

**HON'BLE SRI JUSTICE M. SATYANARAYANA
MURTHY**

APPEAL SUIT No.375 of 1997

JUDGMENT :

The unsuccessful plaintiff in O.S.No.79 of 1993 on the file of the Subordinate Judge's Court at Narsapur preferred this appeal challenging the decree and judgment dated 17.01.1997, whereby the suit filed by the plaintiff for specific performance of agreement of sale was dismissed.

2. For convenience of reference, the ranks given to the parties before the trial Court in O.S.No.79 of 1993 will be adopted throughout the judgment.

3. The plaintiff filed the suit for specific performance of agreement of sale directing the defendants to execute a registered sale deed in favour of the plaintiff after receiving balance of sale consideration and alternatively for recovery of Rs.10,000/- together with interest @ 24% p.a., contending, that plaintiff purchased the property under agreement of sale dated 14.09.1990 from defendant Nos.1 to 3 for a sum of Rs.1,50,000/-, paid an advance of Rs.10,000/-, on the date of execution of agreement of sale itself while agreeing to pay the balance of sale consideration within one month to obtain registered sale deed in favour of the plaintiff at his expenses. Vacant possession of the schedule property i.e., shop (kottu) will be delivered to the plaintiff at the time of registration of

sale deed. It is further agreed that if the defendants commit default to execute registered sale deed in favour of the plaintiff, the defendants have to pay interest 24% p.a. on the advance amount and deduct the same out of balance of sale consideration at the time of execution of registered sale deed.

4. The plaintiff was ready with the balance of sale consideration within the stipulated time and called upon defendant Nos.1 to 3 and late Atmuri Krishna Veni to receive the balance of sale consideration, deliver possession of the schedule property and to execute registered sale deed in favour of the plaintiff at his expenses. But, defendant Nos.1 to 3 and late Atmuri Krishna Veni did not cooperate to execute the registered sale deed in favour of the plaintiff receiving balance of sale consideration, thereupon the plaintiff sent mediators, but his attempts became in vain. Having no other alternative, the plaintiff got issued a legal notice dated 20.08.1992 calling upon defendant Nos.1 to 3 and late Atmuri Krishna Veni to receive balance of sale consideration from the plaintiff and to execute registered sale deed. Defendant Nos.1 to 3 and late Atmuri Krishna Veni acknowledged the receipt of the legal notice, but no reply was issued.

5. The plaintiff has always been ready to perform his part of obligation at all material points of time under agreement of sale, but defendant Nos.1 to 3 and late

Atmuri Krishna Veni did not cooperate to obtain registered sale deed receiving balance of sale consideration. The said late Atmuri Krishna Veni died after issuance of legal notice and her legal representative J. Nagamani was impleaded as defendant No.4 and she is liable to execute registered sale deed receiving balance of sale consideration as per the terms of the agreement of sale. Hence, the suit.

6. Defendant No.1 filed written statement, denying the material allegations and resisted the claim on the following grounds

a. Defendant Nos.1 to 3 and late Atmuri Krishna Veni never offered to sell the schedule property and never executed any agreement of sale in favour of the plaintiff and that the alleged agreement of sale dated 14.09.1990 is rank forgery and was brought into existence by the plaintiff with the help of his henchmen. Hence, the agreement of sale is not enforceable under law.

b. When defendant No.1 was in need of money, approached the plaintiff for lending Rs.10,000/- and that the plaintiff agreed to give Rs.10,000/- but insisted defendant No.1 to pay interest at Rs.2/- per month per Rs.100/-. Having no alternative, defendant No.1 agreed for the same. At the time of lending money, the plaintiff obtained signatures of defendant No.1 along with defendant Nos.2 and 3 and late Atmuri Krishna Veni on two blank stamp papers worth Rs.50/- each and also

blank white papers after affixing revenue stamps. Thus, the agreement of sale is a fabricated document brought into existence by the plaintiff with an ulterior motive, therefore, the agreement of sale is not enforceable under law.

c. If really the agreement was executed, as per the terms, the plaintiff has to pay balance of consideration of Rs.1,40,000/- within one month and obtain registered sale deed. But, the plaintiff cannot wait for a long time to file suit and he got issued a legal notice on 28.09.1992, which established that the plaintiff was not ready and willing to perform his part of obligation under agreement of sale and on this ground alone the suit is liable to be dismissed.

7. As the plaintiff failed to perform his part of obligation within the time fixed under agreement of sale, the plaintiff is disentitled to claim relief of specific performance and prayed for dismissal of the suit.

8. Defendant Nos.2 and 3 filed memo adopting the written statement filed by defendant No.1.

9. Defendant N.4 filed separate written statement contending that she has nothing to do with the plaint schedule property while pleading ignorance about the execution of agreement of sale by his mother late Atmuri Krishna Veni and defendant Nos.1 to 3. It is specifically contended that she was never informed about the agreement of sale executed by late Atmuri Krishna Veni or defendant Nos.1 to 3 in favour of the plaintiff. Her

marriage was performed long back and living with her husband at Nidadavole and thereby she is not liable to execute registered sale deed and prayed for dismissal of the suit.

10. On the strength of above pleadings, the trial Court framed the following issues (extracted):

1. Whether the suit agreement of sale is true, valid and binding upon all the defendants?
2. Whether the plaintiff is entitled to the alternative relief as prayed for?
3. Whether the plaintiff is entitled to the relief of permanent injunction?
4. To what relief?

11. The trial Court also framed an additional issue as under:

Whether the plaintiff is entitled to the primary relief of specific performance of agreement of sale dated 14.09.1990?

12. During trial, on behalf of plaintiff PWs.1 to 4 were examined and marked Exs.A.1 to A.5. On behalf of defendants, DW.1 was examined and no documents were marked.

13. Upon hearing argument of both the counsel and considering oral and documentary evidence on record, the trial Court granted a decree for alternative relief of refund of advance amount of Rs.10,000/- together with interest, while, declining to grant main relief of specific performance of agreement of sale.

14. Dissatisfied with the decree and judgment, the plaintiff preferred this appeal challenging the decree and judgment passed in O.S.No.79 of 1993 on various grounds.

15. The main contentions raised in the grounds of appeal are that

a. The trial Court failed to consider that the time was not the essence of contract and failed to take into consideration of conduct of defendants in denying the execution of registered sale deed itself.

b. The trial Court did not appreciate the evidence adduced by the plaintiff to prove his readiness and willingness to perform his part of obligation under the agreement of sale and also failed to consider the terms of agreement of sale with regard to the eviction of tenant by the defendants, erroneously concluded that the plaintiff failed to prove his readiness and willingness and dismissed the suit for the primary relief of specific performance of agreement of sale.

16. During course of argument, learned counsel for the plaintiff/appellant Sri Y.Chandrasekhar would contend that the payment of balance of sale consideration of Rs.1,40,000/- is linked with eviction of tenant from the schedule property and unless the tenant is evicted from the schedule property, the question of payment of balance of sale consideration of Rs.1,40,000/- by the plaintiff does not arise. But, the trial Court on erroneous consideration

of material concluded that the plaintiff failed to pay the balance of sale consideration within the prescribed time of one month and that the plaintiff failed to prove his readiness and willingness to perform his part of obligation. It is further contended that the time is not essence of the contract as there is no clause terminating or canceling the agreement of sale in the event of failure to pay balance of sale consideration within one month as agreed. Consequently, denial of main relief of specific performance is contrary to the principles of law and requested this Court to reappraise entire evidence and requested to pass a decree for specific performance of agreement of sale. He further contended that in a suit for specific performance , the relief is purely discretionary under Section 20 of the Specific Relief Act, 1963 (for short, 'the Act') and to exercise such discretion, the Court has to consider the conduct of both the plaintiff and defendants. The learned counsel for the plaintiff placed reliance on judgments in **K.Prakash v. B.r.Sampath Kumar**^[1] in support of his contention. He has drawn the attention of this Court to a judgment in **Mademsetty Satyanarayana v. G.Yelloji Rao and others**^[2], while contending that the mere delay in payment of balance of sale consideration would not amount to waiver and prayed to allow the appeal.

17. Whereas the learned counsel for the

respondents/defendants S.V.R.Subrahmanyam mainly urged before this Court that the plaintiff failed to pay balance of sale consideration within one month as agreed and eviction of tenant from the schedule premises is delinked with payment, thereby non payment of balance of sale consideration within one month would amount to breach of terms of the agreement under Section 16(b) of the Act, the plaintiff is disentitled to claim relief of specific performance of agreement of sale on the sole ground. My attention was drawn to the judgment delivered by the Constitution Bench of Apex Court reported in **Smt. Chand Rani (dead) by LRs. V. Smt. Kama Rani (dead) by LRs**^[3]. He also relied upon the judgment in **Sardamani Kandappan v. S.Rajalakshmi and others**^[4] and finally prayed to confirm the decree and judgment of the trial Court.

18. Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

1. Whether the plaintiff committed breach of agreement of sale, which disentitled him to claim relief of specific performance under Section 16(b) of the Specific Relief Act, 1963?
2. Whether the plaintiff is always been ready and willing to perform his obligation under agreement of sale as required under Section 16(c) of the Specific Relief Act, if so, the plaintiff is entitled to claim the main

relief of specific performance of agreement
of sale deed dated 14.09.1990?

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POINT Nos.1 AND 2:

19. The plaintiff filed the suit for the main relief of specific performance of agreement of sale dated 14.09.1990 and alternative relief of refund of advance of sale consideration together with interest. The defendants denied the very execution of agreement of sale while contending that when defendant No.1 approached the plaintiff for lending an amount of Rs.10,000/-, he obtained signatures of defendant Nos.1 to 3 and Atmuri Krishna Veni on two blank stamp papers worth Rs.50/- each and on white papers, utilizing those papers the agreement was brought into existence. Thus, agreement of sale is fabricated one. They also contended that the agreement is a rank forgery. Both these pleas of forgery and fabrication are inconsistent with one another. However, the trial Court recorded its finding on issue No.1 that though Ex.A.1 is proved to be correct, but denied relief of specific performance. Thus, it is clear from the finding recorded by the trial Court on issue No.1. The trial Court accepted the execution of Ex.A.1, disbelieving the contention of the defendants. Aggrieved by the finding on issue No.1, the defendants did not prefer any appeal independently or cross-objections challenging the adverse finding even during arguments, these findings were not challenged. Therefore, I myself refrain to disturb

the finding on issue No.1 with regard to the genuineness and validity of Ex.A.1-agreement of sale.

20. The main endeavour of the learned counsel for the defendants is that the plaintiff has to pay balance of sale consideration of Rs.1,40,000/- within one month from the date of execution of Ex.A.1 and further agreed to execute registered sale deed at the instance of the plaintiff or in favour of his nominee. The defendants further agreed to evict the tenant by the date of execution of registered sale deed and deliver vacant possession. A bare look at the terms and conditions of Ex.A.1, the plaintiff agreed to pay balance of sale consideration within one month and payment of balance of sale consideration is delinked with execution of registered sale deed and eviction of tenant from the schedule property. Therefore, non payment of balance of sale consideration within one month as agreed under Ex.A.1 itself indicates that the plaintiff was not ready and willing to perform his part of obligation. More over, it is settled law that when the parties agreed to perform their part of obligation i.e, payment of balance of sale consideration within the specified date, it is for the plaintiff to pay balance of sale consideration as agreed otherwise it amounts to breach of terms and conditions of agreement of sale under Section 16(b) of the Act. In the recent judgment reported in K. Prakash (1 supra), similar question came up before the Apex Court, wherein it held that when the plaintiff committed breach of terms of

contract due to non payment of balance of sale consideration within the time agreed, the plaintiff is disentitled to claim relief of specific performance.

21. Similarly, in Smt. Chand Rani's case (3 supra), the Constitutional Bench of the Apex Court held in as follows:

“In case 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 property and [3] from the surrounding circumstances.

Where in an agreement to sell the immovable property it was stipulated that amount in part was to be paid within 10 days of the execution of the agreement and the balance has to be paid at the time of registration of deed and it was agreed that the vendor would redeem the property which was mortgaged and also obtain the Income tax clearance certificate and the word 'only' was used twice i.e. To qualify the amount and to qualify the period of payment of such amount i.e. Ten days it was held that the intention of the parties was to make time as essence of contract and in such case, when the purchaser was not ready and willing to pay the amount in part as agreed, before delivery of possession and income tax clearance certificate and redemption of property, it was contrary to the conditions of the agreement and the purchaser was not entitled to the specific performance of contract”

22. In another judgment in Saradamani Kandappan's case (4 supra), the Apex Court while dealing with similar question held in para Nos. 52, 54 and 55 that when the order of performance of reciprocal promises is fixed, the

parties have to adhere to order of performance of their part of obligation in the order of purpose, which reads as under:

“The order of performance of reciprocal promises does not depend upon the order in which the terms of the agreement are reduced into writing. The order of performance should be expressly stated or provided, that is, the agreement should say only after performance of obligations of vendors, the purchaser will have to perform her obligations. In the present case the agreement of sale expressly provided that the purchaser shall pay the balance sale consideration within time schedule as specified. The payment of sale price was delinked from execution of sale deed. The purchaser had to fulfill her obligation in regard to payment of price and thereafter vendors were required to perform their reciprocal promise of executing the sale deed, whenever required by the purchaser. The agreement provided specifically that having paid the balance price, if the purchaser is not satisfied about the title and on being intimated about the same if the vendors fail to satisfy the purchaser about their title, all amounts paid towards the price should be refunded to purchaser. This clearly demonstrates that the payment of balance of sale price in terms of the contract was not postponed nor made conditional upon the purchaser being satisfied about the title, but that payment of the balance price should be made to the vendors as agreed unconditionally. In such circumstances the plea of purchaser that since clause providing that execution of the sale deed shall depend upon the purchaser getting satisfied regarding title to the lands and that properly is not subject of any encumbrance; precedes clause requiring payment of balance consideration in three installments, the satisfaction of the purchaser in regard to the vendor's title to the land and encumbrance , was a condition precedent for payment of the balance consideration cannot be accepted. Since section 52 cannot come in aid of

purchaser to save his non-payment of balance consideration within time fixed when time was essence of contract. Therefore, the failure of the appellant purchaser to pay the balance sale consideration within time fixed, clearly amounted to breach of contract. As the time for payment was, the essence of the contract, the respondents were justified in determining the agreement of sale. The rejection of the prayer for specific performance was, therefore, proper. “

23. As per Section 51 of the Indian Contract Act, 1872, when a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

24. In the present case, the plaintiff agreed to pay the balance of sale consideration of Rs.1,40,000/- within one month from the date of execution of Ex.A.1 and it is delinked with eviction of tenant from the schedule premises. In such case, Section 52 of the Indian Contract Act would apply, which deals with order of performance of reciprocal promises. According to it, where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires. But, in the present case, time for payment of balance of sale consideration is one month and execution of registered sale deed after evicting the tenant on receipt of balance of sale

consideration. Therefore, on payment of balance of sale consideration by the plaintiff, the question of performing the obligation of defendant Nos.1 to 3 and Atmuri Krishna Veni would arise, till then, the defendants cannot be compelled to perform their obligation. Thus, payment of balance of sale consideration is delinked with eviction of tenant, the plaintiff is bound to pay the balance of sale consideration within the time agreed, but failed to do so. In Saradamani Kandappan's case at para No.57, the Apex Court held as follows:

The terms of the contract makes it clear that payment of sale price did not depend on execution of the sale deed. The sale deed was not required to be executed within any specific period. The purchaser had to fulfil her obligation in regard to payment of price as provided in Clause 4 and thereafter vendors were required to perform their reciprocal promise of executing the sale deed, whenever required by the purchaser, either in her name or in the names of her nominees. The sale deed had to be executed only after payment of complete sale consideration within the time stipulated. In these circumstances, [Section 52](#) of the Contract Act does not help the appellant but actually supports the vendors-respondents.

25. Finally, it is concluded in the said judgment that payment was not made within the time stipulated, more particularly when it is delinked with execution of registered sale deed, the plaintiff is disentitled to claim main relief of specific performance.

26. The main endeavour of the learned counsel for the

plaintiff is that when the tenant is not evicted from the schedule premises the question of payment of balance of sale consideration does not arise. But this contention is not acceptable for the reason that the terms of Ex.A.1 are clear that the plaintiff has to pay the balance of sale consideration of Rs.1,40,000/- within one month and thereafter the defendants have to execute registered sale deed and deliver vacant possession after evicting the tenant, who is in occupation of the schedule property. Therefore, payment of balance of sale consideration is a condition precedent to evict the tenant from the schedule premises. But, the plaintiff failed to pay the balance of sale consideration within time agreed, as per terms of Ex.A.1.

27. In view of the principle laid down in K. Prakash's case

(1 supra), the plaintiff himself failed to pay balance of sale consideration within the time and it amounts to breach of terms and conditions of agreement under Section 16(b) of the Specific Relief Act. Thereby, the plaintiff is disentitled to claim the main relief of specific performance of agreement of sale. On this ground alone, the plaintiff is disentitled to claim the main relief of specific performance.

28. The trial Court declined to grant main relief on the ground of delay as the suit was filed at the fag-end of limitation of three years. Undoubtedly, the suit was filed just before completion of three years period, but that is not

a ground to decline the relief of specific performance in view of the law declared by the Apex Court in *Mademsetty Satyanarayana's case* (2 supra), wherein it held that the relief of specific performance is discretionary in nature and merely because there is a delay, such relief cannot be denied. There is no quarrel about the law declared by the Apex Court. But, in the present case, the plaintiff committed breach of terms of agreement-Ex.A.1.

29. The learned counsel for the plaintiff contended that the conduct of the parties must also be taken into consideration to exercise the discretion as to decreeing specific performance under Section 20 of the Act. The Apex Court in *K.Prakash's case* (1 supra) held that while granting relief of specific performance, the Court has to exercise such discretion in accordance with the sound and reasonable judicial principles. The plaintiff must further show his continuous readiness and willingness to perform his obligation from the date of contract till the date of hearing. Any interference by the appellate Court with discretion exercised by the trial Court is normally not permissible unless it is established that the said discretion was exercised perversely, arbitrarily or against judicial principles. The appellate Court should not exercise its discretion against the grant of specific performance on extraneous or sympathetic considerations. Though in terms of Section 20 of the Act, a party is not entitled to get a decree for specific performance merely because it is

lawful to do so, once an agreement to sell is legal and validly proved and further requirements for getting such a decree are established, the Court has to exercise its discretion in favour of party seeking relief of specific performance.

30. In view of legal position brought to the notice of this Court, when a decree for specific performance was granted, the appellate Court cannot interfere with the finding of the trial Court unless there is perversity, arbitrary exercise of discretion or against judicial principles. But, in the present case, the trial Court though dismissed the suit on the ground that it was filed long after execution of Ex.A.1, having found that the plaintiff himself failed to prove his readiness and willingness to perform his obligation under agreement of sale. Therefore, the trial Court rightly exercised its discretion not to grant main relief of specific performance. In view of my discussion in the earlier paras, more particularly, when the plaintiff committed breach of terms of agreement, the plaintiff is disentitled to claim the main relief in view of the law declared by the Apex Court in the above judgments.

31. In view of my foregoing discussion, the plaintiff failed to pay balance of sale consideration within the time stipulated and thereby committed breach of terms of agreement of sale, he is disentitled to claim the relief under Section 20 of the Specific Relief Act. Accordingly, the point is answered against the plaintiff and in favour of

defendants.

POINT No.2 :

32. One of the contentions of the defendants before the trial Court and before this Court is that the plaintiff himself failed to perform his part of obligation and failed to prove of readiness and willingness to pay the balance of sale consideration, adhering to Section 16(c) of the Act. To obtain a discretionary relief of specific performance under Section 20 of the Act, the plaintiff must plead and prove his readiness and willingness his part of obligation through out the proceedings ie., from the date of execution of agreement of sale till termination of the proceedings. In the present case, the time fixed for payment is one month from the date of execution and it is delinked with tenant's eviction since the defendants agreed to get the tenant evicted by the date of execution of registered sale deed. Therefore, non payment of balance of sale consideration within time would establish that the plaintiff is not ready and willing to perform his part of obligation. That apart, the plaintiff got issued a legal notice marked as Ex.A.2 dated 28.08.1992 almost after two years from the date of execution of Ex.A.1. If really the plaintiff is always ready and willing to perform his obligation, he would have got issued legal notice within the time stipulated or at least immediately after expiry of one month time prescribed under agreement of sale

Ex.A.1. Having kept quiet for two years, got issued legal notice to the defendants and Atmuri Krishna Veni to execute registered sale deed and to receive balance of sale consideration. The conduct of the plaintiff would clinchingly establish that he is not ready and willing to perform his part of obligation under Ex.A.1, which is essential term of the contract in view of Section 16(c) of the Specific Relief Act.

33. Hence, the trial Court rightly declined to grant main relief of specific performance, exercising its discretion in accordance with judicial principles and I find no perversity or arbitrariness in exercise of jurisdiction by the trial Court in declining the main or primary relief of specific performance for grant of alternative relief.

34. One of the contentions raised by the learned counsel for the plaintiff is that the conduct of denying of execution of agreement of sale by defendants is to be taken into consideration, in view of the principles laid by the Apex Court in K. Prakash's case (1 supra), no doubt the defendants denied the very execution of agreement of sale deed, but the trial Court believed the execution of Ex.A.1 though the plaintiff entitles to claim primary relief, when he failed to pay the balance of sale consideration of Rs.1,40,000/- within one month from the date of execution of Ex.A.1. Hence, the principle laid down in the above judgment is of no assistance to the plaintiff to claim main relief of specific performance. Hence, I find no illegality or

irregularity in the finding recorded by the trial Court.

35. In view of the foregoing discussion, I find no illegally warranting interference of the findings recorded by the trial Court. Hence, the point is held in favour of the defendants/respondents and against the plaintiff/appellant.

36. In view of the finding on the above points, I find no ground to set aside the decree and judgment to the extent of denial of main relief of specific performance. Hence, the appeal is devoid of merits and is liable to be dismissed.

37. In the result, this appeal is dismissed confirming the decree and judgment passed in O.S.No.79 of 1993 on the file of the Subordinate Judge's Court at Narsapur. No costs.

38. Miscellaneous Petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

8th September 2015.

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[\[1\]](#) (2015) 1 SCC 597

[\[2\]](#) AIR 1965 SC 1405

[\[3\]](#) AIR 1993 SC 1742

[\[4\]](#) (2011) 12 SCC 18