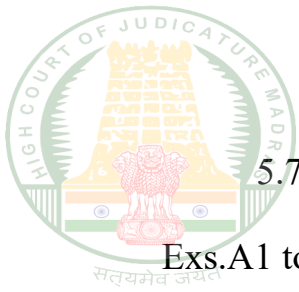


by the plaintiff and immediately after the legal notice (Ex.B3) is issued, the plaintiff also lodged two caveats in the Civil Court. However, the plaintiff neither came forward to pay the remaining sale consideration nor took any steps to complete the transaction in time and hence, the plaintiff was never ready and willing to perform his part of the contract at any point of time.

5.5 It is also the specific contention of the defendant that the time was made as an essence of the contract, wherein, it was specifically agreed by the plaintiff that if the remaining sale consideration was not paid within four months, the same would be forfeited. Further, the defendant also denied the fact that he agreed to remove the high tension overhead electric lines, as alleged in the plaint.

5.6 Based on the above pleadings, the following issues were framed by the trial Court:

- (1) Whether the plaintiff is entitled to a decree of specific performance of contract as against the defendant?*
- (2) Whether the plaintiff is entitled for relief of permanent injunction as against the defendant?*
- (3) Whether the time is essence of the contract?*
- (4) Whether the plaintiff was not ready and willing to perform his part of contract?*
- (5) Whether the claim of the plaintiff is barred by limitation?*
- (6) To what other relief the plaintiff is entitled?*



5.7 On the side of the plaintiff, PWs.1 and 2 were examined and Exs.A1 to A12 were marked.

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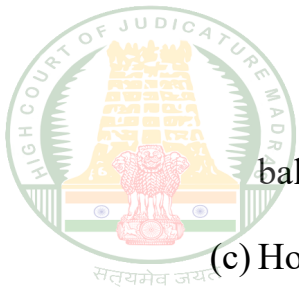
5.8 On the side of the defendant, DWs.1 and 2 were examined and Exs.B1 to B13 were marked.

5.9 After hearing either side, the trial Court decreed the suit for specific performance.

5.10 Aggrieved over the same, the defendant has filed the present appeal.

6. The main contentions of the learned counsel appearing for the appellant/defendant reads as follows:

- (a) The trial Court has not appreciated the entire evidence in a proper perspective. The sale agreement (Ex.A1) itself clearly stipulates that if the remaining sale consideration is not paid within four months, the advance amount paid would be forfeited, which itself makes it clear that the parties are intended to make 'time' as the essence of contract.
- (b) After the period of four months, the defendant exhibited his readiness and willingness to complete the transaction by way of legal notice (Ex.B3), wherein, he specifically requested the plaintiff to pay the remaining



balance sale consideration and complete the transaction.

(c) However, for the first time in the reply notice (Ex.A12), the plaintiff

came with a new story, as if, he has made development and had possession of the land, which is not correct.

(d) The plaintiff is only a real estate broker expecting prospective purchaser for selling the property for more amount and therefore, he delayed the execution of the contract and filed the suit after two years.

(e) Hence, the plaintiff was never ready and willing to perform his part of the contract.

(f) The allegations of non-furnishing of the original documents and not taking any steps to remove the high tension overhead electric lines were introduced only to cover up the delay in filing the suit.

(g) There is no piece of evidence to show that the plaintiff was always ready and willing to perform the contract from the date of inception of the contract and even at the time of filing the suit, he has not shown his readiness.

(h) Hence, the trial Court has not properly appreciated the entire evidence.

7. Refuting the above contentions, Mr.N.Selvaraju, learned counsel for the respondent/plaintiff made the following submissions:

(a) The receipt of Rs.15,00,000/- has been clearly admittedly.

(b) Though four months time was agreed between the parties in the sale



agreement (Ex.A1), the time was never intended to be the essence of the contract.

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- (c) On the date of sale agreement (Ex.A1), the possession of the land was handed over to the plaintiff, pursuant to which, he also levelled the land for laying the layouts and only for that purpose, there is a clause in the sale agreement (Ex.A1) to remove the high tension overhead electric lines.
- (d) The defendant also agreed to cooperate with the plaintiff for removal of high tension overhead electric lines passing through the land. However, the defendant has not come forward to remove the high tension overhead electric lines and that was the reason for the delay in filing the suit.
- (e) The evidence of PW2 clearly proves that the land has been levelled and the expense was meted out by the plaintiff.
- (f) Further, the income returns of the plaintiff clearly proves that the plaintiff had capacity to mobilise the funds to pay the remaining sale consideration and hence, time was never intended to be the essence of the contract.
- (g) The trial Court has rightly appreciated the entire evidence and granted decree and hence the same is not required to be interfered with.

8. In light of the above submissions, the points that arise now for consideration in this appeal are:

*(a) Whether the plaintiff is always ready and willing to perform his part of*



*the contract?*

*(b) Whether the parties to the sale agreement (Ex.A1) were made 'time' as the essence of the contract?*

*(c) To what other reliefs the parties are entitled to?*

**Point Nos.1 & 2:**

9. It is not in dispute that the parties had entered into the sale agreement (Ex.A1) dated 07.06.2012. On a careful perusal of the agreement (Ex.A1) entered into between the parties, it is seen that the sale consideration agreed to between the parties is Rs.43,74,000/-. It is also not in dispute that on the date of agreement (Ex.A1) Rs.15,00,000/- was paid towards advance. Further, the recital of the agreement (Ex.A1) shows that the parties had agreed to complete the sale within a period of four months. It is relevant to note that though time is not the essence of the contract as far as immovable property is concerned, however, the fact remains that once the parties agreed to the specific time in the agreement (Ex.A1), the same cannot be ignored all together.

10. Upon careful scrutiny of the further recital of the sale agreement (Ex.A1) makes it clear that, it is specifically agreed that if the remaining sale consideration of Rs.28,74,000/- is not paid within the agreed period, the advance amount would be forfeited. The forfeiture clause agreed upon between the parties makes it clear that, in fact, the parties are intended to make 'time' as the essence of the contract. Therefore, when the parties are intended 'time' as



the essence of the contract, such time agreed between the parties has to be taken into consideration.

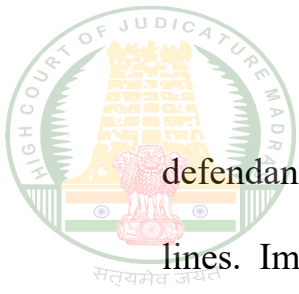
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***Deciding the conduct of the plaintiff to assess the readiness and willingness:***

11. The plaintiff (PW1) has given evidence to the effect that he was always ready and willing to purchase the property and he was also an income tax assessee and to prove the same, he also filed income tax returns (Exs.A6 to A9).

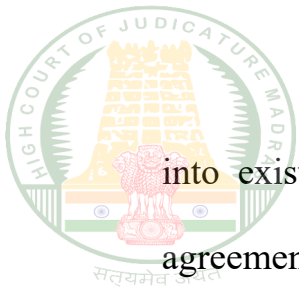
12. We have also perused the income tax returns of the plaintiff. Though the plaintiff has filed income tax returns indicating that he has income more than Rs.7,00,000/- prior to the sale agreement (Ex.A1). It is relevant to note that filing of the income tax returns is a self declaration and mere filing of the income tax returns does not mean that the plaintiff had ready cash of Rs.28,74,000/- at the relevant point of time. Absolutely, there is no evidence at all to show that the plaintiff has any ready cash or amount in the bank to show that he has always had the capacity to mobilise the funds.

13. It is further to be noted that, admittedly, the legal notice (Ex.B3) was issued by the defendant calling upon the plaintiff to pay the remaining sale consideration of Rs.28,74,000/-. Having received the same, the plaintiff sent the reply notice (Ex.A12) on 08.12.2012. Only for the first time in the reply notice (Ex.A12), it was stated that the plaintiff made developments in the land and the



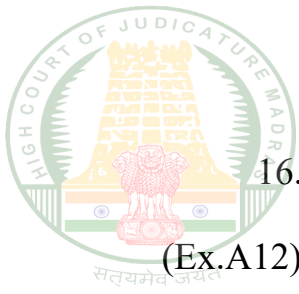
defendant did not cooperate for removing the high tension overhead electric lines. Immediately after the legal notice (Ex.B3) sent by the defendant, the plaintiff sent the reply notice (Ex.A12) with new other grounds to show as if the time is never intended, immediately lodged caveats under Exs.B1 and B2, whereas, the suit has been filed after two years *i.e.* on 14.08.2014. From the date of the legal notice (Ex.B3) issued by the defendant till the filing of the suit almost two years, there is absolutely no document whatsoever to show that the plaintiff was continuously requesting the defendant to remove the so-called high tension overhead electric lines.

14. It is the stand of the plaintiff that on the date of sale agreement (Ex.A1) itself, possession was handed over to him and later, he has also developed the land by spending about Rs.10,00,000/-. In order to substantiate his stand, the plaintiff examined PW2 and also filed an agreement (Ex.A2) said to have been entered between the plaintiff and PW2 for some development work. It is relevant to note that though PW2 supported the version as if the plaintiff has made some development in the subject land, we are of the view that in the reply notice (Ex.A12) sent by the plaintiff, there is no reference whatsoever with regard to the so-called agreement (Ex.A2) between the plaintiff and PW2. If really there was a genuine agreement (Ex.A2) between the plaintiff and PW2 on 09.11.2012, prudence of the man demands the same to be disclosed at an early point of time. According to the plaintiff the agreement (Ex.A2) came



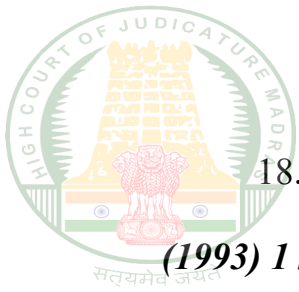
into existence as early as on 09.11.2012. In that case, the existence of the agreement (Ex.A2) between somebody viz. PW2 and the plaintiff should have been reflected in the reply notice (Ex.A12) dated 08.12.2012, whereas, there is no reference whatsoever with regard to the agreement (Ex.A2) dated 09.11.2012 in the reply notice (Ex.A12) dated 08.12.2012. This fact clearly gives an inference that the agreement (Ex.A2) is an afterthought that came into existence at a later point of time only for the purpose of strengthening the case of the plaintiff.

15. It is crucial to highlight that it is the specific stand of the plaintiff that he was given possession of the property immediately after the sale agreement (Ex.A1), but, on perusal of the sale agreement (Ex.A1) clearly indicates that the possession was retained only by the defendant. Therefore, the very contention of the plaintiff that he was already put in possession pursuant to the sale agreement (Ex.A1), is also an afterthought. This is further fortified by the fact that even during the pendency of the suit, the plaintiff sought amendment to amend the plaint for recovery of possession in I.A.No.13 of 2016 dated 21.12.2016, whereas, in the entire plaint, it was nowhere pleaded as to how he was divested with his possession, which necessitated him for seeking recovery of possession. These facts are also cannot be ignored all together.



16. The another stand taken by the plaintiff in the reply notice (Ex.A12) for the first time was that the original documents have not been handed over to him and therefore, sale could not be completed. It is worth pointing out that in the sale agreement (Ex.A1), there is no reference whatsoever with regard to the clause of original document, whereas, for the first time the same was introduced in the reply notice (Ex.A12).

17. Be that as it may, now that the suit has been filed as if the plaintiff was always ready and willing to purchase the property even with high tension overhead electric lines and without original documents. If really the plaintiff intended to purchase property with the high tension overhead electric lines and also without original documents, he should have pleaded in the plaint electing to purchase the property in “As is where is condition”. Whereas, the plaintiff has delayed the contract citing the reasons such as non-removing of high tension overhead electric lines and non-production of original documents. If the plaintiff has really intended to purchase the property in same condition, the same could have been done within the period of contract or immediately after the legal notice (Ex.B3) sent by the defendant, but, very conveniently, the plaintiff lodged caveats under Exs.B1 and B2 in the same year as against the defendant and remained silent without taking any steps and laid the suit after two years *i.e.* on 14.08.2014. This delay cannot be ignored all together. This clearly indicates that the plaintiff never intended to purchase the property within the time agreed.



18. The Hon'ble Apex Court in ***Chand Rani v. Kamal Rani*** reported in (1993) 1 SCC 519, held as follows:

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*“25. From an analysis of the above case law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the Court may infer that it is to be performed in a reasonable time if the conditions are:*

- 1. from the express terms of the contract;*
- 2. from the nature of the property; and*
- 3. from the surrounding circumstances, for example: the object of making the contract.”*

19. The readiness is the capacity to mobilise the funds and willingness is the intention or mental attitude to purchase the property. Unless both the conditions viz. readiness and willingness are established on record, the person seeking an equitable relief of specific performance as a matter of right cannot succeed. The conduct of the parties assumes significance in seeking the discretionary relief of specific performance. The plaintiff claims to be the land developer having entered the agreement, tried to encumber the property and delayed the process by filing the suit belatedly. Even after the defendant expressed his willingness to execute the contract on receipt of the remaining sale consideration or otherwise the advance amount paid will be forfeited, still the plaintiff was sleeping over the matter and leisurely filed the suit after two years.



20. It is pertinent to note that readiness and willingness must be exhibited through out the period i.e. from the date of inception of the sale agreement (Ex.A2) until the agreement is culminated into sale. Though the plaintiff has filed income tax returns to show that he has a capacity or he had relevant remaining balance sale consideration, no documents such as bank statements or passbook files to show that he had such money in the bank always. has not been filed. Further, the conduct of the plaintiff clearly shows that he never intended to purchase the property. However, he had delayed the contract somehow or other to take undue advantage over the land owner. Though the deposit of the remaining sale consideration is not mandatory under Section 16 of the Specific Relief Act, 1963, while filing the suit, at least to show his *bona fides* that he is ready and willing to purchase the property, the plaintiff ought to have produced his bank statement reflecting the balance sale consideration or deposited the amount in the Court. These factors also assume significance in assessing the conduct of the plaintiff and admittedly, the amount has not been deposited, which cannot be ignored, though it is not mandatory.

21. Though much emphasis has been given to the admission of the defendant that he has agreed to remove the high tension overhead electric lines at the expenses of the plaintiff, but, the defendant has clearly deposed that the plaintiff had never approached him to give application to the authorities concerned at any point of time. Therefore, even assuming that it is the duty of



the defendant to give application to the authorities, unless the plaintiff shows interest and take steps to compel the defendant to perform certain obligations viz. giving application to the authorities concerned. Merely because the defendant has not given application, it cannot be stated that the plaintiff was always ready and willing to perform the part of the contract. When the plaintiff is now seeking to enforce the contract as it is, including the high tension overhead electric lines on the land and without the original document, the same option could have been exercised immediately after the defendant sent the legal notice (Ex.B3). However, even thereafter the plaintiff remained silent for another two years and filed the suit. This conduct of the plaintiff clearly shows that he was never ready and willing to perform his part of the contract at any point of time. Further, from the conduct of the plaintiff to plead as if possession was given pursuant to the sale agreement (Ex.A1), which is contrary to the very written contract, the relief of recovery of possession becomes irrelevant.

22. In the latest judgment of the Hon'ble Supreme Court in ***R.Shama Naik Vs. G.Srinivasiah*** reported in **2024 INSC 927**, has held as follows:

*“9. There is a legion of precedents on the subject of readiness and willingness.*

*10. The law is well settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the*



*contract in time.*

*11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.*

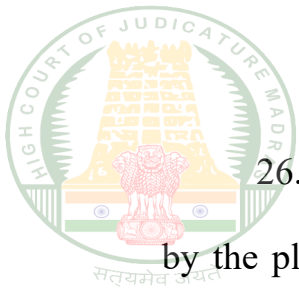
*12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff.”*

23. Considering the said dictum and over all assessment of the conduct of the plaintiff for the delay in approaching the Court and absence of his readiness and willingness from the date of inception of the contract till the filing of the suit and even thereafter, we are of the view that the trial Court is wrong in exercising its discretion and granting the relief of specific performance.

24. Accordingly, the judgment and decree dated 17.09.2018 passed in O.S.No.85 of 2014 on the file of the Additional District Court (FTC), Vellore has to be interfered with and the same is set aside.

**Point No.3:**

25. Though no prayer for alternative relief is sought, the learned counsel appearing for the appellant/defendant fairly submitted that the defendant is ready to repay the entire advance amount with reasonable interest that may be fixed by this Court, though no prayer for alternative relief is sought.



26. Considering the aforesaid submission, though no refund is sought by the plaintiff, as the defendant himself agreed to repay the advance amount with interest, we direct the defendant to return the sum of Rs.15,00,000/- received on 07.06.2012 with interest at the rate of 7.5% per annum from the date of sale agreement (Ex.A1) till the date of realisation. Until the payment, the plaintiff shall have charge over the suit property.

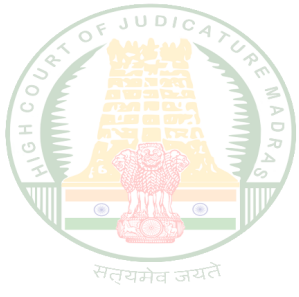
27. At this juncture, it is stated by the learned counsel for the plaintiff that in the execution proceedings, the plaintiff has deposited the remaining balance of sale consideration. Since the relief of specific performance is set aside, the plaintiff is entitled to return of all the amount deposited in the Court on filing necessary application before the Court concerned.

With the above observations and directions, this first appeal stands allowed. There shall be no order as to costs. Connected C.M.P. is closed.

**(N.S.K.,J.) (M.J.R.,J.)**  
**01-07-2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No

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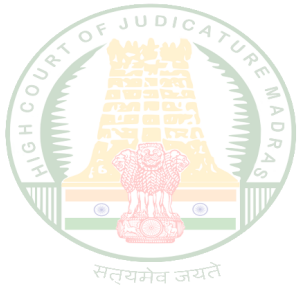
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To

1. The Additional District Judge (FTC), Vellore.
2. The Section Officer, V.R. Section, Madras High Court.



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**N.SATHISH KUMAR J.  
AND  
M.JOTHIRAMAN J.**

nsd

AS No. 82 of 2019

01-07-2026