



A.S.No.187 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON	JUDGMENT PRONOUNCED ON
07.11.2022	24.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

A.S.No.187 of 2017

1.M.Palanisamy

2.P.Parameshwari

... Appellants

Vs.

1.S.Mohan Sankar

2.N.Murugusamy

... Respondents

(2nd respondent as Power Agent of
M.Palanisamy and P.Parameshwari vide order
of this Court dated 29.01.2018 made in C.M.P.
No.540 of 2018 in A.S.No.187 of 2017)

Prayer: This First Appeal is filed under Section 96 of the C.P.C., 1908,
against the judgment and decree dated 08.03.2017 made in O.S.No.204 of
2014 on the file of the III Additional District Court, Dharapuram, Tiruppur
District.



A.S.No.187 of 2017

For Appellants : Mr.T.Murugamanickam
Senior Counsel
for Ms.Zeenath Begum

For R1 : Mr.D.Rajagopal

For R2 : No appearance

J U D G M E N T

[Judgment of the Court was delivered by V.M.VELUMANI,J.]

The defendants 1 & 2, who have suffered a decree in O.S.No.204 of 2014 on the file of the III Additional District Court, Dharapuram, Tiruppur District, are the appellants herein. The 1st respondent herein is the plaintiff, who filed said suit seeking a decree of specific performance of agreement of sale dated 02.11.2011. The 2nd respondent is 3rd defendant in the said suit. After contest, the suit was decreed by the judgment and decree dated 08.03.2017.

Case of the 1st respondent:

2.The 1st appellant is owner of portion of the suit property, he having purchased the property by sale deed dated 15.11.2006 along with one Subramaniam. The 2nd appellant by deed of sale dated 31.03.2008 purchased a



A.S.No.187 of 2017

portion of the suit property. The appellants and the joint owners Ramasamy Gounder and Subramaniam partitioned the suit property and other properties by the registered partition deed dated 30.08.2011. In the said partition, suit property and other properties were allotted to the appellants.

2(i) The appellants decided to sell the suit property and by General Power of Attorney dated 01.11.2011, appointed 2nd respondent as their Power Agent with power to sell the property. The 1st respondent approached the 2nd respondent to purchase the suit property, who agreed to sell the suit property for a total sale consideration of Rs.58,68,000/-. The 1st respondent agreed for the same. The 1st respondent and 2nd respondent entered into an agreement of sale dated 02.11.2011. The 1st respondent paid a sum of Rs.40,00,000/- to the 2nd respondent in the presence of witnesses. It was agreed that 1st respondent has to pay the balance sale consideration of Rs.18,68,000/- within three years from the date of agreement and get the sale deed executed in his favour. The 2nd respondent handed over all the original documents of title of the suit property to the 1st respondent.

2(ii) The 1st respondent was always ready and willing to pay the



A.S.No.187 of 2017

balance sale consideration and get the sale deed executed in his favour. The

1st respondent met the 2nd respondent and appellants requested them to execute the sale deed, but they were evasive. The 1st respondent sent a notice dated 06.09.2014 to the 2nd respondent and appellants. After receiving notice, they have not come forward to execute the sale deed in respect of the suit property. The 2nd respondent sent a reply dated 16.09.2014 stating that the appellants without giving any notice to him, had cancelled the Power of Attorney dated 01.11.2011 on 27.02.2014 and informed the 1st respondent to approach the appellants to pay the balance sale consideration and get the sale deed executed in his favour. The appellants sent a reply dated 29.09.2014 containing false allegations.

2(iii) The 1st respondent was and is always ready and willing to pay balance sale consideration of Rs.18,68,000/- and get the sale deed executed in his favour.

2(iv) On the above averments, the 1st respondent filed O.S.No.204 of 2014 on the file of the III Additional District Court, Dharapuram, Tiruppur



A.S.No.187 of 2017

District, for the relief of specific performance and injunction and in the alternative, to refund a sum of Rs.40,00,000/- together with interest at the rate of 12% per annum till repayment.

Case of the appellants:

3.The appellants filed written statement and denied all the averments of the 1st respondent. According to appellants, the 1st appellant suffered loss in his business and approached 2nd respondent, who is a money lender (Kandhu vatti financier) through one broker Palanisamy, for a loan of Rs.10,00,000/-. The 2nd respondent insisted the appellants to execute Power of Attorney appointing him as their agent, signed blank stamp papers, unfilled signed cheques and hand over original documents of title for security purpose. The appellants borrowed Rs.10,00,000/- on 01.11.2011 and executed a Power of Attorney and registered the same in Sub-Registrar's Office, Kangeyam, as document No.833/2011. The appellants also handed over two unfilled cheque Nos.000142 & 000143 drawn on Bank of Baroda, SSI Branch, Tiruppur.

3(i) The appellants paid interest upto September 2013 without fail and



A.S.No.187 of 2017

on 09.10.2013 paid principal sum of Rs.10,00,000/- together with interest.

The appellants requested the 2nd respondent for cancellation of Power of Attorney and return the documents. The 2nd respondent informed the appellants that he had misplaced some of the documents and dragged on by giving false excuse and did not issue receipt. On 24.02.2014, the appellants approached the 2nd respondent to cancel the Power of Attorney dated 01.11.2011 under document No.833/2011. The 2nd respondent demanded further sum of Rs.5,00,000/- and threatened that if they failed to pay the same, he will create encumbrance over the property.

3(ii) The 1st respondent is a close relative of 2nd respondent. The 1st respondent is a stranger to the appellants and they have not seen the 1st respondent. The document dated 02.11.2011 coloured as agreement of sale was created by the 2nd respondent through 1st respondent and misused and created the agreement of sale dated 02.11.2011. The appellants denied the allegations that sale amount was fixed as Rs.58,68,000/- and Rs.40,00,000/- was paid as advance, the execution of sale agreement dated 02.11.2011 and



A.S.No.187 of 2017

three years time fixed for execution of sale deed. The appellants also denied the allegations that 2nd respondent handed over advance money to the appellants and obtained receipt of the same.

3(iii) The 2nd respondent on several occasions obtained Power of Attorney from the appellants and used to create agreement of sale in favour of his wife jointly. On discharge of loan amount, Power of Attorney and agreement of sale were cancelled and handed over to the appellants. Previously, the 2nd respondent dealt with landed properties of appellants for loan transaction. The dates of execution of Power of Attorney and cancellation are given hereunder:

<i>Date of execution of Power of Attorney</i>	<i>Date of Cancellation of Power of Attorney</i>
28.08.2007	30.04.2008
03.04.2008	03.05.2010
24.07.2008	18.09.2009
27.09.2011	29.11.2011

3(iv) The 2nd respondent used to create sale agreement in the name of his wife and subsequently, used to cancel the same. The sale agreements



A.S.No.187 of 2017

dated 24.09.2007 and 30.04.2008 and cancellation of sale agreements dated 03.10.2010, 03.11.2011 and 29.11.2011 are available with the appellants. In the present suit, the 2nd respondent created unregistered sale agreement dated 02.11.2011 in the name of 1st respondent, who is brother of his son-in-law. The sale agreement dated 02.11.2011 is fabricated and filed for the purpose of this suit.

3(v) In the notice dated 26.08.2014, the 2nd respondent has not given the details about the property and address of the persons viz., Kovai Sivaprakash and Perundurai Arumugam. When the above two persons also entered into sale agreements, the 2nd respondent has not given any reason for having handed over Power of Attorney to the 1st respondent.

3(vi) The 1st respondent has not given any notice of his readiness and willingness prescribed under law. The sale agreement dated 02.11.2011 is fabricated after the notice dated 09.08.2014 issued by the appellants through their Advocate. Agreement of sale dated 02.11.2011 is fabricated one as 1st respondent has issued notice dated 06.09.2014 after two years nine months.



A.S.No.187 of 2017

3(vii) The 1st respondent has to prove the alleged sale agreement and payment of Rs.40,00,000/- and two other advance amounts of Rs.60,00,000/- to the appellants. The 1st respondent has not filed original receipts along with plaint. The appellants have also denied all the averments in the sale agreement dated 02.11.2011 and stated that no cause of action has arisen for the suit. The persons mentioned in the notice of 2nd respondent dated 26.08.2014 are not known to the appellants and prayed for dismissal of the suit.

Case of the 2nd respondent:

4. The 2nd respondent filed written statement and stated that appellants have executed Power of Attorney on 01.11.2011 in his favour, he executed sale agreement dated 02.11.2011 in favour of 1st respondent, received Rs.40,00,000/- as advance from the 1st respondent and handed over the said advance amount to the appellants. The appellants issued receipt for having received the said amount. The appellants without informing the 2nd respondent, cancelled the Power of Attorney on 27.02.2014. The appellants sent a notice dated 09.08.2014 to the 2nd respondent through Advocate



A.S.No.187 of 2017

containing false allegations. On receipt of said notice, the 2nd respondent came to know about the cancellation of Power of Attorney by obtaining Encumbrance Certificate. The 2nd respondent sent a reply through his Advocate to the appellants informing them about agreement of sale dated 02.11.2011 with 1st respondent. In the written statement, he also stated that in view of cancellation of Power of Attorney by the appellants, he lost his right to execute the sale deed and only appellants are liable to execute the sale deed. It is for the 1st respondent to prove that he approached the 2nd respondent to execute the sale deed and that 1st respondent was always ready and willing to perform his part of contract by paying balance sale consideration and prayed for dismissal of the suit.

5. Based on the pleadings, the learned Judge framed the following issues:

- “1. தாவா கிரைய ஒப்பந்தம் 3-ம் பிரதிவாதியால் மோசடியாக வாதிக்ஞ எழுதிக் கொடுக்கப்பட்டதாகச் சொல்வது சரியா?
2. வாதி விருப்ப நிலையிலும் தயார் நிலையிலும் இருந்தாரா?
3. வாதி கோரிய ஏற்றுதல் ஆற்றுகைப் பரிகாரம் கிடைக்கத்தக்கதா?
4. வேறு என்ன பரிகாரம்? ”



A.S.No.187 of 2017

6. Before the learned Judge, the 1st respondent examined himself as P.W.1, one Ayyasamy, was examined as P.W.2 and marked 14 documents as Exs.A1 to A14. On the side of the respondents, 1st appellant examined himself as D.W.1 and marked 17 documents as Exs.B1 to B17 and 2nd respondent examined himself as D.W.2 and marked 10 documents as Exs.B18 to B27.

7. The learned Judge considering the pleadings, oral and documentary evidence, decreed the suit ordering specific performance of agreement of sale dated 02.11.2011 and dismissed the relief of injunction. The learned Judge granted two months time to the 1st respondent to deposit balance sale consideration.

8. Against the said judgment and decree dated 08.03.2017 made in O.S.No.204 of 2014, the appellants have come out with the present appeal.

9. The learned Senior Counsel appearing for the appellants contended that the 1st respondent is a Financier. The appellants on several occasions borrowed moneys and discharged the said amounts. The procedure followed



A.S.No.187 of 2017

is that appellants will execute Power of Attorney in favour of 2nd respondent, who in turn will enter into agreement of sale with his wife Jayanthi. Both the documents will be registered. Whenever the appellants repay the loan, the 2nd respondent will cancel the Power of Attorney as well as agreement of sale. The appellants have produced such cancelled Power of Attorneys as well as agreement of sale and marked as Exs.B1, B4, B5, B8, B9, B11, B14 and B15.

9(i) The appellants borrowed Rs.10,00,000/- from the 2nd respondent on 01.11.2011 and executed Power of Attorney, signed blank stamp papers, two blank cheques and handed over all the documents to the 2nd respondent. The appellants also handed over original documents of title, which clearly shows that Power of Attorney, handing over documents of title and other documents are only for security of the amounts borrowed by the appellants.

9(ii) Power of Attorney dated 01.11.2011 marked as Ex.A7 was executed only for loan transaction as could be seen that on the date of Ex.A7, already the Power of Attorney dated 27.09.2011 Ex.B12 was in force and the 2nd respondent realising the same, cancelled the Power of Attorney Ex.B12 on 29.11.2011 by Ex.B14.



A.S.No.187 of 2017

9(iii) The agreement of sale dated 02.11.2011 Ex.A8 is anti-dated for the following reasons:

(a) The 1st respondent is a resident of Coimbatore and suit property is in Tiruppur District.

(b) Power of Attorney Ex.A7 is dated 01.11.2011 and it is unbelievable that 2nd respondent was able to find a purchaser within a day.

(c) The 1st respondent is brother of 2nd respondent's son-in-law.

(d) It is usual practise of 2nd respondent that after execution of Power of Attorney, he will register the agreement of sale. In the present case, agreement of sale dated 02.11.2011 Ex.A8 is unregistered for a high value of Rs.58,68,000/-.

(e) The respondents have not obtained Encumbrance Certificate. The 1st respondent did not inspect the suit property. This shows that Ex.A8 is not true.

9(iv) There is no privity of contract between the appellants and 1st respondent. The appellants have not received any consideration from the respondents. The stamp receipt Ex.B18 cannot be true. The stamp papers had



A.S.No.187 of 2017

been purchased from the stamp vendor Gnanambal on 01.11.2011. The serial numbers in the stamp papers for Exs.A7, A8 and B18 would show that 2nd respondent is concocting the documents in collusion with 1st respondent, who is his close relative. The receipt Ex.B18 cannot be true as 1st respondent did not even mention in his notice Ex.A9 and said document was not filed along with plaint.

9(v) Ex.B18 mentions that a sum of Rs.40,00,000/- was paid in the presence of witnesses, but the receipt does not show that same was attested by witnesses. Further such a huge amount of Rs.40,00,000/- would normally be paid by pay order or demand draft. For these reasons, the learned Judge ought to have held Exs.A8 and B18 are not true. Even if Ex.A8 sale agreement is true, the 1st respondent had issued notice Ex.A9 only on 06.09.2014 at the fag end of three years period fixed in Ex.A8 and suit filed after three years shows that 1st respondent was not ready and willing to perform his alleged part of contract.

9(vi) The 1st respondent failed to prove his financial capacity and as how he had such a huge amount of Rs.40,00,000/- within one day of Ex.A7 of



A.S.No.187 of 2017

Power of Attorney dated 01.11.2011 and paid the same on 02.11.2011, date of Ex.A8 agreement of sale. Ex.A13 bank statement does not relate to 1st respondent, but it relates to Sree Kailaii Spinners Private Limited, in which 1st respondent is alleged to be a Director. The 1st respondent did not deposit balance sale consideration along with plaint. The 1st respondent has belatedly expressed his readiness and lacks willingness.

9(vii) The learned Judge erred in holding that Ex.A7 Power of Attorney is “coupled with interest”. In the Power of Attorney, it has been stated that no consideration was received for the Power of Attorney. Exs.B18 to B20 receipts were marked subject to objection. Ex.B18 relates to suit property. The said exhibit contains all the properties. If really the said receipt relates to suit property, only the suit property should have been mentioned in Ex.B18.

9(viii) According to the respondents, the 1st respondent paid Rs.40,00,000/- to the 2nd respondent. If really the said amount was paid on 02.11.2011, the same ought to have been made over in Ex.A7 and handed over to the appellants in the presence of witnesses.



A.S.No.187 of 2017

9(ix) Exs.B19 and B20 are dated 03.11.2011 & 06.11.2011 and both the stamp papers were purchased on 01.11.2011 from the same stamp vendor Gnanambal and contains description of all the properties instead of the respective properties. These facts show that Exs.B18 to B20 are concocted one.

9(x) In the reply Ex.B17 sent by the 2nd respondent, he has mentioned two other agreements of sale with Arumugam and Sivaprakash, who have not mentioned their addresses and not filed said agreement of sale. Even though it is alleged that two persons referred to above paid Rs.30,00,000/- each as advance to the appellants, till date no legal proceedings had been initiated by those persons against the appellants.

9(xi) P.W.2 is a real estate broker. He deposed that he took 1st respondent to the suit property in October 2011 itself. The evidence of P.W.2 is unbelievable as Power of Attorney is dated 01.11.2011. P.W.2 and 2nd respondent could not have been anticipated the sale of the suit property.



A.S.No.187 of 2017

9(xii) The agreement of sale Ex.A8 is in the above circumstance is fabricated and anti-dated by the 2nd respondent in collusion with the 1st respondent. The learned Senior Counsel appearing for the appellants further contended that the 1st respondent was not ready and willing to perform his part of contract. In Ex.A8, time limit fixed is three years. The 1st respondent at the fag end of three years only issued Ex.A9 notice dated 06.09.2014, expressing his readiness and willingness to perform his part of contract. If really the 1st respondent was ready and willing to perform his part of contract, he could have easily paid the balance sale consideration and got the sale deed executed in his favour. The action taken by the 1st respondent after three years of Ex.A8 agreement of sale shows that the 1st respondent was not willing to perform his part of contract.

9(xiii) As far as readiness is concerned, the 1st respondent must prove that he had capacity to pay the balance sale consideration and perform his part of contract. The 1st respondent produced Ex.A13 Bank Statement only for two months viz., September and October 2014. The said Bank account is not an individual Bank account of 1st respondent. It is relating to the Bank



A.S.No.187 of 2017

account of Sree Kailaii Spinners Private Limited. The 1st respondent in his cross-examination as P.W.1 has stated that he borrowed a sum of Rs.40,00,000/- and therefore, Ex.A13 has no relevance and it is not proved that 1st respondent was having sufficient funds to pay the balance sale consideration and prayed for allowing the appeal.

9(xiv) In support of his contentions, the learned Senior Counsel appearing for the appellants relied on the following judgments:

(i)(1997) 9 SCC 634 [Tejram Vs. Patirambhau] :

“4.Having regard to respective contentions, the question that arises for consideration is; whether the respondent has paid Rs.48,000/- as cash consideration towards sale transaction? It is seen that document purporting to be an agreement of sale was not , in fact, in truth and in reality, not an agreement of sale, witness No.2, the scribe of the agreement admitted in the examination-in-chief that he had executed several similar documents. All those documents i.e., 10 out of 8, relate to specific performance; all of them are of those who took loan from the respondents. It is an admitted position that the respondent is a money- lender. Under these circumstances,



A.S.No.187 of 2017

the document purporting to be an agreement for sale is in fact not an agreement for sale; it is towards the unpaid interest on the loan taken by the respondent. It is seen that the High Court also accepted that the appellant had taken a loan in 1965 for a sum of Rs.1500/- and repaid Rs.3500/-. Shri Deshpande says that the sum of Rs. 15,000/- is not factually correct; it is actually only Rs.1,500/-. If it is true sale transaction and the respondent being a businessman and having purported to have paid Rs.48,000/-, one would expect that he would seek possession or he would pay the balance consideration and request for execution of the sale deed. Instead, he kept quiet for full 3 years. be that as it may, it would appear that there was money transaction between the appellant and the respondent and the respondent, being money-lender, was taking documents, purporting to be an agreement of sale, from the loanees. In the event of the loanees failure to pay the loan amount along with interest stipulated by him, the documents would, obviously, be executed, with a view to enforce the repayment of loan and interest accrued thereon. it is unlikely that being a money-lender and having parted with Rs.48,000/- as cash, he would have kept quiet either for seeking possession of the property or payment of Rs.2,000/- immediately and then sought specific performances; it



WEB COPY



A.S.No.187 of 2017

would be unlikely in the normal circumstances that he would have waited for 3 years for issuing notice and then filing suit on the last date. Under these circumstances, the Courts below rightly came to the conclusion that it is not an agreement for sale or purports to be a sale in truth and in reality, but in view of the admission made by the respondent by way of endorsement that he had received Rs.48,000/- and in the absence of any specific circumstances and in view of the doubtful conduct of both the parties, it is not possible for us to reach any satisfactory conclusion on the basis of evidence as to what was the amount actually due to paid by the appellant to the respondent and what amount is still payable. Under these circumstances, we are of the considered view that the ends of justice would be met if the conclusion reached by the High Court that a sum of Rs.48,000/- was paid by the respondent to the appellant, is confirmed. However, respondent is not entitled to payment of any interest or cost, as ordered by the High Court. Under these circumstances, the order of the Division Bench of the High Court for payment of Rs.65,280/- is set aside. Instead, there will be a decree for a sum of Rs.48,000/- in lump-sum without any interest.”



(ii) **MANU/SC/1179/2017, [Bhagirath Vs. Ram Ratan]:**

WEB COPY

“12. There are several factors which weigh with us in setting aside the judgment and order passed by the High Court; firstly that agreement is shrouded in mystery even if its execution is found to be established it would give an undue advantage to the Plaintiff as admittedly money had been taken by the deceased Motilal for the purpose of his treatment. He was seriously ailing at that time and died. Prima facie execution of the agreement appears to be as if it was executed for the purpose of obtaining the money for the purpose of treatment only. The land was never actually intended to be sold. Land was approximately in area eight bighas and it could not have been sold for a paltry sum of Rs. 3,000/-. Secondly when substantial consideration in the form of earnest money had been advanced by a lawyer that too in the year 1977 he would not wait for six years till 1983 even for asking for the first time that too to the son of the deceased Motilal to perform the agreement. Keeping silence for six years indicates that agreement was for obtaining money for treatment only and otherwise also Plaintiff had not been ready and willing to perform his part of the contract. Thirdly, it would be iniquitous even if agreement has been executed to decree the specific performance considering the delay on the part of the



A.S.No.187 of 2017

Plaintiff in asking son of Motilal to perform agreement and in filing the suit. He has filed a suit after more that six years of the execution of agreement thus the findings which had been arrived at by the first appellate court were absolutely proper. We have gone through it anxiously, the Plaintiff had not been able to prove his readiness and willingness. He has awoken in the year 1983 to seek the specific performance and kept quiet for a period of six years thus it could not be said that Plaintiff-Ram Ratan who was an advocate was vigilant towards his rights, if any, for seeking specific performance. The first appellate court was fully justified in setting aside the judgment passed by the trial court. ”

(iii)1987 (Supp) SCC 340, [Parakunnnan Veetill Joseph's son Mathew

Vs. Nedumbara Kuruvila's son and others]:

“14.Section 20 of the Specific Relief Act, 1963 preserves judicial discretion of courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take



WEB COPY



A.S.No.187 of 2017

care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. The High Court has failed to consider the motive with which Varghese instituted the suit. It was instituted because Kuruvila could not get the estate and Mathew was not prepared to part with it. The sheet anchor of the suit by Varghese is the agreement for sale Ex.A1. Since Chettiar had waived his rights thereunder, Varghese as an assignee could not get a better right to enforce that agreement. He is therefore, not entitled to a decree for specific performance.”

10. The learned counsel appearing for the 1st respondent contended that the appellants decided to sell the suit property and by registered Power of Attorney dated 01.11.2011 appointed the 2nd respondent as their agent with power to sell the suit property. The 1st respondent approached the 2nd respondent to purchase the suit property. The 2nd respondent agreed to sell the property for a sale consideration of Rs.58,68,000/- and an agreement of sale was entered into between the 2nd respondent as agent of appellants and 1st respondent on 02.11.2011. The 1st respondent paid a sum of Rs.40,00,000/- as advance on that date. Three years time is fixed for paying the balance sale



A.S.No.187 of 2017

consideration of Rs.18,68,000/- and complete the contract. All the terms and conditions were mentioned in the agreement of sale dated 02.11.2011 Ex.A8.

10(i) The 1st respondent was always ready and willing to pay the balance sale consideration of Rs.18,68,000/- and get the sale deed executed in his favour. The 1st respondent approached the appellants and 2nd respondent on many occasions. They evaded to receive the balance sale consideration and execute the sale deed. The 1st respondent issued notice dated 06.09.2014 Ex.A9 through his Advocate, calling upon them to receive the balance sale consideration within 15 days, execute the sale deed and hand over the possession of suit property. The 2nd respondent sent a reply dated 16.09.2014 informing the 1st respondent that appellants without any notice, on 27.02.2014 cancelled the Power of Attorney and that 1st respondent has to directly approach the appellants. The appellants sent a reply dated 29.09.2014 to the notice dated 06.09.2014 issued by the 1st respondent containing false allegations.

10(ii) The contention of the appellants that they executed Ex.A7 Power of Attorney only as security for the loan of Rs.10,00,000/- taken from the 2nd



A.S.No.187 of 2017

respondent and that they did not execute the Power of Attorney for the sale of suit property are not correct. The various Power of Attorneys and sale agreements relate to other properties and do not relate to the suit property. The 1st respondent has proved the agreement of sale dated 02.11.2011 Ex.A8 and payment of advance of Rs.40,00,000/- by marking receipts issued by the appellants under Ex.B18 through 2nd respondent. The learned Judge considering the pleadings oral and documentary evidence, held that Exs.A8 and B18 are genuine by giving valid reasons.

10(iii) The contention of the appellants that the 1st respondent and 2nd respondent, who are close relatives, in collusion with each other, created Exs.A8, B18 to B20 and anti-dated Ex.A8 are not correct. The contention of the appellants that they repaid the loan of Rs.10,00,000/- with interest on 09.10.2013 to the 2nd respondent, who evaded returning the Power of Attorney dated 01.11.2011 after cancelling the same and other documents are not correct. The appellants have not initiated legal proceedings against the 2nd respondent for cancellation of Power of Attorney and for return of alleged signed blank stamp papers and cheques. Even though the appellants have



A.S.No.187 of 2017

cancelled the Power of Attorney, without any notice to the 2nd respondent, on 27.02.2014 Ex.B1, they issued notice to the 2nd respondent only on 09.08.2014 Ex.B16. Even after cancelling the Power of Attorney, the appellants did not take any legal proceedings against the 2nd respondent. The appellants have come out with false defence only with a view to defeat the interest of the 1st respondent and to sell the suit property to third party for higher price.

10(iv) The contention of the learned Senior Counsel appearing for the appellants that 1st respondent has approached the Court at the end of three years, which shows that 1st respondent was not ready and willing to perform his part of contract, is not acceptable. Three years time is fixed in the agreement of sale itself. Even before expiry of time fixed in the agreement of sale, the 1st respondent issued notice through his Advocate and filed the suit immediately, when appellants sent a reply containing false allegations.

10(v) The 1st respondent was always ready and willing to perform his part of contract by paying the balance sale consideration and get the sale deed



A.S.No.187 of 2017

executed in his favour. The 1st respondent has produced Ex.A13 Bank Statement of account of Sree Kailaii Spinners Private Limited, in which he is a Director. The learned Judge properly considered all the materials produced and by giving cogent and valid reasons, held that 1st respondent was ready and willing to perform his part of contract and granted the relief of specific performance.

10(vi) The Power of Attorney dated 01.11.2011 Ex.A7 is a registered Power of Attorney. The 1st respondent entered into agreement of sale on 02.11.2011, when Power of Attorney was in force. The 1st respondent paid a sum of Rs.40,00,000/- on that date and the same is incorporated in the agreement of sale. The 2nd respondent handed over the said sum of Rs.40,00,000/- to the appellants and obtained stamped receipt Ex.B18. The learned counsel appearing for the 1st respondent further contended that Power of Attorney was partly acted upon and as per Section 204 of the Contract Act, the appellants cannot revoke the authority given to the 2nd respondent.

10(vii) The appellants cancelled the Power of Attorney after 2 ½ years without issuing notice to the 2nd respondent and issued notice informing



A.S.No.187 of 2017

cancellation after three years. The appellants are well educated people and

their contention that they were forced and coerced to execute the registered

Power of Attorney cannot be accepted. The appellants have not issued any

notice to the 2nd respondent, when in September 2013, the 2nd respondent

alleged to have evaded cancelling the Power of Attorney and returning the

documents. The appellants had not given any complaint to the Police or had

not filed any suit against the 2nd respondent for return of documents and

cancellation of Power of Attorney. The original documents of title handed

over to the 1st respondent by 2nd respondent on the date of Ex.A8 sale

agreement are still with the 1st respondent. The appellants have not initiated

any legal proceedings seeking return of original documents of title. There is

no reason to set aside the well considered judgment and decree of the learned

Judge and prayed for dismissal of the appeal.

10(viii) In support of his contentions, the learned counsel appearing for the 1st respondent relied on the following judgments:

(i) 2017 SCC OnLine Mad 4978 : (2017) 3 MWN (Civil) 350

[M.Masilamani Vs. M.Veeramani and another]:



A.S.No.187 of 2017

“31. It is settled that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspects. Therefore, it is well settled that judicial precedent cannot be followed as statute and has to be applied with reference to the facts of the case involved in it. In this case ownership of property is admitted. Power of attorney executed in favour of the 2 defendant is also admitted. The cancellation of power of attorney is only subsequent to the sale agreement is also admitted. No notice was issued to the 2 defendant before the cancellation of the power deed is also admitted. The original title deeds handed over to the 2 defendant is also admitted and now all the original title deeds were produced by the plaintiff into the court also admitted. From the date of agreement till the date of filing the suit, the said documents were with the plaintiff is also admitted. The 2 defendant who alleged to have executed sale agreement is remained ex-parte and he has not contested the suit. The 1 defendant has not taken any steps to get back the original title deeds also admitted. Further, as already stated that the plaintiff has proved the execution of sale agreement and he is also ready and willing to perform his part of contract throughout. Under said circumstances, the authorities submitted by the



A.S.No.187 of 2017

learned counsel for the appellant/1 Defendant are not applicable to the present case on hands.”

(ii)AIR 2022 Mad 218 [T.P.Ponnusamy Vs. R.Devaraj]:

“10.1. The appellant and respondent entered into a sale agreement on 28.08.2011 and fixed the time for performance as three months. As per the terms of agreement, the appellant/defendant undertook to demarcate the subject matter of the sale agreement and clear the encumbrance over the same. It is settled law that in case of sale agreement concerning immovable property, the time is not essence of the contract. Whenever the question arises, whether the time is essence of the contract, the same has to be decided based on the conduct of the parties and totality of the circumstances and mere existence of forfeiture clause itself would not make time essence of contract. It is useful to refer to the observations of five member Bench of the Apex Court reported in MANU/SC/0285/1993 : AIR 1993 SC Page. 1742 in Smt. Chand Rani (dead) by Lrs, Vs. Smt. Kamal Rani (dead) by Lrs in this regard. The observation of Apex Court is as follows:

"It is not merely because of specification of time at or before which the thing to be done under the contract is promised to be done and



WEB COPY



A.S.No.187 of 2017

default in compliance therewith, that the other party may avoid the contract. Such an option arises only if it is intended by the parties that time is of the essence of the contract. Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract. Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immovable property, it would normally be presumed that time was not of the essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence."

.. . . .

10.3. The appellant as DW.1 has also admitted the execution of original sale agreement, Ex.A1 and the execution of time extension agreement, Ex.A2. His wife is the attesor to the said documents. After admitting the execution of Ex.A2-extension agreement, DW.1, deposed that he signed Ex.A2 agreement, on compulsion employed by the respondent/plaintiff. It is settled law that the parties



WEB COPY



A.S.No.187 of 2017

cannot lead evidence without the support of plea. In the written statement filed by the appellant, there is no whisper about the alleged compulsion by the plaintiff. Therefore, the evidence of DW.1 in the witness box as if he signed Ex.A2 on compulsion made by the plaintiff deserves to be rejected as an afterthought. It is also pertinent to mention that DW.1 also admitted that he did not make any complaint to police or private complaint to Magistrate, regarding alleged compulsion employed by plaintiff. The execution of Exs.A1 and A2 have been proved by the plaintiff by his own evidence and also that of the attestor PW.2. Nothing had been culled out from their cross examination to doubt their evidence. Therefore, this Court has no hesitation in holding that both the parties out of free will, mutually agreed to extend the time and entered into time extension agreement under Ex.A2. Therefore, the contention of the learned counsel for the appellant that Ex.A2-extension agreement is not a valid document in eye of law is rejected. Once we come to the conclusion Ex.A2-time extension agreement is valid in eye of law, the time limit of three months fixed in the earlier original agreement pales in to insignificance.

Point No(b): WHETHER THE RESPONDENT/PLAINTIFF PROVED HIS READINESS AND WILLINGNESS TO



WEB COPY



A.S.No.187 of 2017

PERFORM HIS PART OF THE CONTRACT:

11.1. In order to prove his readiness and willingness, the plaintiff examined himself as PW.1 and an independent witness as PW.2. The evidence of PW.1 and PW.2 are complementary to each other. The plaintiff also produced the bank statement of accounts issued by Indian Bank, R.S. Puram Branch, Coimbatore as Exs.A10 and A11. A look at Exs.A10 and A11, make it clear that the respondent/plaintiff has got over drawing power up to Rs. 1 Crore. The cursory look at Exs.A10 and A11 proves that during the period from 02.08.2011 to 31.01.2013, the respondent had over drawing balance of more than Rs. 21,00,000/- at most of the time except on few days. Therefore, from Exs.A10 and A11, it is very clear that the respondent possessed sufficient means to pay the balance sale consideration of Rs. 21,45,000/-, at any point of time from the date of agreement to the date of filing of the suit. When it come to the financial capacity of the parties, it is not necessary that the party should physically possess the balance amount with him from the date of agreement to the date of plaint. If it is shown that the party had sufficient means to mobilize the balance amount required within a short span of time, the same is sufficient. Hence the financial capacity of the



respondent/plaintiff has been established beyond any doubt.

11.2 Exs.A3 and A4, dated 03.11.2012 and 12.12.2012 are letters issued by the plaintiff to defendant calling upon him to come forward and execute the sale deed as per the agreement. The receipt of the same was admitted by DW.1. In response to these letters, the appellant/defendant has neither come forward to execute the sale deed nor issued any suitable reply explaining his inability to execute the sale deed. Subsequently, on 19.12.2012, the respondent/plaintiff issued a legal notice to the defendant, calling upon him to appear before the concerned Sub Registrars Office on 24.12.2012 for execution and registration of the sale deed, as per the agreement and the same was received by him on 20.12.2012. The defendant failed to honour his part of the contract and make himself available before the Sub Registrar for execution of sale deed as demanded by the plaintiff. The said legal notice was issued well within the time of 13 months mutually agreed between the parties. Contrarily he issued a reply stating that the agreement got lapsed and the advanced amount paid by the plaintiff was forfeited. It is not open to the appellant/defendant to invoke forfeiture clause of the original agreement, after executing



A.S.No.187 of 2017

Ex.A2 by mutually agreeing to extend the time limit. The forfeiture clause found in Ex.A1-agreement was not available to the defendant on 20.12.2012, when he sought to invoke the same. The moment parties entered into an agreement under Ex.A2 for extension of time of 13 months, the time limit of three months fixed under earlier agreement and the forfeiture clause found therein got erased by terms of subsequent agreement. The trial Court after taking into consideration, various fatal admission of DW.1 and the evidence of PW.1 and PW.2 and also material documents namely Exs.A3, A4, A5, A10 and A11 correctly came to the conclusion that the respondent/plaintiff proved his readiness and willingness to perform the contract from the inception of the agreement to the date of suit and said findings is confirmed.

.. . . .

11.4. We have no quarrel with regard to the above said proposition and as we discussed earlier, on appreciation of oral and documentary evidence, we have given a factual finding that the respondent/plaintiff has been ready and willing to perform his part of the suit agreement throughout from the date of inception to the date of plaint and hence Section 16(c) of the Specific Relief Act has been meticulously complied. Therefore, the decisions



A.S.No.187 of 2017

relied on by the learned counsel for the appellant will not be helpful to him.

11.6. The Supreme Court of India in P.D'Souza Vs. Shondrilo Naid reported in MANU/SC/0561/2004 : 2004 (6) SCC page 649, while considering question of readiness and willingness observed as follows:

19. It is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of the contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstances of each case. No straitjacket formula can be laid down in this behalf.

21 . The readiness and willingness on the part of the plaintiff his part of contract would also depend upon the question as to whether the defendant did everything which was required of him to be done in terms of the agreement. . . . ”

11.The learned Senior Counsel appearing for the appellants in reply mostly reiterated the contentions made earlier. The learned Senior Counsel appearing for the appellants contended that when the 2nd respondent entered into agreement of sale with three persons including the 1st respondent, he cannot hand over the original Power of Attorney and documents of title to the



A.S.No.187 of 2017

1st respondent alone, which is selective handing over the documents and prayed for allowing the appeal.

12. Though notice has been served on the 2nd respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

13. Heard the learned Senior Counsel appearing for the appellants as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

14. Points for consideration arising in this appeal are:

(1) Whether Power of Attorney dated 01.11.2011 executed by the appellants is only a security document for loan obtained by the appellants from the 2nd respondent?

(2) Whether agreement of sale dated 02.11.2011 is valid?

(3) Whether 1st respondent was ready and willing to perform his part of contract?



A.S.No.187 of 2017

Points (1) and (2):

WEB COPY

(1) Whether Power of Attorney dated 01.11.2011 executed by the appellants is only a security document for loan obtained by the appellants from the 2nd respondent?

(2) Whether agreement of sale dated 02.11.2011 is valid?

15. The 1st respondent has filed O.S.No.204 of 2014 against the appellants and 2nd respondent for specific performance of agreement of sale dated 02.11.2011 Ex.A8 and in the alternate, for refund of Rs.40,00,000/- together with interest and for permanent injunction. The 1st respondent is seeking the relief on the ground that he and 2nd respondent, Power Agent of appellants, on 02.11.2011 entered into an agreement of sale to purchase the suit property for a total sale consideration of Rs.58,68,000/- and paid a sum of Rs.40,00,000/- as advance to the 2nd respondent, who in turn handed over the same to the appellants. The 2nd respondent obtained receipt from the appellants on the same day. The stamped receipt was marked as Ex.B18. The appellants and 2nd respondent evaded receiving balance sale consideration, execute the sale deed and hand over the possession to the 1st respondent. Therefore, the 1st respondent filed the suit.



A.S.No.187 of 2017

15(i) The case of the appellants is that 2nd respondent is a Financier, the appellants used to borrow moneys from the 2nd respondent and discharge the same. The procedure adopted by 2nd respondent is that he used to get the registered Power of Attorney from the appellants and register the agreement of sale in the name of his wife. When the appellants repay the loan, he used to cancel the Power of Attorney as well as agreement of sale and handover the cancelled documents to the appellants. The appellants furnished the particulars of earlier financial transaction and marked the cancelled Power of Attorneys and agreement of sale.

15(ii) The appellants borrowed a sum of Rs.10,00,000/- from the 2nd respondent in November 2011. As per the usual practise, they executed registered Power of Attorney, handed over blank signed stamp papers, two blank signed cheques and also original title deeds of the properties. Power of Attorney is executed and registered only as a security document for the loan obtained by the appellants and did not authorise the 2nd respondent to sell the suit property. Even after discharging the loan of Rs.10,00,000/- together with interest on 09.10.2013, the 2nd respondent evaded cancelling the Power of



A.S.No.187 of 2017

Attorney and handing over the documents, handed over to the 2nd respondent.

The 2nd respondent in collusion with 1st respondent, who is his close relative, fabricated the agreement of sale Ex.A8.

15(iii) A careful consideration of pleadings, oral and documentary evidence and impugned judgment, we have no hesitation to reject the case of the appellants for the following reasons:

(a) Earlier Power of Attorneys and agreement of sale relate to some other properties of appellants and not the suit properties. The appellants have not stated that in respect of earlier transactions, they had handed over original documents of title to the 2nd respondent. In respect of suit Power of Attorney only, the appellants have handed over original documents of title.

(b) According to the appellants, they discharged the entire loan with interest on 09.10.2013, but the 2nd respondent evaded cancelling the Power of Attorney and returning the documents handed over to the 2nd respondent. In addition to the above stand, the appellants also claimed that the 2nd respondent demanded further sum of Rs.5,00,000/- and threatened to create



A.S.No.187 of 2017

charge over the property, if they failed to pay the said sum. In spite of 2nd respondent evading cancellation of Power of Attorney, returning the documents and threatening to create a charge over the property, the appellants did not take any legal proceedings like issuing notice to the 2nd respondent and filing suit against the 2nd respondent.

(c) The appellants without notice to the 2nd respondent on 27.02.2014, cancelled the Power of Attorney Ex.A7. Even after such cancellation, the appellants did not immediately inform the 2nd respondent about cancellation. The appellants informed the 2nd respondent only on 26.08.2014.

(d) The inaction of the appellants to take any legal proceedings against the 2nd respondent or against the 1st respondent after receipt of reply of 2nd respondent dated 26.08.2014 shows that Power of Attorney Ex.A7 is not security document for the loan, but executed only authorizing the 2nd respondent to sell the suit property.

(e) According to 1st respondent, he paid a sum of Rs.40,00,000/- to the 2nd respondent on 02.11.2011, who in turn handed over the same to the



A.S.No.187 of 2017

appellants and obtained stamped receipt. The 2nd respondent produced the same and was marked as Ex.B18. The appellants are challenging and disputing Ex.B18 on the ground that the same was filled up by respondents in the blank stamp papers handed over to the 2nd respondent. It is seen that Ex.B18 is typed not only in stamp paper, but also in the concord papers. The learned Judge considered Ex.B18 and held that it was not a print out in a blank stamp paper signed by the appellants, but appellants signed Ex.B18 only after the same was typed. We have also verified Ex.B18 and confirm the findings of the learned Judge.

(f) The appellants have failed to prove that Ex.A8 was fabricated after the appellants have issued notice dated 09.08.2014.

(g) The appellants are not illiterate persons. They are educated persons possessing Degree and Post Graduate Degree qualification. Further, they are doing business with their funds as well as by borrowing moneys from the 2nd respondent. When the 2nd respondent contrary to usual procedure, evaded cancellation of Power of Attorney and returning the documents, the



A.S.No.187 of 2017

appellants as prudent persons ought to have taken appropriate legal proceedings against the 2nd respondent.

(h) Failure on the part of the appellants to take any legal action against the 2nd respondent shows that stand taken by the appellants in the suit is only an after thought.

15 (iv) For the above reasons, we hold that appellants executed Ex.A7 Power of Attorney authorizing the 2nd respondent to sell their properties including the suit property and Ex.A8 is a valid document enforceable against the appellants. Points (1) and (2) are answered against the appellants.

15(v) The 2nd respondent sent a reply dated 26.08.2014 through his Advocate to the notice dated 09.08.2014 issued by the appellants through their Advocate. In the said reply Ex.B17, the 2nd respondent had denied all the allegations made by the appellants in the notice dated 09.08.2014 Ex.B16. In addition to the said denial, the 2nd respondent had stated that he had entered into three agreements of sale on 02.11.2011, 03.11.2011 and 06.11.2011 with 1st respondent, based on Power of Attorneys' including suit agreement. In



A.S.No.187 of 2017

spite of such a stand taken by 2nd respondent, the appellants have not initiated any legal proceedings against the respondents as well as other two persons mentioned in the reply notice Ex.B16.

15(vi) Further the appellants sent a reply dated 29.09.2014 Ex.A12 to the pre-suit notice issued by 1st respondent dated 06.09.2014 Ex.A9. In the said notice apart from narrating averments about borrowing money from 2nd respondent and repaying the same, the appellants have stated that they were forced and coerced to execute the Power of Attorney, it is only a security document and they had no intention of selling their property. In spite of such a stand, the appellants have not initiated any legal proceedings seeking appropriate reliefs against the 2nd respondent for alleged coercion and force by 2nd respondent and any criminal complaint against the 2nd respondent for the alleged fabrication and anti-dating agreement of sale Ex.A8 and creation of receipts Exs.B18 to B20 in the blank signed stamp papers handed over to the 2nd respondent.

15(vii) The contention of the learned counsel appearing for the 1st respondent that appellants cannot revoke Power of Attorney dated 01.11.2011



A.S.No.187 of 2017

Ex.A7 as 2nd respondent has already acted upon, has no relevance to the issues in the present appeal. The respondents have not challenged the appellants' revocation of Power of Attorney. The 2nd respondent had informed about revocation of Power of Attorney by the appellants and informed him to approach the appellants directly. The 1st respondent has approached the appellants directly and has filed the suit against the appellants and 2nd respondent for specific performance of agreement of sale dated 02.11.2011.

15(viii) Learned Senior Counsel appearing for the appellants contended that date of stamp papers, stamp vendors from whom the same are purchased, place of residence of the 1st respondent, create a suspicion about alleged transaction and receipts Exs.B18 to B20. The learned counsel has taken us through Exs.A8, B18 to B20 with regard to the above material. We have gone through the said documents. We do not find anything wrong in the purchase of said stamp papers. The contention of the learned Senior Counsel appearing for the appellants are not acceptable.



A.S.No.187 of 2017

Point (3):

WEB COPY Whether the 1st respondent was ready and willing to perform his part of contract?

16. The 1st respondent has filed suit for specific performance of agreement of sale Ex.A8 dated 02.11.2011. In a suit for specific performance of agreement of sale, the plaintiff/purchaser has to aver and prove his readiness and willingness to perform his part of contract or performed his part of contract. Section 16 of Specific Relief Act deals with personal bars to relief of specific performance. The relevant part of this Section is Section 16(c), which is extracted hereunder:

“Section 16(c) of Specific Relief Act:

16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—

(a)

(b)

(c) who fails to aver and 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 or waived by the defendant. Explanation.—For



A.S.No.187 of 2017

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 aver performance of, or readiness and willingness to perform, the contract according to its true construction.”

As per this Section, unless the plaintiff/purchaser avers and proves his readiness and willingness, he is not entitled to the decree of specific performance. But the first proviso is infavour of plaintiff/purchaser in the sense that plaintiff/purchaser need not tender the balance sale consideration to the vendors/defendants. It is also not necessary for him to deposit the balance sale consideration into Court unless so ordered by the Court.

16(i) The issue readiness and willingness is *no longer res integra*. The Hon'ble Apex Court, this Court and various High Courts have considered this issue in number of cases. It has been held that there is difference between readiness and willingness. As per the judicial pronouncement, readiness is the



A.S.No.187 of 2017

capacity to pay the balance sale consideration from the date the balance sale consideration became payable until the disposal of suit. At the same time, it is held that plaintiff/purchaser need not have cash in hand or in the Bank. It is sufficient if he proves his capacity to raise the balance sale consideration, has made arrangements with any Financier for payment of balance sale consideration or possession of immovable property through which he can raise the balance sale consideration. The willingness is intention of plaintiff/purchaser to pay the balance sale consideration. While considering the willingness, the time fixed in the agreement of sale is important. The Courts have differentiated the terms “limitation” and “delay and latches”. The limitation is filing the suit within three years from the date of agreement of sale, from the date fixed for payment of balance sale consideration or from the date of refusal by vendor. The Courts have deprecated the practise of filing the suit on last date of limitation. The Courts have held that even if no time limit is fixed or time is not essence of contract, the purchaser must approach the Court within a reasonable time. The purchaser is not entitled to equitable relief of specific relief due to delay and latches on his part in approaching the Court for relief of specific performance.



A.S.No.187 of 2017

16(ii) Applying the above principles, the materials on record has to be

examined to find out whether the 1st respondent was ready and willing to perform his part of contract. The 1st respondent has filed suit for specific performance of agreement of sale dated 02.11.2011 Ex.A8. The total sale consideration had been fixed at Rs.58,68,000/- and 1st respondent paid an advance of Rs.40,00,000/- on the date of agreement and the same had been recorded in the agreement of sale itself. Three years time was fixed for paying the balance sale consideration of Rs.18,68,000/- from 02.11.2011. Therefore, the 1st respondent had time till 01.11.2014 and limitation for filing the suit is 01.11.2017. The 1st respondent even before expiry of time limit fixed in the agreement of sale Ex.A8 issued notice dated 06.09.2014 to the appellants and 2nd respondent. The appellants sent a reply dated 29.09.2014 disputing the agreement of sale Ex.A8 and has taken a stand that said agreement is invalid. On the refusal of appellants, the 1st respondent immediately filed suit on 07.10.2014. There is no delay or laches on the part of 1st respondent in approaching the Court for enforcing the agreement of sale. Therefore, the 1st respondent has proved his willingness to perform his part of contract.



A.S.No.187 of 2017

16(iii) The next issue to be decided is whether 1st respondent was ready to perform his part of contract. As per second proviso to Section 16(2) of Specific Relief Act, unless the purchaser avers and proves his readiness and willingness, is not entitled to the relief of specific performance. It is to be noted that first proviso mentions that purchaser need not offer the balance sale consideration to the vendor or deposits the same into Court unless so ordered. The Hon'ble Apex Court has held that plaintiff must be ready with the balance sale consideration from the date that became due till the orders by the Court. It is also held that it is sufficient, if plaintiff proves that he has capacity to pay the balance sale consideration or has made arrangements with Financier for the balance sale consideration. In the present case, the 1st respondent has proved his readiness namely, having sufficient funds to pay the balance sale consideration by producing Ex.A13 Bank statement of account of Sree Kailaii Spinners Private Limited, in which according to 1st respondent, he is one of the Directors. The learned Judge considering Ex.A13 that there is transactions for huge amount, held that 1st respondent was always ready to perform his part of contract. The appellants have disputed Ex.A13 on the ground that said statement of account does not relate



A.S.No.187 of 2017

to the account of 1st respondent and relates to Sree Kailaii Spinners Private Limited. The said objection is not acceptable as it is sufficient for the 1st respondent to prove that he has capacity to pay the balance sale price, which he has proved by producing Bank statement of account of Sree Kailaii Spinners Private Limited, in which he is one of the Directors.

It will be useful to refer the judgment of the Hon'ble Apex Court in Civil Appeal No.4703 of 2022 ***[U.N.Krishnamurthy (since deceased) thro'LRs. vs. A.M.Krishnamurthy]*** dated 12.07.2022. The relevant paragraphs are extracted hereunder -

“38. In this case, we cannot overlook the fact that the suit property is located in the industrial town of Hosur located about 30/40 kms. from Bengaluru. The Court is obliged to take judicial notice of the phenomenal rise in the price of real estate in Hosur. The proposition finds support from case reported in K.S. Vidyanadam v. Vairavan (supra). To quote this Court “we cannot be oblivious to 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”.

39. Mr. Venugopal argued that the Plaintiff had only paid an insignificant amount of Rs.10,001/- as advance when the consideration was Rs.15,10,000/-. Having paid an insignificant amount the Plaintiff was not entitled to discretionary equitable relief of Specific Performance, as observed by this Court in Saradamani Kandappan v. S. Rajalakshmi¹⁴. The relevant paragraph of the judgment of this Court is



set out herein below:-

“37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and 14 (2011) 12 SCC 18 non-readiness. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and receiving rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.”

40. As argued by Mr. Venugopal, the fact that the suit had been filed after three years, just before expiry of the period of limitation, was also a ground to decline the Respondent Plaintiff the equitable relief of Specific Performance for purchase of immovable property. Mr. Venugopal's argument finds support from the judgments of this Court in *P.R. Deb and Associates v. Sunanda Roy*¹⁵; *K.S. Vidyanadam v. Vairavan*¹⁶; *Manjunath Anandappa v. Tammanasa*¹⁷, *Azhar Sultana v. B. Rajamani*¹⁸; *Saradamani Kandappan v. S. Rajalakshmi*¹⁹.

46. It is settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit,



WEB COPY



A.S.No.187 of 2017

he was ready and willing to perform his part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

16(iv) Considering the above materials in its entirety, we hold that 1st respondent has proved his readiness and willingness to perform his part of contract. Point (3) is answered in favour of 1st respondent.

17. The judgment of the Hon'ble Apex Court referred to above and the judgments relied on by the learned counsel appearing for the 1st respondent are squarely applicable to the facts of the present case. The judgments relied on by the learned Senior Counsel appearing for the appellants do not advance their case.

18. For the above reasons, we find no reason to set aside the impugned judgment and decree passed by the learned Judge.

19. In the result, this First Appeal is dismissed. No costs.

(V.M.V., J) (S.M., J)
24.11.2022

Index : Yes / No
Internet : Yes / No
kj



WEB COPY



A.S.No.187 of 2017

**V.M.VELUMANI,J.
and
SUNDER MOHAN,J.**

kj

To

1.III Additional District Judge
Dharapuram, Tiruppur District.

2.The Section Officer,
VR Section,
High Court,
Madras.

**Pre-Delivery judgment in
A.S.No.187 of 2017**

24.11.2022