

Judgment Reserved on: 10.04.2017

Judgment Pronounced on : 13.04.1017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Coram:

The Hon'ble Mr.Justice N.SATHISHKUMAR

Appeal Suit No.31 of 2012
and
M.P.No.1 of 2012

R.Shanmugam .. Appellant

Versus

1.P.Govindaraju (deceased)
2.G.Vijayaperumal
3.Ilayaperumal
4.G.Arivalagan
5.Tmt.Amuthalakshmi .. Respondents

Appeal Suit filed under Section 96 of Civil Procedure Code,
against the Judgment and decree passed by the Principal District
Judge, Salem, in O.S.No.125 dated 30.09.2011.

For Appellant .. Mr.R.Subramanian for
M/s. T.R.Rajaraman
For Respondents .. Mr.Sudhakaran

JUDGMENT

Aggrieved over the dismissal of the suit filed for specific
performance and decreed the suit for refund of advance amount of

Rs.5.00/- lakhs to the plaintiff with interest at 6% per annum, the present appeal came to be filed by the Plaintiff. The parties are arrayed as per their own ranking before the trial Court for the sake of convenience.

2. Brief facts of the plaintiff's case is as follows:-The first defendant is the absolute owner of the suit property and the defendants 2 to 5 are sons and daughter of the first defendant. All the defendants have entered into an agreement with the plaintiff on 05.01.2007 agreeing to sell the suit property to the plaintiff at the rate of Rs.650/- per square feet and received a sum of Rs.1.00 lakh towards advance sale consideration and agreed to execute the sale deed on or before 14.06.2007 and receive the balance sale consideration at the time of registration of the sale deed. The plaintiff was always ready and willing to perform his part of contract to pay the balance sale consideration. When the matter stood thus, the defendants have received a sum of Rs.4.00 lakhs towards part of the balance sale consideration on 08.01.2007 and it was mutually agreed between both plaintiff and defendants to extend the time for performance of the agreement till 31.12.2007. In spite of several requests and demands the defendants failed to perform their part of

contract and postponing the performance by some pretext or other. Therefore, the plaintiff issued a legal notice on 04.12.2007 and sent a telegram to the defendants on 05.12.2007 calling upon the defendants to come to the Sub-Registrar Office of Salem East on 06.12.2007, receive the balance sale consideration and execute the sale deed. However, the defendants did not come to the Sub-Registrar's Office as requested by the plaintiff. Hence suit.

3. It is the case of the defendants that they never intended to sell the property in favour of the plaintiff. In fact they were in dire need of money and so they approached the plaintiff who is a money lender and requested him to give a loan of Rs.1.00 lakh. At that time the defendants were asked to sign on blank stamp papers and some other papers. Since the defendants were in great difficulty and in dire need of money they signed on some blank stamp papers and some other papers and thereafter only the plaintiff has advanced a sum of Rs.90,000/- to the defendants towards loan amount of Rs.1.00 lakh deducting a sum Rs.10,000/- towards three months interest and documentation charges. After that, on 04.04.2007 the defendants have discharged the loan amount and requested the plaintiff to hand over all the signed stamp papers and other papers. However, the

plaintiff was protracted to return the same on the ground that the papers have been given to his Auditors for submitting the accounts to the income tax department. It is further contention of the defendants that they never received further sale consideration of Rs.4.00 lakhs as alleged by the plaintiff and they never made an endorsement to extend the time to perform the contract till 31.12.2007. The suit agreement is fabricated one forging the signature and thumb impression of the defendants. There was no demand whatsoever made by the plaintiff except issuing the legal notice on 04.12.2007. The defendants also sent a reply denying the agreement. The first defendant after receipt of notice issued by the plaintiff fell ill and bedridden and died on 1.3.2008. Even without verifying the death of the first defendant, the suit has been filed against the first defendant also. There is no cause of action for the suit. Hence prayed for dismissal of the suit.

4. Based on the pleadings, the learned trial Judge has framed the following issues:-

1. Whether the agreement of sale is created and fabricated document?
2. Whether the Plaintiff is entitled to specific performance of contract of sale?
3. Whether the Plaintiff is ready and willing to perform his contract of sale?
4. What relief the Plaintiff is entitled to and costs?

5. On the side of the plaintiff two witnesses were examined as P.Ws. 1 and 2 and nine documents were marked as Exhibits A1 to A9. On the side of the Defendants three witnesses were examined as D.W.1 to D.W.3 and nine documents were marked as Exhibits B1 to B9. One Court witness was examined as CW1.

6. On the basis of the oral and documentary evidence and materials, the learned trial Judge has answered issue No.1 to the effect that Ex.A1 Sale Agreement was executed properly and the claim of the defendants that it is a falsely created and fabricated document is unsustainable. The learned trial Judge has answered issue Nos. 2 and 3 to the effect that the plaintiff has not proved his readiness and willingness at all times to perform his part of contract and as such the plaintiff is not entitled to the equitable relief of specific performance of contract of sale as claimed by him. Ultimately, the learned trial Judge has answered the issue No.4, to the effect that the plaintiff is entitled for alternative relief of refund of advance amount paid by him. Accordingly, the learned trial Judge dismissed the suit for specific performance of contract. However, decreed the suit for refund of advance amount of Rs.5.00 lakhs to the plaintiff with interest at 6% per annum from the date of respective payments made by the plaintiff

till the date of realization. Aggrieved over the same, the plaintiff has come before this Court as appellant. The defendants have not filed any cross-appeal challenging the finding given against them by the learned trial Judge in issue No.1.

7. The learned counsel appearing for the appellant has vehemently contended that though it was the contention of the defendants that the sale agreement dated 05.01.2007 was fabricated with the help of the blank stamp papers and other papers signed by the defendants for the purpose of loan transaction, the same is found to be false from the evidence. In the issue No.1 the learned trial Court has clearly held that Ex.A1 Sale Agreement was executed properly and the claim of the defendants that it is a falsely created and fabricated document is unsustainable. In issue No.4, the learned trial Court has clearly held that Ex.A2 endorsement on the agreement and the subsequent payment of Rs.4.00 lakhs is true and genuine. The contention of the defendants that the agreement was fabricated with the help of the blank stamp papers and other papers signed by the defendants for the purpose of loan transaction is also found to be false. Similarly, the discharge pleaded by the defendants has also not been proved. Whereas the plaintiff was ready and willing to perform

his part of agreement. Immediately he has also paid another sum of Rs.4.00 lakhs towards part of advance sale consideration and thereafter he has also sent a telegram and also issued legal notice dated 4.12.2007. Receipt of the legal notice is also admitted by the defendants. In the legal notice issued by the plaintiff it is specifically requested the defendants to come before the office of the Sub-Registrar, Salem East to receive the balance sale consideration and for completion of the sale on 06.12.2007. However, the defendants did not come before the office of the Sub-Registrar for completion of the sale. Thereafter the suit was filed immediately. The conduct of the defendants also assume significance. They have taken different stand and failed to establish the same before the Court. Whereas the plaintiff was ready and willing to perform his part of contract. His pleadings with regard to his readiness and willingness is not even specifically denied by the defendants in the entire written statement. It is the further contention of the learned counsel that remaining sale consideration has also been deposited in the Court. When these facts are taken into consideration cumulatively, the trial Court ought to have granted decree for specific performance by exercising the discretion in a lawful manner. The learned trial Court has found that the amount has not been deposited in the trial Court. That is also not on the basis

of the factual aspect. Hence, submitted that the plaintiff is certainly entitled to decree for specific performance.

8. In support of his arguments, the learned counsel for the appellant has relied upon the following judgments reported in:-

1. *Sukhbir Singh v. Brupal Singh* -(1997) 2 SCC 200
2. *Motilaljain v. Ramdasi Devi* – (2000) 6 SCC 420
3. *Zarina Siddiqui v. A.Ramalingam alias R.Amarnathan* – 2014 (6) CTC 319
4. *R.Aravindhan v. K.R.S.Janakiraman* – 2015 (6) CTC 593
5. *Surjeet Singh v. Kuljeet Kaur* – AIR 2017 P&H 15.

9. Countering the arguments of the learned counsel for the appellant, the learned counsel appearing for the Respondents submitted that absolutely there is no evidence to show that the plaintiff was always ready and willing to perform his part of contract from the very beginning. Originally the agreement was entered into between the plaintiff and the defendants on 05.01.2007, in which time limit was given to complete the sale on or before 14.06.2007. Thereafter, it is alleged as if the endorsement was made on 08.01.2007 extending further time till 31.12.2007. Except sending legal notice for the first time on 04.12.2007, there was no steps

whatsoever taken by the plaintiff to show his readiness and willingness. It is the contention of the learned counsel that the plaintiff has also not proved his readiness and willingness with the money for payment of the balance sale consideration. The evidence of Court Witness who was examined before the Court to prove the genuineness of the document Ex.A1, clearly show that the plaintiff has no money in his Bank Account. Continuous readiness and willingness has not been established from the very beginning. Hence, submitted that the learned trial Court has ultimately considered all these aspects and rightly exercised its discretion and negated the decree for specific performance. Hence, prayed for dismissal of the appeal. In support of his arguments, the learned counsel for the Respondents has also relied upon the following judgments reported in:

1. *His Holiness Acharya Swami Ganesh Dasji v. Shri Sita Ram Thapar – 1996 (II) CTC 15;*
2. *Amirtham v. Subbian – 1997 (II) CTC 417.*

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

1. Whether the plaintiff is always ready and willing to perform his part of contract?

2. To what relief?

11. The points:- The suit has been laid to enforce the contract dated 05.01.2007 entered into between the plaintiff and the defendants agreeing to sell the suit property in favour of the plaintiff at the rate of Rs.650/- per square feet. It is also stated by the plaintiff that on the date of agreement the plaintiff has paid Rs.1.00 lakh towards advance sale consideration. It is agreed between the parties that the sale shall be completed on or before 14.06.2007 and the balance sale consideration shall be paid on the date of registration of sale deed. Again on 08.01.2007 another sum of Rs.4.00 lakhs was paid by the plaintiff towards part of balance sale consideration and an endorsement was obtained on the Ex.A1, extending the time for completion of the sale up to 31.12.2007. It is further stated by the plaintiff that he was always ready and willing to perform his part of contract and to pay the balance sale consideration. Therefore, he has issued a legal notice dated 04.12.2007 besides sent a telegram to the defendants asking them to come before the office of the Sub-Registrar, Salem East on 06.12.2007 for completion of the sale after receiving the balance sale consideration. As they did not come, he has filed the present suit.

12. Though the defendants denied the execution of the

agreement and canvassed the case on the ground that they never intended for sale and the same has been fabricated with the help of signatures obtained from them in blank papers during the money transaction. Their contention has been negated by the learned trial Court in issue No.1. As against which no cross-appeal has been filed. Similarly, no arguments have also been advanced in this appeal. Therefore, the contention of the defendants with regard to the agreement is no relevance at all. Now, this Court has to decide the only question is as to whether the plaintiff was always ready and willing to perform his part of contract from the very beginning.

13. It is well settled that the remedy for specific performance is an equitable remedy. The Court while granting decree of specific performance exercises its discretionary jurisdiction. [Section 20](#) of the Specific Relief Act specifically provides that Court's discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles. It is also well settled that a person coming before the Court for equitable relief of specific performance with the pleading of his readiness and willingness should prove the same before the Court. Readiness and willingness must be a continuous one. It should

be present from the beginning of the contract till the contract culminated into sale deed. The readiness is virtually mean the capacity to mobilize funds and willingness is virtually mean the mental attitude or conduct of the party claims equitable relief. In the above background of the well settled principles now this Court when look at the agreement Ex.A1 dated 05.01.2007 entered into between the parties, the original agreement was entered into between the parties on 05.01.2007 and an advance of Rs.1.00 lakh also said to have been paid on the date of the agreement. It is also agreed between the parties that the sale shall be completed on or before 14.06.2007. The sale consideration was fixed as Rs.650/- per square feet. The property agreed to be conveyed is around 1620 square feet with construction thereon. The agreement entered into on 05.01.2007 shows that specific time has been agreed between the parties to complete the sale on or before 14.06.2007. Thereafter, within three days the plaintiff said to have paid another sum of Rs.4.00 lakhs towards part of balance sale consideration and obtained an endorsement which is also marked as Ex.A2 on 08.01.2007 in which time has been again extended up to 31.12.2007. Having agreed on 05.01.2007 to complete the sale on or before 14.06.2007, within three days time has been extended up to 31.12.2007 without assigning any reasons. This aspect

cannot be ignored altogether.

14. When the entire agreement carefully read, except agreeing to sell the property at the rate of Rs.650/- per square feet, the total sale consideration for the entire suit property has not even set out in the agreement. In this regard the evidence of P.W.1 when carefully seen that he has admitted in his cross-examination that the half of the suit property is the house building and half of the suit property is a vacant land. Except that defendants have no other property. Further, it is categorical admission of the plaintiff that on the date of entering into agreement he never checked up the encumbrance over the property. It is to be noted that a person intended to purchase the property for a valid consideration, normally the conduct of the person would be first to verify the encumbrance over the properties. He has not even done so. Similarly, even after the alleged endorsement under Ex.A2 dated 08.01.2007, absolutely there is no evidence whatsoever available on the side of the plaintiff to show that he has made any attempt to find out the exact extent of the suit property.

15. P.W.2 is said to be the witness to the agreement under Ex.A1, in his cross-examination admitted, that they never surveyed the property at the relevant time. Though the plaintiff said to have

obtained the signature and thumb impressions of the defendants on the documents, in fact on seeing Ex.A2 endorsement the endorsements were in fact accommodated in between the thumb impression. The manner in which the recitals have been accommodated in between the thumb impression and the top of the page also clearly indicate that this has been done in a hurried manner or it should have been typed above the blank signatures. Of course the above aspect is not challenged by the Respondents herein. But the fact remains that without verifying the encumbrance and even not taking any steps to find out the exact extent of the properties to be sold as per the agreement entered. The plaintiff has not pleaded in any circumstance in the plaint to show that how much is the balance the sale consideration to be paid. Further, absolutely there is no circumstance pleaded in the plaint with regard to the original title deeds of the properties. As stated under Section 114 of the Indian Evidence Act, human conduct of the parties also assumes significance in assessing the readiness and willingness. Normal conduct of an ordinary prudent man who intend to purchase the property would be to enquire about the title deeds and also to verify the encumbrance if any over the property. Without seeing the encumbrance, making payment of Rs.5.00 lakhs towards sale consideration is against the normal

conduct of the human which in fact forces this Court to presume certain facts. This is further strengthened by the other materials available on record.

16. Even assuming that the plaintiff has proved payment of advance amount of Rs.1.00 lakh and subsequent payment of Rs.4.00 lakhs on 05.01.2007 and 08.01.2007 till the time when he sent the legal notice dated 04.12.2007, he has not taken any steps to call for the defendants to execute the document. Whereas, for the first time, Ex.A3 legal notice dated 04.12.2007 was sent by the plaintiff wherein he has called upon the defendants to come over to the Sub-Registrar office, Salem East on 06.12.2007, as if he was ready to pay the balance sale consideration and register the document. Not stopping with that he has also sent a telegram requesting the defendants to come over to the Sub-Registrar's Office on 06.12.2007 for executing the document. It is to be noted that though the legal notice was dated 04.12.2007 the above legal notice was despatched on 05.12.2007 at 1.23 p.m. The telegram was also sent on the same date. The legal notice was received only by the second and fifth defendants on 07.12.2007. Sending the legal notice on 05.12.2007 expecting the defendants to come over to the Sub-Registrar's Office, Salem East on

06.12.2007 is highly improbable, when the notice itself was received by the defendants only on 07.12.2007. These facts in fact clearly show that this notice and telegram have been sent only to show as if the plaintiff was ready and willing to purchase the property at the relevant time. Even assuming to be true that the plaintiff went to the Sub-Registrar's Office on the premise of registering the document to show that he was ready and willing to perform his part of contract, no evidence was forthcoming to prove the same. Whether he was present in the Sub-Registrar's office with the relevant document and balance sale consideration has also not been established.

17. Whereas it is the categorical admission of the plaintiff in the cross-examination that only the defendant has requested the plaintiff to come to the Sub-Registrar's Office at 12.00 Noon on 06.12.2007. If that admission is taken into consideration the conduct of the plaintiff should have been different. If he had been in the Sub-Registrar's Office, as requested by the defendants, his normal conduct would be to purchase necessary stamp papers and to make the draft sale deed ready for complete the sale transaction. But whereas nothing is available on record to show that the plaintiff in fact went to the Sub-Registrar's Office and was ready with stamp papers with remaining

sale consideration for completion of the sale deed. Without establishing all these facts merely creating some evidence at one point of time to show as if he was ready and willing to purchase the property, readiness and willingness cannot be inferred from the only one such circumstance. Of course as far as the immovable properties are concerned time is not the essence of contract, but at the same time, when the specific time is agreed between the parties the same cannot be ignored altogether. Except sending legal notice on 04.12.2007 and telegram on 05.12.2007, no other materials available on record to show that the plaintiff was all along ready and willing to perform his part of contract from the inception of the agreement.

18. The conduct of the plaintiff sending telegram and legal notice just one day prior to the alleged date of going to the Sub-Registrar's Office itself show that this notice itself issued only for the purpose of creating some evidence to show as if he was ready and willing to purchase the property. The above conduct of the plaintiff itself in the view of this Court the plaintiff has not come to the Court with clean hands. This fact is further strengthened by the plaintiff's own conduct in filing the suit against the dead person also. The first defendant stated to be died on 1.3.2006. Whereas the suit has been filed on

20.06.2008 even against the first defendant as if he was alive. This fact is also cannot be ignored altogether. The evidence of P.W.1 clearly shows that he was residing in the same locality and the defendants are residing just two streets away in Salem. Unlike the Metropolitan area in the mofusil area any death occurs in the same area or next street, it will be known to everyone in that locality. The plaintiff's conduct in filing the suit against the first defendant deceased also shows that he has not come to the Court with clean hands.

19. Further, he has not even taken any steps to find out the exact extent of the land he has neither taken any steps to verify the title nor taken any steps to identify the boundaries and simply keeping silent till 04.12.2007 and filed the present suit. Further there is no evidence to show that on the date of his alleged visit to the Sub-Registrar's Office he had sufficient means to pay the remaining balance sale consideration. Whereas his income tax Returns summoned and filed as Exhibits B1 to B3 for the relevant period shows that the plaintiff had no sufficient deposits in the Bank. Further no passbook whatsoever has been filed by the plaintiff to show that at the relevant time he had sufficient money in his bank account. Further, it is not the case of the plaintiff in the pleadings that he went to the Sub-

Registrar's Office along with balance sale consideration. In fact what was the total sale consideration for the entire suit property has not even set out in the agreement. Furthermore, what was the balance sale consideration to be paid to the defendants also not even pleaded in the plaint.

20. As already stated above a person who is intended to purchase the property as an ordinary prudent man would make arrangements to know about the balance sale consideration to be paid to the vendor and also verify the title deeds and encumbrance etc. But the plaintiff has not done the above aspects. His conduct in fact is against the normal human conduct of an ordinary prudent man. Therefore merely because of creation of some evidence at the later point of time by issuing a legal notice and telegram alone is not sufficient to prove his readiness and willingness. The readiness and willingness is a continuous process and should be exhibited from the very beginning to end. Therefore, this Court is of the view that though the agreement is proved, the plaintiff has not established his readiness and willingness from the very beginning.

21. In Sukhbir Singh v. Brupal Singh -(1997) 2 SCC 200, it has

been held as follows:-

“In paragraph 5,9 and 10 of the plaint the respondents have in substance pleaded that they had been and were still willing to perform their part of the agreement and the defendants did have notice in that behalf. It is seen that averments made in the above paragraphs are in substance as per Forms 47 and 48 prescribed in Appendix AA of the Code as amended by the High Court. What requires to be considered is whether the essential facts constituting the ingredients in Section 16 (1) (c) of the Act were pleaded and that found mentioned in the said Forms do in substance point to those facts. The procedure is the hand-maid to the substantive rights of the parties. it would, therefore, be clear from a perusal of the pleadings and the forms that the averments are consistent with the Forms. When the respondents had pleaded and proved by the by the Sub-Registrar's endorsement as per paper No.41/C that the respondents were present in the office of the Sub-Registrar for having the sale deed

executed and registered by the petitioners, it would be explicit that the respondents were ready and willing to perform their part of the agreement., The facts that the petitioners did not attend the office would prove positively that the petitioners had avoided execution of the sale deed. Law is not in doubt and it is not a condition that the respondents should have ready cash with them. The fact they attended the Sub-Registrar's office to have the sale deed executed and waited for the petitioners to attend the office of the Sub-Registrar is a positive fact to prove that they had necessary funds to pass on consideration and had with them the needed money with them for payment at the time of registration. it is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. it is not necessary to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till date of the decree. It would, therefore, be clear that the courts below have appropriately

exercised their discretion for granting the relief of specific performance to the respondents on sound principles of law.”

22. In Motilal Jain v. Ramdasi Devi – (2000) 6 SCC 420, it has been held as follows:-

“The first ground which the High Court took note of is the delay in filing the suit. It may be apt to bear in mind the following aspects of delay which are relevant in a case of specific performance of contract for sale of immovable property: (i) Delay running beyond the period prescribed under the [Limitation Act](#); (ii) Delay in cases where though the suit is within the period of limitation, yet : (a) due to delay the third parties have acquired rights in the subject-matter of suit; (b) in the facts and circumstances of the case, delay may give rise to plea of waiver or otherwise it will be inequitable to grant a discretionary relief. Here none of the above mentioned aspects applies. That apart factually also, the High Court proceeded on an incorrect assumption with regard to cause of action. Ext.2

was executed on February 20, 1977 and under it the sale deed was to be executed on or before July 19, 1977. The last notice was issued on November 26, 1978 and from that date the suit was filed only after nine months and not after more than a year as noted by the High Court. Therefore on the facts of this case the ground of delay cannot be invoked to deny relief to the plaintiff."

23. In Zarina Siddiqui v. A. Ramalingam alias R. Amarnathan – 2014 (6) CTC 319, it has been held as follows:-

"The principles which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the

appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under [Section 20](#) of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so. Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance. "

24. In R. Aravindhan v. K.R.S. Janakiraman – 2015 (6) CTC 593, it has been held as follows:-

"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. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract."

25. In Surjeet Singh v. Kuljeet Kaur – AIR 2017 P&H 15, it has

been held as follows:-

"20. From the statement of the plaintiff and her husband, it is established that the plaintiff was ready and willing to perform her part of contract. She went to the office of Sub-Registrar along with balance sale consideration on the appointed date for registration and execution of the sale deed. But, defendant did not turned up. The plaintiff has placed on record the affidavits Ex.P-5 and Ex.P-6 dated 07.09.2006 and 11.09.2006 respectively to corroborate the oral evidence. Even, the legal notice Ex.P-3 was issued. Once the execution of the agreement to sell is established and it is also proved that the plaintiff-respondent was ready and willing to perform her part of contract, the plaintiff-respondent was certainly entitled for the relief of specific performance of the agreement to sell dated 11.11.2005."

26. There is no dispute with regard to the proposition laid down in the above judgments cited by the learned counsel appearing for the appellant. But on analyzing the entire facts particularly the conduct of

the plaintiff this Court is unable to accept the contention of the learned counsel for the appellant to exercise the discretion in favour of the plaintiff. Accordingly, these points are answered.

27. In the result, the appeal is dismissed. The judgment and decree of the learned trial Court is confirmed. No costs.

13.04.2017

gr.

N.SATHISHKUMAR, J

gr.

**PRE DELIVERY JUDGMENT
IN A.S.No.31 of 2012**

13.04.2017

<http://www.judis.nic.in>