



WEB COPY



A.S.Nos.211 and 355 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:13.03.2023

Delivered on: 24.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

A.S.Nos.211 and 355 of 2013

A.S.No.211 of 2013

Vijay Prabu

.. Appellant

Vs.

1.S.T.Lajapathie

2.L.Vivek Anand

3.L.Jaikishan

4.L.Kavitha

5.S.Anitha

.. Respondents

Prayer:- Appeal Suit filed under Section 96 r/w Order XLI, Rules 1 and 2 of the Code of Civil Procedure against the judgment and decree dated 18.02.2010 made in O.S.No.45 of 2008 on the file of the District Judge of



A.S.Nos.211 and 355 of 2013

Nilgiris at Udhagamandalam.

WEB COPY

For Appellant : Mr.A.R.L.Sundaresan, Senior Counsel  
assisted by  
Mr.S.Kingston Jerold

For Respondents : Ms. S.Radha Gopalan

A.S.No.355 of 2013

1.S.T.Lajapathie

2.L.Vivek Anand

3.L.Jaikishan

4.L.Kavitha

5.S.Anitha

.. Appellants

Vs.

Vijay Prabu

.. Respondent

Prayer:- Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of the Code of Civil Procedure against the judgment and decree dated 18.02.2010 made in O.S.No.45 of 2008 on the file of the District Judge of Nilgiris at Udhagamandalam.



WEB COPY



A.S.Nos.211 and 355 of 2013

For Appellants : M/s. S.Radha Gopalan

For Respondent : Mr.A.R.L.Sundaresan, Senior Counsel  
assisted by  
Mr.S.Kingston Jerold

### **COMMON JUDGMENT**

(Judgment of the Court was made by P.B.BALAJI,J.)

These two First Appeals are filed against the judgment and decree passed in O.S.No.45 of 2008, filed by the appellant in A.S.No.211 of 2013 as plaintiff, seeking specific performance of the agreement dated 07.11.2005 and for delivery of possession, with an alternate prayer for Rs.60,00,000/- together with interest at 12% per annum from the date of the filing of the suit.

2. The District Judge, Nilgiris at Ootacamud, in and by judgment and decree dated 18.02.2010, rejecting the prayer for specific performance, decreed the suit for a sum of Rs.20,00,000/- together with interest at 12% per annum, from the date on which the amounts were advanced.



A.S.Nos.211 and 355 of 2013

WEB COPY

3. The parties are described as per their rank before the Trial court for the sake of convenience.

4. The plaintiff/appellant in A.S.No.211 of 2013 has preferred the said Appeal challenging the judgment and decree of the Trial Court refusing to grant specific performance. On the other hand, the defendants who are directed to pay a sum of Rs.20,00,000/- together with interest at 12% per annum have preferred A.S.No.355 of 2013 as against the said decree for money, especially laying challenge to the decree for payment of interest.

5. Brief facts that are necessary for deciding the above appeals are as follows:

The defendants representing to be the owners of the suit schedule property, agreed to sell the same to the plaintiff and an agreement of sale was executed on 07.11.2005, fixing the total sale consideration at Rs.84,00,000/-. Originally the mother of the 5<sup>th</sup> defendant one Rathinamala was also a signatory to the agreement of sale. However, in view of her demise and her share being inherited by the 5<sup>th</sup> defendant, the suit has been



A.S.Nos.211 and 355 of 2013

WEB COPY

filed as against defendants 1 to 5. On the date of the sale agreement, the plaintiff paid a sum of Rs.1,00,000/- as security deposit and subsequently on 03.01.2006 a further sum of Rs.19,00,000/- was paid by the plaintiff in respect of which an endorsement was made by the defendants and the deceased Rathinamala, confirming the receipt of Rs.19,00,000/-.

6. It is the further case of the plaintiff that the sale transaction should be completed within one year from the date of payment of sum of Rs.19,00,000/-. The plaintiff also places reliance on Clause 4 of the sale agreement, which casts upon the defendants certain obligations on receipt of the sum of Rs.19,00,000/-. The plaintiff also places reliance on Clause 6 of the agreement in terms of which the defendants have to either refund the amounts advanced by various tenants or alternatively furnish details and correct particulars of advance/security deposits received from the tenants to enable the plaintiff to absorb the same and deduct it from the balance sale consideration to be paid to the defendants. The plaintiff further states that even though the defendants received the said sum of Rs.19,00,000/-, they did not take any steps to fulfill any of their obligations as undertaken in Clauses 4 and 6 of the sale agreement. The plaintiff further contends that



A.S.Nos.211 and 355 of 2013

WEB COPY

the 1<sup>st</sup> defendant who was well known to the plaintiff, was assuring the plaintiff that necessary steps were being taken in terms of Clauses 4 and 6 and that the plaintiff would be informed on successful completion of the defendant's obligations. The plaintiff believed the representations of the 1<sup>st</sup> defendant and was patiently waiting, at which point of time, he was surprised to receive an unsigned registered letter dated 05.12.2007, along with a banker's cheque for Rs.20,00,000/- from the 1<sup>st</sup> defendant stating that the defendants were unable to fulfill their obligations. On receipt of the said letter, the plaintiff sent a reply dated 08.12.2007 stating that the 1<sup>st</sup> defendant was trying to cancel the sale agreement with ulterior motives and that the allegation made by the 1<sup>st</sup> defendant that the plaintiff has also not fulfilled certain obligations cast upon him under the agreement of sale being false and baseless. In the said reply, the plaintiff contended that the 1<sup>st</sup> defendant alone was not entitled to unilaterally cancel the sale agreement and it could be done only on mutual consent between the plaintiff and all the defendants. The plaintiff returned the banker's cheque for Rs.20,00,000/- along with the reply dated 08.12.2007. It is the further case of the plaintiff that the 1<sup>st</sup> defendant sent another letter dated 05.12.2007, which was despatched only on 14.12.2007 and the same was



A.S.Nos.211 and 355 of 2013

sent by the 1<sup>st</sup> defendant for himself and on behalf of the other defendants.

WEB COPY

To the said letter dated 05.12.2007, the plaintiff sent a reply on 19.12.2007 and thereafter there has been exchange of correspondence between the plaintiff and the defendants until July 2008. Contending that the plaintiff was always ready and willing to perform his part of agreement of sale, the plaintiff filed the suit seeking the relief of specific performance and for delivery of possession, with an alternate relief of sum of Rs.60,00,000/- with a charge on the suit schedule property for the said money decree prayed for by the plaintiff. The alternate relief prayed for the plaintiff comprised of Rs.20,00,000/- towards refund of advance amount and Rs.40,00,000/- towards damages.

7. The defendants 1 and 2 filed a written statement denying and refuting all claims made by the plaintiff. The defendants 3 to 5 adopted the written statement filed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The sum and substance of the defence set up to the suit for specific performance was that the defendants had expressly sent across a message to the plaintiff that they were not in a position to comply with the obligations cast upon them under the agreement of sale and that even otherwise, the plaintiff was



A.S.Nos.211 and 355 of 2013

WEB COPY

never ready and willing to perform his part of the agreement of sale and that in the interregnum period, the property prices have also increased multi fold and it would not be equitable to sell the property to the plaintiff for the originally agreed sale consideration of Rs.84,00,000/-. The allegations with regard to the 1<sup>st</sup> defendant assuring the plaintiff of the defendants taking all steps to fulfill their obligations was stoutly and expressly denied by the defendants. The defendants ultimately contended that the plaintiff was never ready and willing to complete the sale transaction on or before 15.12.2006, the date contemplated for completion of the sale and therefore the suit was liable to be dismissed.

8. The Trial Court framed the following issues:

1. Whether the plaintiff is entitled to the relief of specific performance of sale agreement dated 07.11.2005 with modifications as prayed by him?
2. Whether the plaintiff is entitled to possession of the suit property described in the plaint schedule excluding the portion in the possession of the tenants?
3. In the alternative, whether the plaintiff is entitled to refund of



A.S.Nos.211 and 355 of 2013

the advance amount of Rs.20,00,000/- and for damages to a tune of Rs.40,00,000/- from the defendants?

4. Whether the plaintiff is entitled to claim interest at the rate of 12% p.a on the above amounts? (end of the 6th page in original)

5. Whether the plaintiff is entitled to charge over the suit property for the above amounts as claimed by him?

6. To what other reliefs the plaintiff is entitled?

9. Before the Trial Court, the plaintiff examined himself as P.W.1 and on the side of the defendants, the 1<sup>st</sup> defendant examined himself as D.W.1. On the plaintiff's side, Exs.A1 to A4 were marked and on the side of the defendants, Ex.B1 was marked.

10. The Trial Court, on appreciation of oral and documentary evidence, held that the plaintiff was not ready and willing and consequently was not entitled to the equitable relief of specific performance. In so far as the alternative relief, the Trial Court found that the plaintiff had failed to plead and prove that he had suffered damages and proceeded to grant a decree for refund of the amount of Rs.20,00,000/-



A.S.Nos.211 and 355 of 2013

WEB COPY

alone paid as advance for purchasing the suit property, together with interest at 12% per annum.

11. Aggrieved by the said judgment and decree of the Trial Court, as already discussed herein and above, both the plaintiff as well as the defendants have come forward with their respective appeals, one for setting aside the dismissal of the suit in so far as the relief of specific performance was concerned (at the instance of the plaintiff) and challenging the decree directing the defendants to pay with interest on Rs.20,00,000/- (at the instance of the defendants).

12. Heard Mr.A.R.L.Sundaresan, learned Senior counsel appearing for the plaintiff and Ms. Radha Gopalan, learned counsel appearing for the defendants.

13. This Court on hearing the rival submissions and various issues canvassed by the learned counsel on either side, proceeds to formulate the following points to be decided in these appeals:

(1) Whether the plaintiff was ready and willing to perform his part of



A.S.Nos.211 and 355 of 2013

the agreement of sale dated 07.11.2005?

WEB COPY

(2) Whether the plaintiff can seek to invoke Sec.12 of the Specific Relief Act, 1963?

(3) Whether the plaintiff is entitled to the discretionary and equitable relief of specific performance?

(4) Whether the plaintiff, in the event of not being entitled to the relief of specific performance, would be alternatively entitled to the relief of damages and refund of advance to the tune Rs.40,00,000/- and Rs.20,00,000/- respectively?

**Point (1)**

14. This Court has perused the sale agreement Ex.A1. The following Clauses in the said sale agreement are of relevance for deciding the issue of readiness and willingness:

*Clause 4. In the meanwhile, the vendors have agreed to carry out the following acts:*

*a) On receipt of the consideration of Rs.19,00,000/- (Rupees Nineteen lakhs only) by 15<sup>th</sup> December 2005, the vendors will vacate all those persons who are occupying part of the property for their residence and agreed to be sold by depositing certain amount with the vendors with the*



WEB COPY



A.S.Nos.211 and 355 of 2013

*understanding that the deposits will carry no interest and the premises given to them for their occupation will not attract payment of any rent. The vendors have represented to the purchaser that there are ten houses forming part of (end of the 4<sup>th</sup> page in the original) the schedule property coming under the above arrangement and as soon as the purchaser make the payment of Rs.19,00,000/- (Rs. Nineteen lakhs only) as stipulated above the vendors will immediately take steps to return the amounts paid by the said persons who are occupying those portions and get vacant possession thereof within six months from 15.12.2005 positively;*

*b) The vendors have also represented to the purchaser that the original will in question has been deposited with the State Bank of India, Ootacamund Branch for availing of loan for the development of the vendors lands situate at Lovedale. The vendors undertake to discharge the entire debt due to the State Bank of India, Ootacamund as soon as the purchaser makes the payment of Rs.19,00,000/- (Rs.Nineteen lakhs only) as stipulated above and obtain the return of the original will and codicil executed by late T.Angammal which has been deposited with the State Bank of India, Ootacamund, to create a mortgage by deposit of title deeds (end of the 5<sup>th</sup> page in the original) in*



WEB COPY



A.S.Nos.211 and 355 of 2013

*respect of the vendors' land situate at Lovedale.*

*c) The Vendors will also take immediate steps to execute and register a Deed of Surrender of the lease-hold interest by the Ooty Berry's Hotel Pvt. Ltd., in respect of 600 sq.mter of built up area at the 2<sup>nd</sup> floor leased to them under the registered lease deed dated 11.03.1992 and registered as Doc.No.249/92 at the office of the Jt.Sub Registrar No.1, Ootacamund for the period of Thiry years which lease however has not been acted upon and the said Ooty Berry's Hotel Pvt. Ltd had not taken possession of the demised property at all and the said company has also ceased of carrying on any business.*

*.....*

*6. The Vendors have also represented that in addition to the ten residential houses above referred to Eight portions of the main building are rented out to non-residential tenants and the Vendors have agreed with the purchaser to refund to the said tenants of the non-residential portions advance/security deposit amounts if any received by them from the said tenants before the time of the registration of the sale deed so that the purchaser may be enabled to enter into separate tenancy agreements with the said tenants if he so chooses by receiving advance or security deposit amounts as*



WEB COPY



A.S.Nos.211 and 355 of 2013

*he may stipulate from the said tenants. It is also agreed that in the event of the Vendors not refunding the advance/security deposit amount received from the tenants, the Vendors would furnish the purchaser the correct particulars and details of such (end of the 7<sup>th</sup> page in the original) advances/security deposits and the purchaser would be entitled to deduct the said amounts out of the balance sale consideration to be paid to the Vendors and it will be the responsibility of the purchaser thereafter to refund the said amounts to the said tenants as and when they surrender possession of their respective portions and the purchaser will keep the Vendors duly indemnified against any claim from those tenants so far as the refund of the security deposit/advance amounts due to them. ”*

15. This Court has also seen that certain dates are very relevant viz.,

- (1) 07.11.2005- Agreement of sale
- (2) 15.12.2005- Sum of Rs.19,00,000/- to be paid by the plaintiff
- (3) 15.12.2006- Time for completion of the sale transaction.

This Court also finds that the parties have agreed that after the payment of a sum of Rs.19,00,000/- by 15.12.2005 the following obligations were cast upon the defendants under Clause 4:



A.S.Nos.211 and 355 of 2013

WEB COPY

(1) To vacate the persons in occupation of the suit property on the basis of the interest free deposit amounts, without liability to pay rent, within six months from 15.12.2005.

(2) Get return of the original Will and Codicil of one Late P.Angammal, deposited with the State Bank of India, Ootacamund Branch, after discharging the entire debt that may be due to State Bank of India, Ootacamund Branch, as soon as the payment of Rs.19,00,000/- was made by the plaintiff on or before 15.12.2005.

(3) To execute and register a deed of surrender of lease hold interest in favour of Ooty Berry's Hotel Pvt. Ltd in respect of a lease deed dated 11.03.1992, registered as Doc.No.249 of 1992 on the file of Joint Sub-Registrar, Ootacamund.

16. Clause 6 of the Agreement of Sale casts further obligations on the defendants to return the advance/security deposit amounts received from non residential tenants to enable the plaintiff to enter into fresh agreements of lease with the tenants or alternatively give all correct particulars and details of advances/security deposits to enable the purchaser to deduct the said amounts from and out of the balance sale consideration payable to the



A.S.Nos.211 and 355 of 2013

WEB COPY

defendants, consequent upon which it would be the plaintiff's responsibility to refund the advances/security deposits to respective tenants.

17. This Court also notices a default clause agreed to between the parties. Clauses 9 and 10 are extracted herein below:

*“ 9. In the event of the Vendors not being able to make out a clear, absolute and marketable title to the premises in question free from all encumbrances, claims and demands and also to get vacant possession of the portions of the premises which are under the occupation of parties other than the tenants within six months from the date of receipt of Rs.19,00,000/- (Rs.Nineteen lakhs only) from the purchaser stipulated under clause 3 above then the purchaser will be entitled to terminate the agreement for breach on the part of the Vendors and in the event of the purchaser terminating this agreement the Vendors will be liable not only to refund the entire sale consideration received by the Vendors from the purchaser under this agreement and also for payment of damages.*

*10. Should the Vendors make out a clear and*



WEB COPY



A.S.Nos.211 and 355 of 2013

*marketable title to the premises agreed to be sold and should the (end of the 19<sup>th</sup> page in the original) vendors also perform their other obligations under this agreement and should the purchaser not be forthcoming to pay the balance sale consideration and complete the sale as stipulated under this agreement the Vendors will be entitled to terminate this agreement for breach on the part of the purchaser and in the event of the Vendors lawfully terminating the agreement for the breach committed by the purchaser then the Vendors forfeit, the sum of Rs.1,00,000/- (Rs.One lakh only) as liquidated damages out of the sale consideration received from the purchaser and refund the balance if any to the purchaser forthwith and thereafter the agreement will stand terminated without any further liabilities or claims on either side.”*

18. It is thus seen that an option was given to the plaintiff to terminate the agreement in the event of any breach committed by the defendants and seek not only refund of the advance amounts but also damages that may be suffered by the plaintiff. In the event of default committed by the plaintiff, the defendants would be entitled to terminate the agreement and deduct a sum of Rs.1,00,000/- towards liquidated damages and refund the balance



A.S.Nos.211 and 355 of 2013

advance, if any, to the plaintiff.

WEB COPY

19. Learned Senior counsel for the plaintiff relying on the specific agreement between the parties, especially Clauses 4 (a) (b) (c) and 6 contended that the defendants were obligated to perform four primary conditions and the time period itself was split into two only to enable the defendants to vacate persons in occupation within a period of six months and further six months was provided for completion of the sale transaction. The learned Senior counsel also took this Court through the various correspondence between the parties, prior to the filing of the suit and attempted to impress upon this Court that the conduct of the plaintiff can never be termed as not 'ready and willing' and only because of the default committed by the defendants, the transaction did not go through. The learned Senior counsel also invited the attention of this Court to Exs.A13 and A14 being Bank statement and Income Tax returns to show that the plaintiff was possessed of sufficient funds to make payment of the balance sale consideration and complete the transaction. Learned Senior Counsel then made a submission that the plaintiff is willing to purchase the property by paying the balance without insisting on clause 4 of the



A.S.Nos.211 and 355 of 2013

WEB COPY

agreement and the Court may grant a decree for specific performance by applying Sec.12 of the Specific Relief Act.

20. Per contra, learned counsel appearing for the defendants contended that even a perusal of Exs.A13 and A14 would go to show that the balance sale consideration which was due to be paid by the plaintiff was Rs.64,00,000/- and the said amount was not available with the plaintiff even according to his own documents viz., Exs.A13 and A14 and the same clinchingly establishes that the plaintiff was not at all ready and willing to conclude the transaction. The learned counsel also placed reliance on the exchange of letters between the parties to buttress her submissions that the conduct of the plaintiff only evidenced lack of readiness and willingness and not otherwise.

21. This Court after careful consideration of the respective contentions and also on going through the various Clauses in the agreement of sale and also the exchange of letters between the parties, finds that vide Ex.A2, the 1<sup>st</sup> defendant sent a letter to the plaintiff returning the advance amount of Rs.20,00,000/-, expressing inability to



A.S.Nos.211 and 355 of 2013

WEB COPY

vacate the tenants and discharge the encumbrance pertaining to Ooty Berry's Hotel Pvt. Ltd. Ex.A5 is the signed copy of Ex.A2, only with an addition to the effect that the said letter was being sent by the 1<sup>st</sup> defendant on his behalf and also on behalf of the other defendants. The plaintiff has replied to the said letter dated 05.12.2007, in and by reply dated 08.12.2007, Ex.A3. It is to be noted that this is the first correspondence that emanated from the plaintiff after the execution of the agreement of sale on 07.11.2005. This Court finds that even in the said letter, the plaintiff has chosen only to accuse the defendants of not fulfilling their obligations and denying the allegation made by the defendants that the plaintiff was also under certain obligations. There is not a whisper even in the said reply notice dated 08.12.2007, that the plaintiff was always ready and willing throughout, to perform his part of the agreement of sale.

22. Learned Senior counsel for the plaintiff pointed out to this Court that Ex.A5, the signed letter dated 05.12.2007 was sent only on 14.12.2007, much after receipt of the reply dated 08.12.2007, sent by the plaintiff and contended that the letter was only antedated and the defendants have not chosen to refute any of the allegations made in the



A.S.Nos.211 and 355 of 2013

WEB COPY

reply notice dated 08.12.2007 which had been served on the defendants by then i.e., prior to dispatch of letter dated 05.12.2007 on 14.12.2007. This Court does not find force in the said submission for the simple reason that when the plaintiff had pointed out in his reply that the letter dated 05.12.2007 was unsigned and sent by the 1<sup>st</sup> defendant alone, only to meet that infirmity the defendants have chosen to send the very same letter duly signed by the 1<sup>st</sup> defendant, for himself and on behalf of the other defendants. Therefore, the mere fact that in the said letter, the defendants have not responded to other allegations in the reply letter dated 08.12.2007, cannot be put against them.

23. On the contrary, this Court finds that the conduct of the defendants was bonafide, for the simple reason that while expressing their inability to perform the various obligations cast upon them under the agreement of sale, they have returned the entire advance of Rs.20,00,000/- received from the plaintiff. This is the expected and normal conduct of any prudent seller, who does not want to proceed with the transaction and the same cannot be found fault with. However, on the contrary, the plaintiff is obliged to make out and establish a clear case that a personal bar U/s. 16 of



A.S.Nos.211 and 355 of 2013

WEB COPY

the Specific Relief Act, 1963(in short “Act) does not apply to him and that he has always been ready and willing to perform the essential terms of the contract which are to be performed by him.

24. As already noted herein above, the agreement of sale was dated 07.11.2005 and the plaintiff was obligated to pay a sum of Rs.19,00,000/- on or before 15.12.2005. The said sum was also not paid within the stipulated time but much later on 03.01.2006 only. In this context the learned Senior counsel for the plaintiff submitted that the defendants having received the said amount without any demur or protest, cannot accuse the plaintiff of not being ready and willing and at best, it could be stated that the time of six months to vacate the persons in occupation of suit property would commence from 03.01.2006 instead of 15.12.2005.

25. Learned Senior counsel for the plaintiff relied upon the decision of the Hon'ble Supreme Court in the case of *Madhukar Nivrutti Jagtap and Others vs. Pramila Bai Chandulal Parandekar (dead) through legal representatives and others*, reported in (2020) 15 SCC 731, wherein it is held that the plaintiff had a limitation period of three years for filing a suit



A.S.Nos.211 and 355 of 2013

WEB COPY

for specific performance and that during such period it cannot be said that the plaintiff was required to show any overt act at his end in furtherance of the agreement in question. However, on a reading of the entire judgment, on the facts of the case before the Apex Court, considering that there was a supplementary agreement for sale and subsequent payments made by the plaintiff and considering the conduct of the parties, the Apex Court held that when a suit for specific performance was filed within the period of limitation, the delay cannot be put against the plaintiff. However, in the very same judgment, the Hon'ble Supreme Court has held as follows:

*“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*



WEB COPY



A.S.Nos.211 and 355 of 2013

*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 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."*

26. Infact, ultimately, the Apex Court denied the discretionary relief of specific performance and only granted an alternate relief invoking Sec.22 of the Act. This Court is unable to apply the facts of the said case before the Hon'ble Supreme Court to the facts of the present case to hold that the plaintiff, especially considering his conduct in approaching this Court only on 24.09.2008, should be granted the equitable relief of specific performance, not withstanding the delay in approaching the Court. This



A.S.Nos.211 and 355 of 2013

WEB COPY

Court would like to reiterate that “readiness and willingness” cannot be put in a straight jacket and has to be determined independently on overall assessment of facts, pleadings, evidence and relevant circumstances, including the intention and conduct of the parties. This Court also reiterates the well settled principles that “readiness and willingness” are two different concepts and it was incumbent on the plaintiff approaching the Court to establish both “readiness” as well as “willingness”. The plaintiff must plead and also prove his capacity to perform the contract, which includes his means or financial position to pay the agreed sale consideration. This part is “readiness”, whereas “willingness” would require the plaintiff to plead and prove his conduct to be such that he was always moving towards the completion of the contract, or atleast his part of the contract, i.e the obligations that were to be performed by him.

27. Going back to the facts of the present case, the plaintiff was obligated to complete the sale transaction by 15.12.2005. However, not a single step towards such completion was taken by the plaintiff till December 2007. Even in December 2007, it was the 1<sup>st</sup> defendant who prompted the plaintiff regarding the agreement of sale by choosing to



A.S.Nos.211 and 355 of 2013

WEB COPY

refund the advance amount of Rs.20,00,000/-. As already discussed, even in the reply dated 08.12.2007, the plaintiff has not even chosen to state that he was possessed of sufficient funds to pay the balance sale consideration of Rs.64,00,000/- and that he was always ready and willing to conclude the sale transaction. More over, the suit also came to be filed by the plaintiff only on 24.09.2008. The delay in approaching the Court even after the lengthy exchange of letters back and forth between the parties ended as early as in July 2008. Nothing prevented the plaintiff to approach the Court much earlier, especially in the light of the stand taken by the defendants that they are opting out of the agreement of sale and chose to even refund the advance amount as early as in December 2007. This Court also specifically notes the total silence on the part of the plaintiff, right from the date of the agreement of sale till even 15.12.2006 when the sale transaction itself should have been completed.

28. This Court has also gone through the findings of the Trial Court. The Trial Court has rightly applied its mind to the facts and circumstances and concluded that the plaintiff did not even show that he was possessed of sufficient funds to meet the balance amount of Rs.64,00,000/- within the



A.S.Nos.211 and 355 of 2013

stipulated time. This Court, therefore finds no interference is warranted with regard to the finding of the Trial Court regarding the plaintiff being not 'ready and willing'.

**Point 2.**

29. Learned Senior counsel for the plaintiff relied on Sec.12 of the Act and vehemently contended that the plaintiff would be entitled to a decree when the plaintiff was willing to relinquish his claims to the performance by the defendants, of the remaining part of the agreement of sale. This Court at the very outset notices that such a plea was never raised before the Trial Court and no grounds have also been raised in the memorandum of First Appeal in this regard. However, this Court is inclined to deal with the elaborate submissions made by the learned Senior counsel for the plaintiff touching Sec.12 of the Act.

30. Sec.12 of the Specific Relief Act, 1963 reads thus:

*“ 12. Specific performance of part of contract.*

—

*(1) Except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract.*



WEB COPY



A.S.Nos.211 and 355 of 2013

*(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed by only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.*

*(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—*

*(a) forms a considerable part of the whole, though admitting of compensation in money; or*

*(b) does not admit of compensation in money, he is not entitled to obtain a decree for specific performance; but the court may, at the suit of other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—*

*(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and a case falling under clause (b) [pays or had paid] the consideration for the whole of the contract without any abatement; and*

*(ii) in either case, relinquishes all claims to*



WEB COPY



A.S.Nos.211 and 355 of 2013

*the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.*

*(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.*

*Explanation.—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.”*

31. The learned Senior counsel emphasised on clause (ii) to Sub-Sec(3) of Sec.12 and contended that by approaching the Court, seeking specific performance, the plaintiff was relinquishing the claims to performance of the obligations unfulfilled by the defendants. This Court interprets Sec.12 as a beneficial provision in favour of a purchaser, providing for instances in the form of Sub-Sections (2),(3) and (4) where a court can grant decree for part performance of a contract. Sec.12(3)



A.S.Nos.211 and 355 of 2013

WEB COPY

contemplates cases where the unperformed part should be considerable and where compensation in monetary terms is admitted or not. Clause (i) of Sub-Sec(3) mandates that in case of Clause (a), the entire consideration agreed for the whole contract should be paid, except for reducing the consideration in respect of the unperformed part. In cases of applications of Clause (b), the entire consideration for the whole of the contract, without any deduction should be paid. Clause (ii) of Sub-Section (3) mandates that in order to invoke both clauses (a) and (b) to Sub-Section (3) of Sec.12, the plaintiff seeking specific performance of a part of the contract should relinquish all claims to performance of the unfulfilled part of the contract and also all his right to compensation, loss and damages that has been sustained by him because of the default committed by the defendants.

32. This Court on a careful reading of Sec.12 in entirety and interpreting the same, holds that the plaintiff cannot take shelter under Sec.12(3)(i) for the simple reason that the agreement of sale does not contemplate any bifurcation of the sale consideration to be paid by the plaintiff. On a reading of the agreement of sale, Ex.A1, this Court



A.S.Nos.211 and 355 of 2013

WEB COPY

concludes that the sale consideration of Rs.84,00,000/- has been mutually agreed upon between the parties for the entire property and it is not divisible so as to state that for the residential portion, the consideration would be 'X' and the remaining portion, the consideration would be 'Y'. For instance, let us take an illustration:

An acre of land is agreed to be sold for a sale consideration of Rs.10,000/- per cent. In the event of an issue cropping up with 20 cents subject to the agreement and the remaining 80 cents can be sold without any problem, then in such event part performance can be sought in respect of 80 cents alone where the consideration would also be ascertainable. However, in the instant case, such part performance cannot be sought or granted.

33. Coming to Clause (ii) of Sub-Sec (3) to Sec.12, this Court finds that relinquishment should be of all claims to the performance of the remaining obligations due to be performed by the defendants and also all right to compensation, loss of damage suffered by the plaintiff on account of breach committed by the defendants.



A.S.Nos.211 and 355 of 2013

WEB COPY

34. Interestingly, this Court finds that the plaintiff, even in his plaint has not relinquished “all claims”. Paragraph 24 of the plaint is extracted usefully:

*“24. The plaintiff states that he has always been ready and willing to fulfil his part of the obligation under the sale agreement and to completed the sale by paying the balance sale consideration but the sale could not be completed so far on account of the defendants failure to fulfil their obligations particularly with reference to clauses 4 and 6 of the sale agreement despite the plaintiff having acceded to the 1<sup>st</sup> defendant's request for extension of time from time to time. The plaintiff is even now ready and willing to pay the balance sale consideration and complete the sale provided the defendants comply with their obligations under the sale agreement except as to the cancellation of the lease deed in favour of M/s. Ooty Berry's Hotel Pvt. Ltd which requirement the plaintiff has already waived as stated in his registered communication dated 7<sup>th</sup> May 2008 above referred to.”*

Even on a plain reading of paragraph 24 extracted herein above, it can be safely inferred that the plaintiff never relinquished all claims and infact he has only expressed readiness and willingness with a rider that the



A.S.Nos.211 and 355 of 2013

WEB COPY

defendants should comply with their obligations under the sale agreement excepting the obligation regarding cancellation of lease deed in favour of M/s. Ooty Berry's Hotel Pvt. Ltd. The prayer in the plaint is also relevant and para 29 of plaint reads as follows:

*“29. The plaintiff prays judgment and decree against the defendants for:*

*a) Specific performance of the sale agreement dated 7<sup>th</sup> November, 2205 by directing the defendants to execute and register the sale deed in respect of the property described in the schedule below by complying with the obligations under Clauses 4 and 6 of the sale agreement excluding the cancellation of lease deed by Ooty Berry's Hotel Pvt. Ltd by a stipulated date by receiving the balance sale consideration of Rs.64,00,000/- from the plaintiff failing which the Hon'ble Court may be pleased to execute the sale deed;*

*b) direct the defendants to deliver possession of the property described in the schedule below excluding the portion in the possession of the tenants.*

*c) alternatively for payment of Rs.60,00,000/- with interest thereon at 12% per annum from the date of suit till payment by providing necessary charge over the property described in the Schedule*



A.S.Nos.211 and 355 of 2013

*below.*

*d) costs of the suit; and*

*e) such other reliefs as the Court may deem fit to grant or the circumstances of the case may require.*

35. Thus, when the plaintiff has chosen to waive only one of the obligations that remain unfulfilled at the end of the defendants, it is not open to the plaintiff to seek shelter U/s.12 and claim specific performance of the part of the agreement of sale in his favour. Interestingly, it is also seen that apart from seeking relief of specific performance, has also made a claim for damages besides refund of advance. Thus, the plaintiff does not qualify to invoke clause (ii) of Sub-Section (3) to Sec.12, when admittedly, he has not relinquished “all claims” and when he approaches the Court seeking damages. This Court also holds that Sec.12(3) is only a discretionary relief, which can be granted to the plaintiff, depending on peculiar facts and circumstances of the case. In the opinion of this Court, Sec.12(3) cannot be invoked where the terms of the contract are not capable of being segregated. In the instant case, we do not find that the agreement of sale can be compartmentalised in order to grant specific performance of only a part of the agreement of sale. It is also seen that



A.S.Nos.211 and 355 of 2013

WEB COPY

mandate of Sec.12 is very clear in so far as payment of the whole of the consideration. Admittedly, in the instant case, the plaintiff has paid only a sum of Rs.20,00,000/- and a sum of Rs.64,00,000/- was still outstanding. Unless the plaintiff's pay or has paid the sum of Rs.64,00,000/- he was not even justified in invoking the part performance of the agreement of sale by resorting to Sec.12 of the Act.

36. The explanation to Sec.12 is also very relevant because the explanation qualifies the main section itself. The explanation implies that part performance would become available only where the subject matter existing at the date of contract subsequently ceases to exist at the time of performance. Even applying the import of the explanation to the facts of this case, it is clear that obligations that were cast upon the defendants were clearly set out and understood by the parties even at the time of entering into the agreement itself. Therefore, nothing has changed at the time of performance of the agreement, in order to enable the appellant to invoke Sec.12 and seek part performance of the agreement of sale.

37. Further, the explanation to Sec.12, if properly understood, then



A.S.Nos.211 and 355 of 2013

WEB COPY

also the entire Sec.12 cannot be applied to the facts of the present case. A learned Single Judge of the Andhra Pradesh High Court in ***Polepalle Subramanyam Chetty and others Vs. Gundamreddy Peddakka***, reported in ***AIR 2001 AP 204***, discussed the applicability of Sec.12 permitting part performance of a contract and on the facts in the said case, held “ when both the plaintiff and defendant were aware of the fact that the defendant had title only to one half share in the property and it was not a case where the parties to the agreement subsequently found that the vendor had no title to the whole of the property, Sec.12 would not have any application. The incapability to perform the contract as contemplated in Sec.12 must be in relation to the agreement entered into and such inability refers to only the inability to confer title to the whole of the property agreed to be sold.”

38. In the case on hand, both the plaintiff and defendants were aware of the position and specific obligations were cast upon the defendants regarding,

1) Vacating persons occupying portions of the property for residential purposes on an arrangement with the vendors by paying certain specific amounts which would not carry interest and there being no obligation to



A.S.Nos.211 and 355 of 2013

pay any rent;

WEB COPY

2) Getting back the original Will and Codicil from State Bank of India, Ootacamund Branch;

3) Execution and registration of Deed of Surrender of lease-hold interest in favour of Ooty Berry's Hotel Pvt. Ltd and

4) Refund of advance/security deposits of non-residential tenants or alternatively give full particulars of the amounts that would be liable to be refunded to them.

It is not a case where something has changed subsequent to the agreement between the parties. Both the plaintiff and defendants were fully aware of what remained to be done by the defendants. Therefore, the question of the plaintiff subsequently discovering some fact regarding the defendants title does not arise at all. This Court, therefore answers point 2 against the plaintiff.

**Point 3:**

39. This Court has already found that the plaintiff has not been ready and willing to perform his part of the contract.



A.S.Nos.211 and 355 of 2013

40. Sec.20 of the Act reads thus:

WEB COPY

*“ 20. Discretion as to decreeing specific performance.—*

*(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.*

*(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—*

*(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or*

*(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or*



WEB COPY



A.S.Nos.211 and 355 of 2013

*(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance. Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). Explanation 2.— The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.*

*(3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.*

*(4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”*



A.S.Nos.211 and 355 of 2013

WEB COPY

41. It is now well settled law by a series of pronouncements of the Apex Court as well as this Court that even if the plaintiff succeeds in passing the test of Sec.16(c) viz., readiness and willingness, even then the Court can refuse to grant the equitable relief of specific performance, taking into account all relevant and peculiar facts of each case. Even prior to the filing of the suit, the defendants have put the plaintiff on notice that the property prices have increased multi fold and therefore they were justified in refusing to sell the property to the plaintiff. This Court finds that the conduct of the plaintiff, not only during the period contemplated in the agreement of sale for completion of the transaction but also thereafter, till such time he approached the Court, was not bonafide. The Trial Court has also rightly found that the plaintiff was not entitled any relief of equity while declining the relief of specific performance.

42. Learned counsel for the defendants relied on the decision of the Hon'ble Supreme Court in ***P.Deivasigamani Vs. S.Sambandan, Civil Appeal No.9006 of 2011***, dated 12.10.2022. In the said judgment, the Hon'ble Supreme Court has held that Sec. 20 confers the discretion on the Court to exercise jurisdiction to decree specific performance of contract



A.S.Nos.211 and 355 of 2013

WEB COPY

and that such exercise should not be arbitrary but should be guided by sound and reasonable judicial principles. The Apex Court also held that the requirements of Sec.16(c), 20 and 22 of the Act have to properly pleaded by the parties in their respective pleading and proved with the aid of evidence, in accordance with law and that only thereafter the Court was entitled to exercise discretion and accordingly grant or refuse the relief of specific performance, depending upon the case made out by the parties on facts. The Apex Court also listed factors like hardship to defendant/seller which he did not foresee, hardship to plaintiff/purchaser in case of non-performance, enforcement of specific performance being inequitable and the conduct of parties including that of the defendant/seller and other circumstances which may result in an unfair advantage to the plaintiff over the defendant, to be considered by the Court while deciding a suit for specific performance. The Apex Court further held that the Court should examine whether the plaintiff has performed his part of contract, and if so, how and to what extent, and in what manner and whether such performance was in conformity with the terms of the contract. Applying the facts of the present case, to the various factors set out by the Apex Court, this Court does not find any ground whatsoever under which the



A.S.Nos.211 and 355 of 2013

plaintiff can be the beneficiary of the discretion to be exercised by this Court. The plaintiff sent notices just to gain time without any indication of his readiness to pay balance. The delay of 9 months in filing the suit seeking specific performance even after receiving the letter from the defendants, cancelling the agreement is a very relevant factor to not exercise discretion in favour of the plaintiff, especially when the specific case of defendants regarding steep rise in price was pleaded. Therefore, this Court does not find any reason to interfere with the said finding of the Trial Court. This Court accordingly answers point 3.

**Point 4:**

43. Coming to the relief of refund of advance and damages, the learned Senior counsel for the plaintiff argued that in the event of this Court not agreeing with his submissions regarding the grant of relief of specific performance in favour of the plaintiff, then this Court should certainly award damages besides also directing refund of entire amount of Rs.20,00,000/- together with interest, which part viz., the refund of advance already decreed by the Trial Court. He also pointed out that the defendants have continued to enjoy rental income from the suit property



A.S.Nos.211 and 355 of 2013

WEB COPY

and they have not been put to any loss whatsoever and in fact they also had the benefit of sum of Rs.20,00,000/- paid way back to them (Rs.1,00,000/- on 07.12.2005 and Rs.19,00,000/ on 03.01.2006).

44. Per contra, learned counsel for the defendants contended that the Appeal has been filed by the defendants in A.S.No.355 of 2013 only being aggrieved by the direction with regard to payment of interest and contended that the defendants had returned the sum of Rs.20,00,000/- as early as on 05.12.2007. Further, she also brought to the notice of this Court that the sum of Rs.20,00,000/- has been deposited in 2013 and the grievance of the defendants is only with regard to the award of interest, considering that at the earliest instance, they had offered to repay the entire advance of Rs.20,00,000/- to the plaintiff.

45. In so far as the claim for damages, this Court finds that there is absolutely no plea made by the plaintiff, leave alone letting in any oral or documentary evidence to substantiate the claim of damages to the tune of Rs.40,00,000/-. The Trial Court has rightly held that the plaintiff has failed to plead and prove that he suffered any damage, much less to the tune of



A.S.Nos.211 and 355 of 2013

WEB COPY

Rs.40,00,000/-. When this Court has held that the plaintiff has not proved his readiness and willingness there is no question of awarding damages.

This Court does not find any ground to interfere with the said well considered finding of the Trial Court. However, with regard to refund of Rs.20,00,000/-, admittedly, the defendants were continuing to enjoy income from the suit property besides also having the benefit of the plaintiff's money to the tune of Rs.20,00,000/- till such time the same was deposited. according to the learned counsel for the defendants, in 2013. Admittedly, even according to the defendants the property prices have also shot up, as a result of which the defendants alone stand to gain. Even though it is brought to the notice of this Court, the defendants have already deposited a sum of Rs.20,00,000/- in 2013, it does not absolve them of their liability to pay interest at 12% per annum. This Court directs that the defendant are jointly and severally liable to pay interest at 12% per annum on Rs.20,00,000/- from 03.01.2006, on which date the substantial amount of Rs.19,00,000/- was paid by the plaintiff, till the date of payment/deposit of Rs.20,00,000/-. Thus, point 4 is answered accordingly.



A.S.Nos.211 and 355 of 2013

WEB COPY

46. In the result, both the Appeal Suits are dismissed and the judgment and decree dated 18.02.2010 made in O.S.No.45 of 2008 on the file of the District Judge of Nilgiris at Udhagamandalam is confirmed. There shall be no order as to costs.

**(S.S.S.R.J) & (P.B.B.J)**  
24.03.2023

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

To

1.The District Judge of Nilgiris  
at Udhagamandalam

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



WEB COPY



A.S.Nos.211 and 355 of 2013

**S.S.SUNDAR, J.,**  
**and**  
**P.B.BALAJI, J**  
kpr

Pre-delivery judgment in  
A.S.Nos.211 and 355 of 2013

24.03.2023