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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	18/04/2022
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CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

A.S.NO.653 OF 2008 &
M.P.NOS.1 OF 2008 AND 1 OF 2009 &
C.M.P.NO.6476 OF 2022

1.A.Sivasubramaniam
2.V.S.Vaishnavi
3.Vignesh Kumar

...Appellants

Vs.

1.E.Bhuvaneshwari
2.S.Renukha
3.M.Kalaiselvi

...Respondents

Prayer: First Appeal filed under Section 96 read with Order 41 Rule 1 of C.P.C. against the judgment and decree dated 29.04.2008 made in O.S.No.193 of 2006, on the file of the Principal District Court, Erode.

For Appellants
For Respondents

:Mr.K.K.Ramakrishnan
Mr.N.Manoharan for R-1
Mr.K.Doraisamy
Senior Counsel
For Mr.N.Manoharan for R1 and also
For Mr.M.Roshan Atiq for R-2

M/s.Chitra Sampath
Senior Counsel
For M/s.R.Baskar for R-3

J U D G M E N T

The Judgment is delivered by V.SIVAGNANAM, J.,

This Appeal is directed against the Judgment and Decree passed by the Principal Sub Judge, Erode in O.S.No.193 of 2006.



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2. The appellants herein are the defendants in the suit. The respondents instituted the suit for the following reliefs:-

(a) Directing the first defendant to execute a registered sale deed in favour of the plaintiffs for Rs.71,61,942/- after receipt of the balance sale consideration of Rs.47,74,628/- (apart from the advance amount of Rs.23,87,314/-) in respect of the suit properties and put them in possession of the same;

(b) in default of such compliance by the first defendant, this Court may be pleased to execute a registered sale deed in respect of the suit properties in favour of the plaintiffs at the costs of the first defendant;

(c) restraining the defendants in any way and in any manner either alienating or encumbering the suit properties till the execution of the sale deed to any other third parties by means of permanent injunction"

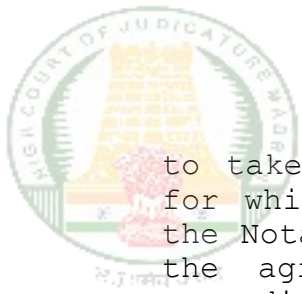
3. The parties are herein referred as per their litigative status before the trial Court.

4. The case of the plaintiffs are as follows:-

The first defendant is the absolute owner of the suit property by virtue of registered sale deed dated 19.02.1997 registered as Document No.339 of 1997 on the file of Sub Registrar, Kangayam and settlement deed 09.03.1998 executed by his mother Subbulakshmi which is registered as Document No.1216 of 1998, on the file of Sub Registrar, Kangayam.

5. According to the plaintiffs, the first defendant made a proclamation for sale of the suit property to meet out urgent family necessities. Since the plaintiffs wanted to purchase the property, they approached the first defendant and after negotiation, the first defendant agreed to sell the suit property at the rate of Rs.2,58,088.25/- per acre and the total sale consideration comes to Rs.71,61,942/- for the extent of 27.75 acres. They entered into an unregistered and notarized written agreement for sale on 05.10.2005 in the presence of R.Sivasubramanian, Advocate-cum-Notary, Erode. On the date of agreement, the plaintiffs paid a sum of Rs.13,87,314/- by cash and another sum of Rs.10,00,000/- through instruments, totally, a sum of Rs.23,87,314/-. One year time was fixed for completion of sale.

6. It is their further case that the first defendant represented that a case in respect of the suit property was pending before the High Court, Madras and the plaintiffs agreed



to take the sale deed subject to the result of the said suit, for which, they entered into a consent deed in the presence of the Notary on 05.10.2005. The plaintiffs further stated that in the agreement of sale, the suit properties were described according to the measurements found in the title deed and hence, the first defendant is liable to fix four boundaries at his costs with the help of the Taluk Surveyor and in accordance with the title documents and revenue records and thereby erect boundary stone in order to fix the exact sale price.

7. In the plaint, it is averred that from the date of sale agreement, the plaintiffs are ready and willing to perform their part of the contract. On several occasions, the plaintiffs tendered the balance sale consideration and requested the first defendant to execute the sale deed free from all encumbrances in term of the agreement of sale, but the first defendant gave evasive replies and postponed the execution of sale deed. The plaintiffs have sufficient means and amounts to pay the balance sale consideration and to take sale deed in their favour in terms of the agreement for sale.

8. It is alleged that at the instigation of the first defendant, the defendants 2 and 3 issued a notice dated 10.01.2006 to the plaintiffs and others as if the suit properties are joint family properties and they have 2/3rd share therein. It is the further case of the plaintiffs that the allegations in the said notice are false and the first defendant was the absolute owner of the property. Hence, the plaintiffs did not send any reply for the pre-notice dated 10.01.2006. It is also alleged that the first defendant in collusion with the defendants 2 and 3 attempted to alienate or encumber the suit properties to the third parties, for which, he has no right. So, the plaintiffs caused a telegram demanding the first defendant to execute a registered sale deed on 04.10.2006, but the first defendant managed to return the telegram. Thereafter, a registered notice dated 02.10.2006 was sent calling upon the first defendant to come and execute the sale deed on receipt of the balance sale consideration on 04.10.2006 at about 10 a.m., in the office of Sub Registrar, Kangayam. The plaintiffs on 04.10.2006 were waiting in the office of Sub Registrar, Kangayam from morning to evening, but the first defendant did not come to execute the sale deed. Hence, the suit.

9. The first defendant in his written statement denied and disputed the averments made in the plaint. It is his case that the suit properties were purchased from the sale proceeds of the ancestral property and the income received from the other properties. Hence, they are joint family properties, in which, he has 1/3rd share. It is the case of the first defendant that



the husband of the first plaintiff, viz., Easwaramoorthy was known to him earlier. The first defendant in the course of construction of a building in his property situated at Erode, he was in need of money and approached the said Easwaramoorthy to borrow Rs.10,00,000/- interest at 12% per annum. The said Easwaramoorthy agreed to lend money to the first defendant and directed the first defendant to approach him on 04.10.2005 and informed that he will not lend money on promissory note and for security purposes he has to sign stamped papers and in blank papers. In order to continue the construction activities, the first defendant signed in the blank papers on 05.10.2005 and 20 Rupees stamp papers purchased in the name of his wife Bhuvaneswari and in the name of others and also in green papers and blank promissory note. When the first defendant was regularly paying interest, the plaintiffs with a ulterior motive created the agreement of sale.

10. It is specifically stated that the first defendant at no point of time agreed to sell the properties and executed all the documents and they are fabricated. It is also stated that he was shocked to know after seeing the documents filed along with the plaint. Since no sale agreement was executed, there was no necessity to register the same. The plaintiffs are housewives and they did not have this huge amount to purchase the property and they have to prove their readiness. The first defendant is ready and to repay the loan of Rs.10,00,000/- borrowed from the said Easwaramoorthy. It is further stated that the value per acre is Rs.10,00,000/- and the plaintiffs knowing the fact that the first defendant is having dispute with his wife, created documents to grab the property and they were also aware of the partition suit in O.S.No.337 of 2006, filed by the defendants 2 and 3.

11. It is further stated in the written statement that if the plaintiffs had balance sale consideration and the defendants refused to execute the sale deed on receipt of the balance sale consideration, the amount should have deposited in the Court as per the agreement. The non-compliance of the terms of the agreement shows that the plaintiffs did not act as per the agreement. The first defendant did not receive the cheques and there is no averment when and how the cheques were paid and how the defendant received the cash and from which account he received the money. No document was produced to prove the same. If the suit is decreed as prayed for, it will cause huge loss to the first defendant, since the value of the land was huge.

12. The defendants 2 and 3 filed a separate written statement stating that the suit properties are joint family properties and the first defendant has no right to enter into an agreement of sale as alleged by the plaintiffs. The defendants



are in joint possession and enjoyment of the same. Since the first defendant did not agree for partition, they have filed a suit in O.S.No.337 of 2006 and the same is pending. The first defendant had no right to execute the sale agreement and it is not binding upon them and prayed for dismissal of the suit.

13. On the basis of the pleadings, the trial Court framed the following issues and additional issues for consideration:-

"(1) Whether the suit agreement dated 05.10.2005 is true, genuine and enforceable?

(2) Whether the suit agreement is executed towards collateral security for the debt borrowed by the first defendant as alleged in the written statement?

(3) Whether the suit in O.S.No.337 of 2006 on the file of the Principal Subordinate Judge of Erode is binding on the plaintiffs?

(4) Whether the suit properties are joint family properties of the defendants?

(5) Whether the plaintiffs are entitled to the relief of specific performance as prayed for in the suit?

(6) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for in the suit?

(7) To what relief the parties are entitled for?"

Additional issues:

(1) Whether the plaintiffs are not entitled to seek any relief against the defendants 2 and 3?

(2) Whether the suit properties purchased in the name of the first defendant and Parvatham from out of the ancestral nucleus?"

14. During trial, the parties had let in oral and documentary evidence to substantiate respective contentions. The second plaintiff examined herself as P.W.1 and also examined 4 other witnesses as P.Ws' 2 to 5 and marked Exs.A1 to A24. On the side of the defendants, the first defendant gave evidence as D.W.1 and examined the Bank Manager as D.W.2 and produced Exs.B1 to B11. Upon consideration of the evidence adducted by the parties, the trial Court came to the conclusion that the sale agreement is genuine and the plaintiffs are entitled for decree of specific performance and permanent injunction. Assailing the said finding, the present Appeal has been filled.

15. The learned counsel appearing for the appellants Mr.K.K.Ramakrishnan would urge that the Trial Court without appreciating the evidence has decreed the suit filed for specific performance and permanent injunction. According to the



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learned counsel, the first defendant borrowed money from the husband of the first plaintiff and at that time, the first defendant was made to sign the blank stamp papers and promissory notes as security for discharge of the money and the sale agreement (Ex.A3) and consent deed (Ex.P.4) were forged and created by the plaintiffs. When the property was situated near Kangeyam and the parties are from that area, they could not have preferred to go to Erode to get the help of P.W.4. The stamp papers in Exs.A3 and A4 were said to have been prepared and typed at Kangeyam, hence, there was no necessity nor any explanation was offered by the plaintiffs for going to Erode to get the assistance of P.W.4. Exs.A3 and A4 could have been registered at Kangeyam itself. The draft agreement said to have been prepared by P.W.4 was not produced and non-examination of scribe to Exs.A3 and A4 is fatal to the case of the plaintiffs. The evidence of P.W.2, P.W.3 and P.W.5 are highly suspicious. Further, they did not speak about handing over of cash and cheques by the plaintiffs to the first defendant. The contents of Ex.A4 could have been added in Ex.A.3 itself. The stamp papers for Exs.A3 and A4 were purchased from different vendors and different places, but no explanation was given by the plaintiff, this shows that the plaintiffs did not come to the Court with clean hands.

16. It is further submitted that since the first defendant had denied execution of Ex.A3, the burden of proof is on the plaintiffs to establish that those documents were executed by the first defendant and he received the advance amount as stated in Ex.A3. According to the learned counsel, the burden was not discharged by the plaintiffs. The non-examination of the first plaintiff and her husband Eswaramoorthy, is fatal.

17. It is next contended that neither in the pre-suit notice nor in the plaint or in the evidence of P.W.1, the preparation of two documents, Exs.A3, A4 and B1 and B2 was mentioned and only after marking Exs.B1 and B2 through P.W.1, the witnesses P.Ws.2 to 5 have spoken about the preparation of two sets of documents. There is no proof that two cheques were handed over to the first defendant in pursuance of the agreement of sale Ex.A3 and they were encashed by the first defendant. It is the submission of the learned counsel that the total sale consideration in Ex.A3 is said to have been fixed based on the measurement mentioned in the parent documents. As per Exs.A3 and A4, no boundary was fixed and exact sale consideration was determined, therefore, the contention of the plaintiffs that they were ready with money in Sub Registrar Office, Kangeyam for registration of the sale deed on 04.10.2006 is a total lie. The plaintiffs further have not proved readiness and willingness from the date of agreement till the date of the decree as required in Section 16(c) of the Specific Relief Act.



18. According to the learned counsel, the first defendant (D.W.1) has categorically stated that he did not receive the cash of Rs.10,87,314/- and two cheques for Rs.10,00,000/- pursuant to Ex.A3. He also filed an application in I.A.No.82 of 2008 for Expert opinion to establish the signatures in Exs.B3 and B4 are not that of the first defendant. But, the learned trial Judge rejected the application holding that it was the duty of the plaintiffs to prove the signature of the first defendant in those documents, however in the judgment, it is observed that the first defendant did not prove the same. He further added that there are material contradiction in the evidence of P.W.1 to P.W.5. Exs.A8 and A9 and A22 bank statements would show that the plaintiffs did not have sufficient amount in their account and they were not ready to perform their obligation. The plaintiffs did not approach the Court with clean hands, hence, the plaintiffs are not entitled for the equitable relief of specific performance in the suit. In support of the submissions, the following decisions are relied on:-

Parties have to approach the Court with clean hands:-

(i) S.S.Chokkalingam Vs. R.B.S.Mani and others [(1994) 2 MLJ 78]

"25. Thus, the appellant is guilty of making a false plea. It is well known that a person who has come to Court with a false case is not entitled to the equitable relief of specific performance."

(ii) Ritu Saxena v. J.S. Grover [(2019) 9 SCC 132]

"Statement will be in the nature of ipse dixit of the appellant and/or her husband and is without any corroborating evidence. Such self-serving statements without any proof of financial resources cannot be relied upon to return a finding that the appellant was ready and willing to perform her part of the contract. The appellant has not produced any income tax record or the bank statement in support of her plea of financial capacity so as to be ready and willing to perform the contract."

The plaintiffs did not deposit the remaining sale consideration as required under the terms of the contract and hence, he is not entitled for decree for specific performance:-

(iii) Arunachala Mudaliar Vs. Jayalakshmi Ammal and another [(2003) 1 MLJ 626]

"25. The obvious lacunae in the plaintiff's case have been pointed out above. The plaintiff has not



be said there is non-compliance of the said section."

24. This Court further noticed that despite Explanation appended to Section 16(c), the plaintiff can always tender the amount to the defendant or deposit it in the court for performance towards the contract under the obligation of the contract with a view to exhibit (sic) to perform his part of obligation.

27. The decisions of this Court, therefore, leave no manner of doubt that a plaintiff in a suit for specific performance of contract not only must raise a plea that he had all along been and even on the date of filing of suit was ready and willing to perform his part of contract, but also prove the same. Only in certain exceptional situation where although in letter and spirit, the exact words had not been used but readiness and willingness can be culled out from reading all the averments made by the plaintiff as a whole coupled with the materials brought on record at the trial of the suit, to the said effect, the statutory requirement of Section 16(c) of the Specific Relief Act may be held to have been complied with."

(vi) Rexnord Electronics and Controls Limited Vs. Union of India and others [(2008) 12 SCC 156]

13. .. The compliance with the requirement of Section 16(c) is mandatory and in the absence of proof of the same that the plaintiff has been ready and willing to perform his part of the contract suit cannot succeed. The first requirement is that he must aver in plaint and thereafter prove those averments made in the plaint. The plaintiff's readiness and willingness must be in accordance with the terms of the agreement. The readiness and willingness of the plaintiff to perform the essential part of the contract would be required to be demonstrated by him from the institution of the suit till it is culminated into decree of the court.

(vii) Man Kaur (Dead) by Lrs. Vs. Hartar Singh Sangha [(2010) 7 MLJ 1059 (SC)]

23. The second issue relates to the personal bar to enforcement of a specific performance by persons enumerated in section 16 of the Act. A person who fails to aver and prove that he has performed or



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

(viii) Saradamani Kandappan Vs. S.Rajalakshmi and others
[(2011) 12 SCC 18]

28. The intention to make time stipulated for payment of balance consideration will be considered to be essence of the contract where such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. If, for example, the vendor discloses in the agreement of sale, the reason for the sale and the reason for stipulating that time prescribed for payment to be the essence of the contract, that is, say, need to repay a particular loan before a particular date, or to meet an urgent time-bound need (say medical or educational expenses of a family member) time stipulated for payment will be considered to be the essence. Even if the urgent need for the money within the specified



time is not set out, if the words used clearly show an intention of the parties to make time the essence of the contract, with reference to payment, time will be held to be the essence of the contract.

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36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

38. It is now well settled that laws, which may be reasonable and valid when made, can, with passage of time and consequential change in circumstances, become arbitrary and unreasonable.

41. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in K.S. Vidyanadam v. Vairavan [(1997) 3 SCC 1] (by Jeevan Reddy, J. who incidentally was a member of the Constitution Bench in Chand Rani [(1993)



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1 SCC 519]). This Court observed: (SCC pp. 7 & 9, paras 10-11)

"10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. ... in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades—particularly after 1973. ...

11. ... We cannot be oblivious to the reality—and the reality is constant and continuous rise in the values of urban properties—fuelled by large-scale migration of people from rural areas to urban centres and by inflation. ... Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties—evolved in times when prices and values were stable and inflation was unknown—requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so."

42. Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to a larger Bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand Rani [(1993) 1 SCC 519] and other cases. Be that as it may.

43. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam [(1997) 3 SCC 1] :

(i) The courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) The courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to perform his part of the contract.



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(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. The courts will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part-performance, where equity shifts in favour of the purchaser."

(ix) I.S.Sikandar (Dead) by Lrs. Vs. K.Subramani and others
[(2013) 15 SCC 27]

"45. . Further, the plaintiff is required to prove the fact that right from the date of execution of the agreement of sale till the date of passing the decree he must prove that he is ready and has always been willing to perform his part of the contract as per the agreement. Further, he rightly contended the same by placing reliance upon another judgment of this Court in P.R. Deb and Associates v. Sunanda Roy [(1996) 4 SCC 423] wherein this Court held that: (SCC p. 429, para 7)

"7. ... The plaintiff, in a suit for specific performance, must be ready and willing to carry out his part of the agreement at all material times."

(x) Shenbagam Vs. K.K.Rathinavel [(2022) SCC Online SC 71]

"14. Specific performance of a contract cannot be enforced in favour of a person- [(a) who has obtained substituted performance of contract under section 20; or] PART C prove that he has performed or has always been „ready and willing" to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented and waived by the defendant. In JP Builders v. A Ramadas Rao⁹, a two-judge Bench of this Court observed that Section 16(c) mandates "readiness and willingness" of the plaintiff and is a condition precedent to obtain the relief of specific performance. The Court held:

"25. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for



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obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

[...]

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties." (emphasis supplied)

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

(c) [who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

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

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

(ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction." (2011) 1 SCC 429]

15. The Court further observed that „readiness" refers to the financial capacity and „willingness" refers to the conduct of the plaintiff wanting the performance.

16. Similarly, in His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar¹⁰, a two-judge Bench of this Court observed that "readiness" means the



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capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. To ascertain „willingness“, the conduct of the plaintiff has to be properly scrutinised. The Court noted:

“2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. [...] The factum of readiness and willingness to perform the plaintiff's 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 the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bid for the time which disentitles him as time is of the essence of the contract.” (emphasis supplied)

17. The precedents of this Court indicate that the plaintiff must establish that he was „ready and willing“ to perform the contract. In this regard, the conduct of the plaintiff must be consistent.

19. In assessing the conduct of the plaintiff, the Court in Atma Ram (supra) observed that the delay in filing a suit, specifically one for mandatory injunction, indicates the inconsistent behaviour of the plaintiff. The failure of the trial court to frame an issue relating to the readiness and willingness of the plaintiff to perform the contract is also critical in declining the remedy of specific performance.

28. No issue on readiness and willingness was framed by the trial court. The trial court analysed the notice issued by the appellants and held that the appellants made no demand from the respondent to discharge the mortgage liability. Thus, the appellants' plea that the respondent-plaintiff had to pay the loan and only thereafter, could the appellants



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execute the sale deed was rejected. The court also accepted the respondent's argument that the advance PART C amount of Rs. 10,000 was paid to discharge the mortgage. Further, the trial court observed that the documents submitted by the respondent indicate that he had sufficient means to purchase the suit property. The judgment of the trial court was upheld by the first appellate court and, in a second appeal, by the High Court.

29. All the three courts, including the High Court, grossly erred in the manner in which they have adjudicated upon this dispute in a suit for specific performance. In the first instance, the trial court failed to frame an issue on whether the respondent-plaintiff was ready and willing to perform his obligations under the contract and instead assessed whether he is entitled to the relief of specific performance. In doing so, the trial court viewed the legal issue from an incorrect lens. The foundation of a suit for specific performance lies in ascertaining whether the plaintiff has come to the court with clean hands and has, through his conduct, demonstrated that he has always been willing to perform the contract. There is a conspicuous absence in judgment of the trial court of any reference to evidence led by the respondent to indicate his willingness to perform the contract. The trial court merely adverted to "document produced on behalf of the plaintiff" and concluded that he had sufficient means to purchase the suit property. Apart from this observation, the judgment fails to analyse the terms of the agreement, the obligations of the parties and the conduct of the respondent or the appellant.

30. In evaluating whether the respondent was ready and willing to perform his obligations under the contract, it is not only necessary to view whether he had the financial capacity to pay the balance consideration, but also assess his conduct throughout the transaction.

....

33. We shall now advert to the respondent's conduct throughout the sale transaction. The respondent has failed to provide any documents or communication which would indicate that he called upon the appellants to perform their obligations or



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discharge the mortgage within the time period stipulated in the contract. Even after the expiry of the six months, the respondent did not reach out to the appellants. It is only in response to the appellants' legal notice that the respondent demanded performance of their obligations. Merely averring that he was waiting with the balance consideration and believed that the appellants would clear the encumbrance is insufficient to prove that the respondent-plaintiff was willing to perform his obligations under the contract.

35. The "readiness" of the respondent to perform his obligations refers to whether he was financially capable of paying the balance consideration. Both the trial court and the first appellate court have observed that the respondent was ready to pay the balance consideration as (i) he was paying income tax since 1988 and (ii) his bank passbooks indicate that he had sufficient funds. The payment of income tax by itself does not show that the respondent had sufficient resources to pay for the suit property. Moreover, the bank passbooks submitted in evidence by the respondent were for accounts opened on 11 March 1992 and 22 July 1994, that is, after the expiry of the period written in the contract. The first appellate court despite noting this, has chosen to hold that the respondent was PART C ready and willing to perform the agreement. The respondent however did not lead any evidence to indicate that in the year 1990 he had the money to pay the balance consideration. The first appellate court shifted the burden on the appellants to prove that the respondent-plaintiff was incapable of paying the balance consideration. It is an established principle of law that the plaintiff must prove that he is ready and willing to perform the contract. The burden lies on the plaintiff. The respondent has not led any evidence that he was ready or willing to perform his obligations under the agreement.

36. Even assuming that the respondent was willing to perform his obligations under the contract, we must decide whether it would be appropriate to direct the specific performance of the contract in this case. In *Zarina Siddiqui v. A. Ramalingam*¹³, a two-judge Bench of this Court while dealing with a suit for specific performance of a contract regarding the sale of



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immovable property observed that the remedy for specific performance is an equitable remedy and Section 20 of the Specific Relief Act confers a discretion on the Court. The Court held:

"24. It is well settled that 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 the 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.

41. True enough, generally speaking, time is not of the essence in an agreement for the sale of immovable property. In deciding whether to grant the remedy of specific performance, specifically in suits relating to sale of immovable property, the courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property, and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault. In the present case, three decades have passed since the agreement to sell was entered into between the parties. The price of the suit property would undoubtedly have escalated. Given the blemished conduct of the respondent-plaintiff in indicating his willingness to perform the contract, we decline in any event to grant the remedy of specific performance of the contract. "

(xi). Raj Rani Bhasin v. S. Kartar Singh Mehta [1975 SCC OnLine Del 4 : AIR 1975 Del 137]

"10. A distinction may be drawn between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract. This includes his financial ability to pay the purchase price. We will assume for the sake of argument that the plaintiff respondent could have raised the money to pay the purchase price if he wanted to do so. But the more important question is whether he was willing to perform his part of the contract even if he had the financial capacity to do so. It is here that the plaintiff's conduct has to be properly scrutinised. In our view, the trial Court has not done so. It has merely concentrated its attention on the financial



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ability of the plaintiff to raise the money to pay the purchase price but has not noticed the unwillingness of the plaintiff to perform his part of the contract.

11. Shri Lonial for the appellants argued that the willingness of the plaintiff to perform his part of the contract must be judged not by the mere assertions made by the plaintiff from time to time that he was always willing to buy the property but by considering whether the conduct of the plaintiff was in accordance with the contract. It is settled law that if the plaintiff behaves contrary to the contract and insists that the sale by the defendants should be on terms which are different from the terms of the contract, then the plaintiff has failed to show that he was willing to perform his part of the contract. When the plaintiff insisted upon the defendants' furnishing him with a certificate of the District Judge even when he was told that Chandra Parkash was attaining majority on 16-08-1962 and even after Chandra Parkash had so attained majority, he was acting contrary to the contract. Similarly, his insistence on seeing the will by late Shri Chanan Singh Bhasin or for the supply of the plan of the building was also contrary to the contract. He also failed to offer a stamped sale deed for its execution by the defendants and to pay the purchase price in time. Such conduct has been held to be the evidence of the plaintiff's failure to prove his willingness to perform his part of the contract in *Hawkins v. Maltby*. (1867-8) 3 Ch A 188 at pp. 194-195: *Babu Bindeshri Parshad v. Mahant Jairam Gir*, (1886-87) 14 Ind App 173 at pp. 177-178 (PC) and *Md. Ziaul Haque v. Calcutta Vyaper Pratisthan*, AIR 1966 Cal 605, per A.N. Ray, J. as he then was. As against this, Shri R.M. Lal for the plaintiff-respondent has argued that the insistence by the plaintiff on being furnished with certain documents which the defendants were not required to furnish according to the agreement did not by itself show that the plaintiff was not willing to perform his part of the contract. In our view the distinction between conduct which would disentitle the plaintiff from specific performance and conduct which would not so disentitle him is as follows. If the conduct of the plaintiff shows that he was really unwilling to buy the property then the plaintiff is disqualified from specific performance. If on the other hand, the plaintiff was always willing to buy the property but in doing so made a mistake in insisting on some thing which he was not entitled to get from the defendants then such a



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mistake would not disqualify him from specific performance if the mistake was corrected in time and the plaintiff had made it clear that he had withdrawn the mistaken demand and the mistake did not detract his essential willingness to purchase the property. The plaintiff in the present case did not withdraw the demand for the certificate of the District Judge or for the plan of the building or for the will of late Shri Chanan Singh Bhasin. He did not say that the demand for these documents was made by a mistake. He did not clarify that the demand of these documents was not a condition precedent to his performance of the contract. On the contrary, from his failure to tender a stamped sale deed and to pay the purchase price could be understood that the supply of these documents was a condition precedent to his performance of the contract because he purported to wait for the supply of these documents. As observed by the Supreme Court in Gomathinayagam Pilliai v. Pallaniswami Nadar. (1967) 1 SCR 227 at pp. 235-236 : (AIR 1967 SC 868 at p. 878) approving the observation of the trial Court :-

"Mere assertion in the plaint that he was ready and willing to perform the contract was not sufficient and his readiness and willingness had to be judged from what he had done or from his conduct subsequent to the agreement..... The reasons set up by the respondent for the delay in taking steps in the matter were obviously untrue and that the respondent was trying to out the blame on the appellants and inventing excuses to explain the omission in taking the sale deed."

(xii) Sandhya Rani Sarkar v. Sudha Rani Debi [(1978) 2 SCC 116]

"It is undoubtedly true that the High Court has recorded a finding (p. 32) that time was not the essence of the contract nor was it made essence of the contract by a specific notice, but it is equally true that the plaintiff seeks relief for specific performance of contract and it is incumbent upon the plaintiff to affirmatively establish that all throughout he or she, as the case may be, was willing to perform his or her part of the contract, and that the failure on the part of the plaintiff to perform the contract or willingness to perform her part of the contract may in an appropriate case disentitle her to relief."

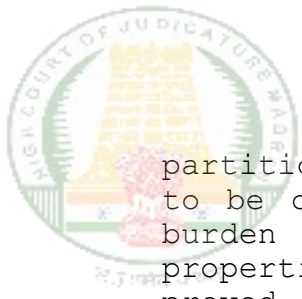


19. The learned Senior Counsel appearing for the second respondent would state that the suit filed by the plaintiffs for specific performance was decreed on 29.04.2008, as such each plaintiff is entitled for 1/3rd share. Pursuant to the decree, the first plaintiff, namely, E.Bhuvaneswari vide deed dated 30.03.2012 made over the decree in favour of the second plaintiff Renuka, hence, the first plaintiff is not having any interest in this matter.

20. The learned Senior Counsels representing the respondents 2 and 3 Mr.K.Doraisamy and Mrs.Chitra Sampath submitted that the first defendant, who was the absolute owner of the suit property, had entered into an agreement with the plaintiffs on 05.10.2005 agreeing to sell the property measuring an extent of 27.75 acres, for per acre, Rs.2,58,088/- for total sale consideration of Rs.71,61,942/-. On the date of agreement, the plaintiffs paid Rs.13,87,314/- by way of cash and two cheques for Rs.10,00,000/-. The time for completion of the sale is one year. According to them, the plaintiffs had been approaching the first defendant to measure the property to ascertain the exact extent of the land for execution of the sale deed. However, within three months, the defendants 2 and 3 at the instigation of the first defendant, issued a notice dated 10.01.2006 (Ex.A5) stating that the suit property is the joint family property and they are having 2/3rd share. The plaintiff's were always ready and willing to execute the sale deed, but it was delayed by the first defendant. Hence, on 02.10.2006, a telegram was sent. Despite receipt of the telegram (Ex.A6), the first defendant did not come to Sub Registrar Office, Kangeyam. Hence, the suit was filed on 09.10.2006 within the period of limitation.

21. It is their further submission that in the written statement that the first defendant admits his signature and receipt of Rs.10,00,000/- but disputes the receipt of two cheques. So, the second plaintiff gave evidence as P.W.1 and examined P.Ws.2 to 5, who are the independent witnesses to prove the execution of sale agreement (Ex.A3) and payment of advance amount. Though the first defendant had stated that he borrowed Rs.10,00,000/- from the husband of the first defendant Eswaramoorthy, but he did not examine any other witness nor produced any documentary evidence to substantiate the same and on the contrary, he took inconsistent stand in written statement and in the evidence with regard to payment of interest.

22. It is further contended that though the defendants 2 and 3 have filed their written statement stating that the suit properties are the joint family properties and their father had no right to enter into the sale agreement, but they did not enter into the witness box to give evidence. Furthermore, the



partition suit filed by the defendants 2 and 3 was also allowed to be dismissed for default. It is their submission that the burden of proof is on the defendants to prove that the suit properties are joint family properties. The plaintiffs have proved that the properties are separate properties of the first defendant through Exs.A1 and A2. In this regard, they referred the legal opinion given by an Advocate Ex.A16. The first defendant has also failed to prove the payment of interest. The documents Ex.A3, A4, B1 and B2 were executed on the same date i.e., on 05.10.2005, hence, purchasing stamp papers in different places and in different names will have no consequence. Further, the plaintiffs have proved that on 04.10.2006, they were waiting at Sub Registrar Office through Exs.A.20 and 21, and that the plaintiffs were ready to perform their obligation under Ex.A3 agreement. According to the learned Senior Counsels, there was no necessity for the plaintiff to deposit the balance sale consideration in the Court at the time of filing of the suit, unless a specific direction is issued by the Court.

23. The learned Senior Counsel for the second respondent has cited the following decisions in support of his arguments.

The first defendant had not produced any evidence to substantiate his claim that the sale agreement (Ex.A3) has been forged:-

(i) Grasim Industries Ltd. v. Agarwal Steel
[(2010) 1 SCC 83]

"6. In our opinion, when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. In particular, businessmen, being careful people (since their money is involved) would have ordinarily read and understood a document before signing it. Hence the presumption would be even stronger in their case. There is no allegation of force or fraud in this case. Hence it is difficult to accept the contention of the respondent while admitting that the document, Ext. D-8 bears his signatures that it was signed under some mistake. We cannot agree with the view of the High Court on this question. On this ground alone, we allow this appeal, set aside the impugned judgment of the High Court and remand the matter to the High Court for expeditious disposal in accordance with law."

The first defendant did not deny the signature in A-14 in the proof affidavit:-



(ii) Gian Chand and Brothers and Ors. Vs. Rattan Lal [(2013) 2 SCC 606]

"The defendant, on the contrary, except making a bald denial of the averments, had not stated anything else. That apart, nothing was put to the witness in the cross examination when the documents were exhibited. He only came with a spacious plea in his evidence which was not pleaded."

The defendants have not produced any evidence would clearly establish the fact that there was no loan transaction:-

(iii) M.Ramalingam and Ors. Vs. Subramanyam and Ors [(2003) 1 MLJ 697]

"10. When the defendant came with a plea stating that the intention of the parties was only to treat the same as a loan transaction, and it was never intended to be acted upon, which is consistent with the terms of the document, a duty is cast upon the defendant to strictly prove that it was a different transaction all together, and what was recorded in the document was intended to be of no consequence whatsoever.

The defendant has not examined any independent witness or the attestors to the document, nor has he placed acceptable materials to hold so. Except the interested testimony of the defendant, nothing more is available on record.

Readiness and willingness of the plaintiffs to execute the sale deed:-

(iv) Rathinam Chettiar Vs. Embar Naidu and Ors [1999 (3) CTC 394]

"11. Even according to the Explanation (i) to clause (c) of Section 16 of the Specific Relief Act, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court. The trial Court is not correct in holding that the plaintiff has not produced the documents to show that he is having money with him ready to pay the same towards the sale consideration."

(v) Sukhbir Singh and Ors. Vs. Brij Pal Singh and Ors [(1997) 2 SCC 200]



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"4. ... 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 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.

5. Law is not in doubt and it is not a condition that the respondents should have ready cash with them. The fact that 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 that they should always carry the money with them from the date of the suit till the 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."

(vi) Indira Kaur and Ors. Vs. Sheo Lal Kapoor
[Manu/SC/0448/1998]

"10... The real test as to whether or not the plaintiff was ready and willing to perform his part of the contract was for the defendant to call his bluff, in case it was a bluff, by remaining present at the Sub-Registrar's office on the appointed day that is to say on August 16, 1977 as he was bound to do if he on his part was ready and willing to execute the sale deed. In fact the lower Courts ought to have considered whether the defendant himself was willing and ready to perform his part of the contract by executing the sale deed in favour of the plaintiff in discharge of the obligation undertaken under the agreement of sale executed in 1967 in favour of the plaintiff.



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...

The conclusion is therefore inevitable that the defendant was not ready and willing to perform his part of the contract and had deliberately abstained from remaining present at the Sub-Registrar's office on the last day for performance though he was called upon to do so by the plaintiff within the stipulated time."

(vii) Madhukar Nivrutti Jagtap and Ors. Vs. Pramila Bai Chandulal Parandekar and ors. [MANU/SC/1083/2019]

"13. The question as to whether the plaintiff seeking specific performance has been ready and willing to perform his part of the contract is required to be examined with reference to all the facts and the surrounding factors of the given case. The requirement is not that the plaintiff should continuously approach the defendant with payment or make incessant requests for performance. For the relief of specific performance, which is essentially a species of equity but has got statutory recognition in terms of the Specific Relief Act, 1963, the plaintiff must be found standing with the contract and the plaintiff's conduct should not be carrying any such blameworthiness so as to be considered inequitable. The requirement of readiness and willingness of the plaintiff is not theoretical in nature but is essentially a question of fact, which needs to be determined with reference to the pleadings and evidence of parties as also to all the material circumstances having bearing on the conduct of parties, the plaintiff in particular. In view of the contentions urged, we have scanned through the record to examine if the finding of the High Court in this regard calls for any interference."

Suit property is the absolute property of the first defendant and no iota of evidence has been produced by the defendants to prove that the suit property is a joint family property:-

(viii) Kuppara Obul Reddy Vs. Bonala Venkata Narayana Reddy (Dead) through Lrs [AIR 1984 1171]

"15. There may be presumption that there is a Hindu Joint Family but there can be no presumption



that the joint family possesses joint family properties."

(ix) Mudi Gowda Gowdappa Sankh Vs. Ram Chandra Ravagowda Sankh [1969 AIR 1076]

"5.. Ofcourse there is no presumption that a Hindu family merely because it is joint, possesses any joint property. The burden of providing that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it as coparcenary property."

The defendants / appellants have not produced a single piece of evidence to show that the value of the property is more than the sale price:-

(x) Nanjammal and Ors. Vs. Palaniammal [(1993) 2 MLJ 7]

"6. ... The defendant has stated in the evidence that the property was worth much more than Rs. 1,01,000 at the time of the agreement. But there is absolutely no evidence in support of the same. No document has been produced to prove the value of the lands in the locality and no witness has been examined to speak to the same. In such circumstances we cannot accept the case of the defendant that the property is more valuable than the consideration mentioned in Ex.A-1."

24. The learned Senior counsel for the for the third respondent has cited the following citations:-

The evidence of P.W.2 to P.W.5 clearly speak about the execution of document by the first appellant after the contents were typed and not in blank. Exs.A3, A4, B1 and B2 are true and that the documents are genuine:-

(i). Gallie Vs. Lee [1969 (2) WLR 901]

"Whenever a man of full age and understanding, who can read and write, signs a legal document which is put before him for signature-by which I mean a document which, it is apparent on the face of it, is intended to have legal consequences - then, if he does not take the trouble to read it, but signs it as it is, relying on the word of another as to its character or contents or effect, he cannot be heard to say that it is not his document. By his conduct in signing it he had represented, to all those into whose hands it may come, that is his document; and once they act on



it as being his document, he cannot go back on it, and say it was a nullity from the beginning."

(ii) Dalchand Mulchand and others Vs. Hasanbi and others
[AIR 1938 Nag 152]

7. We have no quarrel with the general proposition that proof of signature is not necessarily proof of execution and that an admission that a document bears a man's signature is not necessarily an admission of execution. The circumstances of the case may negative such an inference"

9. In our opinion, this inference arises in India directly from Section 114 of the Evidence Act. Persons do not ordinarily sign documents without intending to execute them that is not the common course of human conduct, nor yet the common course of either public or private business. Consequently, if any person wants to rely on the exceptional circumstance if he wants to show that in some particular instance the ordinary rule was abrogated surely he must prove it.

12. This is not the case here and as we view the matter was not in the case of 20 NLR 7.1 In that case the plaintiff's statement when analyzed consisted of three separate assertions of fact: (1) that the thumb impression in question was the defendant's (2) that it had been affixed to the document in question as opposed to the piece of paper on which it appeared, and (3) that it had been so affixed in token of execution. The defendant admitted the first of these three statements and denied the other two. As regards the first there was no qualification whatever. Of course this was not an admission of liability and not an admission of execution. It was merely admission of the one fact that the thumb impression on the paper was the defendant's. That being so, as we view the law the plaintiff was not called upon to prove the fact. But if that is accepted then according to our view an inference arises under the law about execution and not because of any admission made by the defendants as inference that the thumb impression had been affixed in token of execution. The plaintiff would succeed if nothing more is known not because the defendants had admitted execution but because the plaintiff has established a prima facie case.

13. So also in the present case. The fact that the documents in question bear the executan's signature is



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unconditionally accepted. There is no qualification in the pleadings about that fact. That in our opinion is enough to discharge the initial onus which lay on the plaintiff's to prove execution and the burden then shifted to the defendants to prove the special circumstances which according to them rendered this execution nugatory. We cannot see how the plaintiff can be put in a worse position than he would have been if the defendant had denied both signature and execution. In such a case surely the moment the plaintiff proved the signature the burden would shift to the defendant to show that it did not import execution. If the defendant admits the signature and denies execution then all that happens is that the plaintiff is relieved of the necessity of providing the signature, but except for that he is in exactly the same position as he was before.

33. Hence, it is submitted that the appellants have failed to prove that they did not sign the sale agreement or that the signature in the agreement is not that of the first appellant. The ipsi dixit claim of the first appellant in this regard has not been proved and as the onus is clearly on the first appellant to prove the contrary, the first appellant failed to shift the burden and therefore is liable as held by the trial Court in the impugned judgment."

readiness and willingness:-

(iii) Madhukar Nivrutti Jagtap Vs. Pramila Bai Chandulal Parandekar [(2020) 5 SCC 731]

"13.2. The question as to whether the plaintiff seeking specific performance has been ready and willing to perform his part of the contract is required to be examined with reference to all the facts and the surrounding factors of the given case. The requirement is not that the plaintiff should continuously approach the defendant with payment or make incessant requests for performance. For the relief of specific performance, which is essentially a species of equity but has got statutory recognition in terms of the Specific Relief Act, 1963, the plaintiff must be found standing with the contract and the plaintiff's conduct should not be carrying any such blameworthiness so as to be considered inequitable. The requirement of readiness and willingness of the plaintiff is not theoretical in nature but is essentially a question of fact, which needs to be determined with reference to the 5 Its forerunner being the Specific Relief Act, 1877 pleadings and



evidence of parties as also to all the material circumstances having bearing on the conduct of parties, the plaintiff in particular."

1st appellant cannot plead a totally different transaction unless he satisfies the requirements under Section 92 of the Evidence Act:-

(iv) P.S.Ranakrishna Reddy Vs. M.K.Bhagyalakshmi and another [(2007) 10 SCC 231]

"13. A document, as is well known, must be read in its entirety. The intention of the parties, it is equally well settled, must be gathered from the document itself. All parts of the deed must be read in their entirety so as to ascertain the nature thereof.

17. The contention of the appellant has been rejected both by the learned trial Judge as also by the High Court upon assigning sufficient and cogent reasons. The agreement has been held to have been executed by the parties in support whereof large number of witnesses had been examined. The High Court, in particular in its judgment, has categorically opined that when the respondents served a notice upon the appellant on 29-5-1981, it was expected of the appellant to raise a contention that the said agreement was a sham one or nominal one and was not meant to be acted upon but it was not done. Failure on the part of the appellant to do so would give rise to an inference that the plea raised in the suit was an afterthought."

Pros and cons of doubting the intent of a written agreement under Sections 91 and 92 of the Evidence Act:-

(v) V.Anantha Raju Vs. T.M. Narasimhan [LQ/SC/2021/3191]

22. ... It has been held that when a jural act is embodied in a single memorial, all other utterances of the parties on the topic are legally immaterial for the purpose of determining what are the terms of their act. It has been held that when persons express their agreements in writing, it is for the express purpose of getting rid of any indefinite ness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. It has been observed that the written contracts presume deliberation on the part of the contracting parties and it is natural that they should be treated with careful consideration by the courts and with a disinclination to disturb the



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conditions of matters as embodied in them by the act of the parties. It has been held that the written instruments are entitled to a much higher degree of credit than parol evidence.

23. This Court has further held that Sections 91 and 92 of the Evidence Act would apply only when the document on the face of it contains or appears to contain all the terms of the contract. It has been held that after the document has been produced to prove its terms under Section 91, the provisions of Section 92 come into operation for the purpose of excluding evidence of any oral agreement or statement for the purpose of contradicting, varying, adding or subtracting from its terms. It has been held that it would be inconvenient that matters in writing made by advice and on consideration, and which finally import the certain truth of the agreement of parties should be controlled by averment of the parties to be proved by the uncertain testimony of slippery memory. It has been held that when parties deliberately put their agreement into writing, it is conclusively presumed, between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory.

Burden of proof:-

(vi) Addagada Raghavamma and Anr. Vs. Addagada Chenchamma
[AIR 1964 SC 136]

"There is an essential distinction between burden or proof and onus of proof, burden of proof lies upon the person who has to prove a fact and it never shifts but the onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence."

25. We have heard the rival submissions and perused the materials available on record.

26. In the present appeal, the following points arise for consideration:-

"(i) Whether the sale agreement Ex.A3, dated 05.10.2005 is true and genuine?

(ii) Whether the plaintiffs proved the execution of Ex.A3?

(ii) Whether the plaintiffs have averred and proved their readiness and willingness to perform their obligations under Ex.A3-sale agreement as



required under Section 16 (c) of the Specific Relief Act?

(iv) Whether the plaintiffs are entitled for the reliefs sought for in the suit?"

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Keeping in view of the principles laid down in the decisions referred supra, we have to analyze the case in hand.

27. The case of the plaintiffs before the trial Court was that the first defendant is the absolute owner of the suit schedule properties and on 05.10.2005, he entered into an agreement with the plaintiffs to sell the property for the sale consideration of Rs.71,61,942/- for the extent of 27.75 acres and on the date of agreement, a sum of Rs.13,87,214/- was paid by cash and Rs.10,00,000/- was paid by way of two cheques, each for a sum of Rs.5,00,000/-. As per the agreement, the sale shall be completed within a period of one year. When the plaintiffs were always ready and willing to complete the sale as per the agreement, the first defendant failed to come forward to perform his obligation.

28. According to the first defendant, the suit properties are joint family properties and his two children viz., D.W.2 and D.W.3 have equal share. It is his specific case that the husband of the first plaintiff Easwaramoorthy is known to him and when he approached the said Easwaramoorthy to borrow a sum of Rs.10,00,000/- to meet out the construction expenses of a building at Erode, he was directed to meet him on 04.10.2005. Accordingly, he met the said Easwaramoorthy, he demanded signatures in the blank stamp papers and blank papers. Since he was in need of money, on 05.10.2005 while borrowing Rs.10,00,000/-, he was made to sign blank stamp papers and other empty papers. It is his specific case that he never intended to sell the properties and there was no agreement of sale as alleged by the plaintiffs. Further, the market value of the land at the relevant point of time was Rs.10,00,000/- per acre. It is also stated that he did not receive the cheques said to have given by the plaintiffs, and he did not encash the same.

29. The second plaintiff examined herself as P.W.1 and to prove the execution of Ex.A3 sale agreement, P.W.2, P.W.3, who were the attesting witnesses to the documents were examined. It is relevant to note that neither in the pre-suit notice Ex.A7, nor in the plaint, the plaintiffs have stated that the sale agreement and consent deed were prepared in two sets and one of the copies were given to the first defendant. Exs.B1 and B2 were



marked through the cross examination of P.W.1.

30. Perusal of Ex.A3, A4, B1 and B2 would reveal that [Ex.A3] 20 Rupees stamp papers was purchased dated 05.10.2005 in the name of E.Bhuvaneswari, the first plaintiff and the name of the stamp vendor is invisible and it was sold by stamp vendor at Vellakoil. Ex.A4-stamp paper was purchased in the name of the first plaintiff and the stamp paper bears the date 18.07.2005 and the stamp vendor is S.A.Kadhar of Thenkasi. Ex.B1 was purchased in the name of the first plaintiff on 05.10.2005, again the name of the stamp vendor could not be identified and it was purchased at Vellakoil. Ex.B2 stamp paper bears date 05.10.2005 and it was purchased in the name of the first defendant at Erode. P.W.1 in her evidence admitted that she purchased Ex.A3 stamp paper one week prior to the agreement, but in the cross examination, she stated that it was purchased by the first defendant.

31. It is the contention of the learned Senior counsel appearing for the respondents 2 and 3 that the plaintiffs and the first defendant had signed the sale agreements and the consent deeds only in the typed papers. The learned Senior Counsels drew the attention of this Court to the documents to show that the parties have signed immediately next to the last line, so, it could not have been prepared subsequently, as contended by the first defendant. Further Exs.B1 and B2 did not bear the signature of the Court. So, the case of the first defendant that those copies were served on him in compliance with Order 39 Rule 3 (a) cannot be accepted.

32. Per contra learned counsel appearing for the appellants would state that the font size in the documents differs and in some of the pages it was typed in full page and some pages it was typed in half pages which will reveal that those documents were fabricated by the plaintiffs.

33. Perusal of Exs.A3, A4, B1 and B2 would reveal that as pointed out by the learned counsel appearing for the appellants font size is different and in typing also they vary. Even though these documents are said to have been prepared on 05.10.2005, there is absolutely no explanation as to why the stamp papers were purchased from different persons and from different places. As stated above, two stamp papers were purchased from Vellakoil and the remaining two were purchased from Tenkasi and Erode. It is also relevant to point out that the Sub Registrar Office is situated at Kangeyam, but these stamp papers were purchased from different places. That apart, there



was absolutely no averment either in the pre-suit notice nor in the place with regard to preparation of documents in duplicate. Rule 3 (a) of Order 39 of CPC mandates delivery of all the documents relied on by the plaintiffs, including the copy of the plaint. They have to send the documents to the defendants and file a proof. Sending documents is not necessarily through Court, this probabilise the case of the appellants that those documents were sent by the plaintiffs, especially when they failed to plead that those documents were prepared in duplicate and the first defendant was provided with one copy on the date of execution of the sale agreement.

34. From the perusal of Ex.A3, it is seen that the total extent of land and the total sale consideration was fixed based on the measurements mentioned in the parent documents. In Exs.A3 and A4, it has been stated that the first defendant has to fix the boundaries and shall take steps to measure the property with the help of Surveyor. Under Ex.A4, the plaintiffs were given permission to enter into the property to level the land. Neither in the pre-suit notice Ex.A7 nor in the plaint, the plaintiffs have stated that after entering into the agreement of sale, they had taken steps to measure the property to find out the exact extent of the suit properties.

35. It is relevant to point out that the defendants 2 and 3 issued a notice dated 10.01.2006 under Ex.A5 claiming 2/3rd share in the suit properties. It is not in dispute that even though the plaintiffs have received Ex.A5, but did not choose to send any reply. Strangely, after lapse of about 9 months, a telegram Ex.A6 was issued on 02.10.2006, requesting the first defendant to come for execution of the sale deed. Ex.A7 suit notice was also issued for the same purpose. Exs.A20 and A21 were relied on by the plaintiffs to show that on 04.10.2006, they were present in the Sub Registrar Office with the sale deed and the balance sale consideration, but the draft sale deed was not produced before the trial Court and no explanation was offered for non-production of the document. Since exact extent of the suit properties was not fixed as per Ex.A3 sale agreement, as admittedly no measurement had taken place, we wonder how the draft sale deed was prepared by the plaintiffs and they were ready for registration on 04.10.2006.

36. P.W.1 deposed that after registration of Ex.A3 sale agreement in the notary register, the advance amount of Rs.13,87,314/- and two cheques each for a sum of Rs.5,00,000/- were handed over to the first defendant, but the attesting witnesses P.W.2, P.W.3 and P.W.4 have not supported the case of



the plaintiffs with regard to payment of cash and the cheque. Therefore, except the interested testimony of P.W.1, no other evidence is available to show that the plaintiffs had paid the advance amount on 05.10.2005 as alleged by them.

37. The deposition of the witnesses are extracted hereunder:-

P.W.2:- வாதி தன்னுடைய வழக்கறிஞர் சொல்லியபடி பிரமாணப் பத்திரிகை தயார் செய்யப்பட்டது. ஒப்பந்தம் போட்டது சம்பந்தமாக விபரம் எனக்கு நேரடியாக தெரியாது. ஒப்பந்தத்தில் சாட்சி கையெழுத்து போடுமாறு வாதிகள் சொன்னதன் பேரில் கையெழுத்து போட்டேன் மற்ற விபரங்கள் தெரியாது.

P.W.3:- இந்த வழக்கு விபரங்கள் எனக்குத் தெரியாது. ஒப்பந்தத்தில் கையெழுத்து போட்டதை சாட்சி சொல்ல வந்தேன். எனக்குத் தெரிந்த விபரங்களை எழுத்து மூலமாக போடவில்லை. அந்த ஆவணங்களில் உள்ள விபரங்களை என்னால் கூற முடியாது.

P.W.4:- வாதிகள் பிரதி வாதிகளுக்கு எவ்வளவு பணம் கொடுத்தார்கள் என்று என பிரமாணப்பத்திரிகையில் கூறவில்லை (சாட்சி தாமாக 1-ம் பிரதிவாதி என நீண்ட கால நண்பர் என்பதால் பணம் கொடுத்தது பற்றி தெரியாது என்கிறார்) குறிப்பாக எவ்வளவு பணம் கொடுத்தார்கள் என்று கூற இயலாது. ஆனால் ஆவணத்தை பார்த்தால் கூற இயலும். 05.10.2005 அன்று என முன்னிலையில் பணம் கொடுத்ததை தவிர வேறு எந்த வரவு, செலவு, நடவடிக்கையம் நடக்கவில்லை.

38. It is further to be pointed out that P.W.1 in the cross examination admitted that no document was produced to prove from which Bank D.W.1 encashed the two cheques and she has not produced any material to establish that the amount was withdrawn from her account. The relevant portion is extracted hereunder:-

"மேற்படி காசோலைகளில் 1-ஆம் பிரதிவாதியின் வங்கி கணக்கில்



பெற்றுக் கொள்ளுமாறு குறிப்பிட்டு, செய்து கொடுத்தேன் என்று நியாயகம் இல்லை. அவர் எந்த வங்கியில் தாக்கல் செய்து பெற்றுக் கொண்டார் என்பது ஆவணம் எதுவும் இல்லை. என வங்கி கணக்கிலிருந்து 1-ஆம் பிரதிவாதிடம் மேற்படி பணம் பட்டுவாடா செய்ததற்கு ஆதாரம் தாக்கல் செய்யவில்லை."

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In view of the contradictions in the evidence referred supra, we are of the view that the plaintiffs failed to prove the payment of advance amount pursuant to Ex.A3 sale agreement, dated 05.10.2005.

39. P.W.4 deposed that he prepared a draft sale agreement and handed over to the plaintiffs on 05.10.2005 to be typed in a stamp paper. The draft sale agreement was typed in a computer at Kangeyam, and they returned in the evening. Thereafter, he prepared Ex.A4 consent deed and after registering Ex.A3, Ex.A4 was registered. In Ex.A4, it is mentioned that the sale agreement Ex.A3 was registered and thereafter, it was prepared, but in Ex.A-14 Notary Register, the consent deed Ex.A4 was registered first in S.No.249 and thereafter, the sale agreement Ex.A3 was registered in Sl.No.251. Ex.B1 sale agreement and Ex.B2 consent deed were registered in Sl.Nos.250 and 248. That apart, as submitted by the learned counsel appearing for the appellants, the evidence of P.W.4 shows that the plaintiffs were not known to him, but he did not get any identification records of the parties to the documents. So, it is highly unsafe to rely on the evidence of P.W.4.

40. It is apposite to mention that P.W.5 deposes that he acted as a middleman (broker) and the sale price was fixed as Rs.2,58,000/- per acre. However, in Ex.A3, sale price mentioned as Rs.2,58,088.25/- per acre. This discrepancy with regard to sale price has not been explained by the plaintiffs. Further, in Ex.A3 it is mentioned that on the date of agreement Rs.13,87,314/- was paid in cash as advance. Furthermore, the plaintiffs rely on Ex.A18 to show that the land in adjacent survey was sold for Rs.51,000/- per acre at the relevant point of time. Here also, no explanation was offered as to why they agreed to purchase the suit properties of the first defendant per acre for Rs.2,58,088.25/-. The fraction in fixing of the sale price and payment of advance amount as referred above is new in the case of sale of immovable property and unless the plaintiffs come with an explanation for fraction in the sale price and payment of advance amount, it is very difficult to accept the case of the plaintiffs and it creates a reasonable doubt.

41. As aforementioned, the receipt and encashment of cheques was denied by the first defendant. Therefore, onus of proof is on the plaintiffs. It appears that no steps was taken by the plaintiffs to discharge the burden by getting opinion from the



handwriting expert. During the trial, the first defendant took out an application, but that application came to be dismissed observing that the burden of proof is on the plaintiffs. It is an admitted fact that even thereafter the plaintiffs failed to take any steps to prove the fact that the cheques were encashed and the signatures therein are that of the first defendant.

42. According to the plaintiffs, the first defendant made proclamation of sale of the suit properties for urgent family necessities. Even though the plaintiffs have stated that Rs.13,87,314/- was paid through cash, why two post dated cheques dated 27.10.2005 and 05.11.2005 were given for a sum of Rs.5,00,000/- is not explained. The cheques were said to have been encashed on 27.10.2005 and 05.11.2005. These contradictions and inconsistencies create doubt over the case of the plaintiffs. So, we are of the view that the sale agreement Ex.A3 is not a genuine and true document and the execution of the documents is not proved by the plaintiffs.

43. The learned Senior Counsels representing the respondents contended that since the first defendant disputed the agreement of sale itself, there is no necessity to prove the readiness and willingness. We are unable to agree with the said submissions for the reasons in the decisions cited by the learned counsel appearing for the appellants in 2003 (10) SCC 390, 2008 (12) SCC 156, 2010 7 MLJ 1059 and 2022 Online SC 71, the Hon'ble Apex Court has clearly held that it is the mandate of the statute in the case of suit on specific performance to aver and prove the readiness and willingness of the plaintiff to perform their obligation under the agreement throughout the relevant points of time.

44. D.W.1 in his written statement has categorically stated that the plaintiffs are house wives and they did not have sufficient funds. In order to prove the readiness, the plaintiffs have produced the bank statement Ex.A8 relates to the first plaintiff, Ex.A9 for the second plaintiff and Ex.10 for the third plaintiff.

45. Perusal of Exs.A8, A9 and A10 would reveal that the plaintiffs failed to produce the bank transactions in their accounts from the date of the sale agreement. Ex.A8 shows that on 01.10.2006, the balance was Rs.12,269/-, on 03.10.2006, the cash of Rs.16,00,000/- was deposited in her account and on 05.10.2006, the balance was Rs.16,12,269. Likewise in Ex.A9 it relates to the period from 03.04.2006 to 23.09.2006. Cashes were deposited on different dates and the account holder concerned



withdrew the amount. Ex.A10 shows that on 03.10.2006, two cheques were made for Rs.9,90,000/- and Rs.6,10,000/-. Ex.A22 relates to Gowtham Textiles, in which, the first plaintiff and her husband were partners. The bank accounts were opened on 09.08.2005 with an opening balance of Rs.1,000/- and 12.08.2005, Rs.16,95,000/- was deposited. Out of which, Rs.14,95,000/- were withdrawn between 16.08.2005 and 22.08.2005. On 25.08.2005 Rs.5,00,000/- was deposited and Rs.7,00,000/- was withdrawn on 24.09.2005. The bank balance on 24.09.2005 was only Rs.1,000/-. On 27.10.2005, Rs.9,00,000/- was deposited and on the same day D.W.1 said to have withdrawn Rs.5,00,000/-. On 27.10.2005 a sum of Rs.1,00,000/- was deposited and on the same day D.W.1., said to have withdrawn Rs.5,00,000/-. Thereafter, the cheque issued in the account was dishonoured. Hence, Rs.900/- was deducted and Rs.55/- was deducted from the account for not maintaining the minimum balance and on 05.11.2005, the bank statement was only Rs.49/-.

46. P.W.1 deposed that a cash of Rs.10,00,000/- was given as an advance from her account and with available cash, but no particulars were produced to substantiate the same. Therefore, it is the case of the defendants that the husband of the first plaintiff Easwaramoorthy had lent Rs.10,00,000/- to the first defendant on 05.10.2005. When the first defendant has clearly stated that the husband of the first plaintiff was known to him and he approached him for borrowing money, neither the first plaintiff nor her husband chose to give any evidence in this case.

47. It is the submission of the learned counsel appearing for the appellants that the suit was decreed on 29.04.2008 and the balance sale consideration was directed to be paid within 30 days to the first defendant, failing which, they are entitled to deposit the balance consideration in the Court. In this Appeal, the stay was granted on 06.08.2008, however, till then, the plaintiffs did not comply the direction issued by the trial Court. In the written argument also, this point has been stated by the appellants, but it is not denied by the respondents. If the plaintiffs had sufficient money, they would have tendered the balance sale consideration to the first defendant or deposited the amount in the Court as per the decree. Therefore, the inevitable conclusion is that they were not ready with the money.

48. It is fairly well settled that in the case of suit for specific performance, it is the mandatory requirement of law that the plaintiffs shall plead and prove their readiness and willingness to perform their obligation under the agreement of sale from the date of agreement till the date of decree. It is also obligatory on the part of the trial Court to frame an issue with regard to readiness and willingness and render a finding.



There is no dispute with regard to the proposition suggested by the learned Senior Counsels appearing for the respondents that the plaintiffs have to establish their capacity to pay the sale consideration and they need not always carry the money, but the requirement of law as pointed out above, there shall be proper pleading and proof. Readiness and willingness to perform part of contract of the plaintiffs is required to be examined with reference to all the facts and surrounding factors of the given case. But, in the case on hand, no issue was framed by the learned trial Judge. It is settled legal principle that the plaintiff has to succeed or fail on his own case and he will not be permitted to take advantage on the laches if any, in the case of the defendants. Taking holistic view of the matter, in our considered view, the plaintiffs failed to prove their readiness and willingness in this case as required under Section 16(c) of the Specific Relief Act. Therefore, the plaintiffs are not entitled for the relief sought for in the suit.

49. Here we like to point out that there is absolutely no quarrel over the propositions stated in the decisions cited by the learned Senior Counsel appearing for the respondents, but in our considered opinion, they have no application to the facts of this case, for the reasons except in one case, execution of agreement was admitted, but the defence was that it was a loan transaction and they have mistakenly signed in the documents. But in the instant case, the first defendant at the very beginning itself has clearly denied the execution of Exs.A3 and A4 and also denied his signature in Ex.A14. For non-appearance of first defendant in the Registrar Office on 04.10.2006, it is his case that he did not receive the telegram said to have been given on 02.10.2006 and the pre-suit notice was served him only on 11.10.2006. The service of telegram is not proved. Even in the case of dispute in execution of the agreement, the Nagpur High Court in AIR 1938 NAG 152, states that burden shifts on the defendant to prove the special circumstances which according to them rendered this execution nugatory. In this case, to disprove the case of the plaintiffs, the first defendant examined himself as D.W.1 and also discharged his burden of proof through P.W.2 to P.W.4. With regard to exclusion of oral evidence under Section 92 of the Evidence Act, it is settled legal position that when a true character of document itself is questioned, extrinsic evidence by way of oral evidence is admissible. [Vimal Chand Ghevarchand Jain Vs. Ramkant Exnath Jadoo [(2009) 5 SCC 713]. It is equally well settled that Section 92 excludes admission of oral evidence for the purpose contradicting, varying or subtracting from its terms of documents. Hence, with great respect, we are not able to follow the decision cited by the learned Senior Counsel for the respondents.



50. Since the first defendant has admitted that he borrowed Rs.10,00,000/- from the husband of the first plaintiff on 05.10.2005, the first defendant is liable to return the amount to the plaintiffs with interest at the rate of 12% per annum.

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51. For the foregoing reasons, the appellants are entitled to succeed in this Appeal. In that view, the Judgment and Decree of the trial Court is set aside and the Appeal is allowed with costs. The plaintiffs are entitled for a decree to recover a sum of Rs.10,00,000/- from the first defendant with interest at the rate of 12% per annum from from the date of agreement i.e., 05.10.2005 to till the date of realization. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

s k n

To

The Principal District Court,
Erode.

Copy to
The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to Mr.R.Baskar, Advocate, S.R.No.29167
+1cc to Mr.K.K.Ramakrishnan, Advocate, S.R.No.28842

Pre Delivery Judgment made in
A.S.No.653 of 2008 &
M.P.Nos.1 of 2008 and 1 of 2009 &
C.M.P.No.6476 of 2022

SSV(CO)
KKV/10/05/2022