



A.S.No.178 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE C. KUMARAPPAN

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A.Chidambaram

... Appellant

Vs.

1.G.Mohan

2.M/s.R.R.V.Constructions Ltd.

Represented by its Executive Director,
Rudraraja Ravi Varama,
A.No.AACEP 4973 N,
Plot No.56, Flat No.101,
Santhoshi Apartments,
Sri Nagar Colony, Ammeerpt,
Hyderabad – 500 073.

3.M/s.Rudra Creations Constructions,

Represented by its Proprietor, K.Sridha Varma,
(PA No.ACEPR 3878n A) H5,
Vora Towers, C-89, Madura Nagar,
Yousufguda Road,
Hyderabad – 38.

4.R.Viswanathan

... Respondents



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Prayer : Appeal Suit filed under Section 96 r/w. Order XLI Rule 1 of Code of Civil Procedure against the judgment and decree dated 09.10.2015 in O.S.No.432 of 2006 on the file of the Additional District Court, Chengalpattu.

For Appellant	:	Mr.M.S.Krishnan Senior Counsel for Mr.R.Sagadevan
For R1	:	Mr.R.Manikandan
For R2 and R3	:	Mr.N.Ramakrishnan for M/s.ARK Law Associates
For R4	:	No appearance

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

Plaintiff in the suit in O.S.No.432 of 2006 on the file of the Additional District Judge, Chengalpattu, is the appellant in this appeal.

2.The appellant filed the suit in O.S.No.432 of 2006 on the file of the Additional District Court, Chengalpattu, for specific performance of an



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agreement of sale, dated 02.12.2005, executed by the 1st respondent in favour of the appellant in respect of an extent of 2.97 Acres comprised in few Survey Fields in Pudupakkam Village, Kelambakkam Firka, Chengalpattu Taluk, Kancheepuram District. Though the suit properties are shown as Items 1 to 9 comprised in same or different Survey Fields without reference to boundaries, there is no dispute with regard to identity of properties.

3.The case of the plaintiff in the plaint is that the 1st respondent/1st defendant is the absolute owner of the entire extent of 2.97 Acres which is the subject matter of the suit agreement. It is his further case in the plaint that the plaintiff and 1st defendant entered into an agreement of sale dated 02.12.2005 in respect of suit properties for a total consideration of Rs.44,55,000/- (at the rate of Rs.15,000/- per Cent). The suit agreement was also registered before the Sub-Registrar's Office, Thiruporur. On the date of sale agreement, the 1st respondent acknowledged the receipt of a sum of Rs.15,00,000/- as advance (Rs.10,00,000/- by way of cheque dated 02.12.2005 and Rs.5,00,000/- by way of cash). As per the sale agreement,



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the plaintiff/appellant was required to pay the balance sum of Rs.29,55,000/-

within two months from the date when the 1st defendant hands over patta, chitta and adangal in the name of the 1st respondent. It is the case of the plaintiff that time is not the essence of the contract, as no time limit was prescribed in the sale agreement dated 02.12.2005 for getting the patta, chitta and adangal by the 1st respondent. It is the definite case of the appellant that the 1st defendant did not hand over patta even after 11 months from the date of agreement. However, in the plaint, it is stated that the 1st respondent was threatening the plaintiff through phone that he would alienate the suit properties to the third parties and that therefore, the plaintiff was forced to file a suit in O.S.No.242 of 2006 on the file of the District Munsif Court, Chengalpattu, for permanent injunction restraining the defendant from in any manner alienating the suit properties. Stating that the plaintiff was ready and willing to perform the contract and that he is a producer in the cinematographic field, the plaintiff filed the present suit for specific performance on 04.12.2006. After the filing of the suit for specific performance, again, the plaintiff realised that the 1st respondent has alienated the entire suit property in parcels in favour of respondents 2 to 4 herein, who



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are defendants 2 to 4 in the suit. The plaintiff impleaded the subsequent purchasers as defendants 2 to 4 and the plaint was also amended accordingly. Though the plaint was amended to implead defendants 2 to 4, the prayer in the plaint was not amended appropriately to seek relief as against defendants 2 to 4.

4.The 1st defendant filed a written statement admitting the execution of the sale agreement and the receipt of advance of a sum of Rs.15,00,000/-. However, it is the specific case of the 1st respondent that he got patta for the suit property and it was very well known to the plaintiff. It is stated by the 1st respondent/1st defendant that time was the essence of the contract, as the 1st defendant wanted to sell the suit property urgently for the purpose of his daughter's marriage and therefore, the 1st defendant insisted the plaintiff to pay the balance as per the terms of the agreement and it was the plaintiff/appellant who was not ready and willing to pay the balance amount. The 1st defendant took a specific stand that patta, chitta and adangal extract in respect of the suit property had been handed over to the plaintiff and the plaintiff, who was not ready and willing to perform his part of the contract in



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terms of the agreement, is not entitled to the equitable relief of specific performance. Only after seeing that the plaintiff did not come forward to pay the balance despite repeated demands made to the plaintiff, it is contended that the 1st defendant, who was in urgent need in money to perform his daughter's marriage, was forced to execute sale deeds in favour of defendants 2 to 4. It is also stated in the written statement filed by the 1st defendant that the 1st defendant offered to repay the money which he had received from the plaintiff on few occasions, but the plaintiff refused to receive the amount.

5.It is admitted that the major portion of the suit property was purchased by the 2nd respondent/2nd defendant under three different documents on 01.12.2006. The 3rd respondent purchased a small extent (16 Cents) from the 1st defendant by a sale deed dated 01.12.2006. The 4th respondent purchased an extent of 77 Cents on 23.03.2007. Therefore, major portion of the suit property had been alienated by the 1st defendant on 01.12.2006, even before filing of the suit.



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6. After impleading defendants 2 to 4, each of them filed written statements independently. The prime contention raised by the defendants 2 to 4 is that they are *bona fide* purchasers for value without notice of sale agreement and that the plaintiff was never ready and willing to perform his part of the contract. Stating that they have also purchased the suit property from the wife of the 1st defendant, who has joined with the 1st defendant in the execution of the sale deeds, it is contended by the defendants 2 to 4 that the suit is bad for non-joinder of the wife of the 1st defendant to the proceedings. The defendants 2 to 4 also suspected and contended that the plaintiff and the 1st defendant have colluded together to grab money from the defendants 2 to 4. It is contended by the 4th defendant that he is in possession and enjoyment of the suit property. Other grounds were also raised by the defendants 2 to 4 to sustain their plea that the plaintiff/appellant is not entitled to the discretionary and equitable relief of specific performance.



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7.Before the trial Court, the plaintiff examined himself as P.W.1 and produced Exs.A1 to A7. On behalf of defendants, 1st defendant examined himself as D.W.1, apart from examining D.W.2 to D.W.4. On the side of defendants, Exs.B1 to B17 were marked.

8.The trial Court framed the following issues :

- i. *“Whether the 1st defendant's wife is a necessary party to the proceedings ?*
- ii. *Whether the plaintiff proved his readiness and willingness to perform his part of contract ?*
- iii. *Whether the defendants 2 to 4 are bona fide purchasers of the suit properties ?*
- iv. *Whether the plaintiff is entitled to the discretionary relief of specific performance of contract against the 1st defendant as prayed for ?*
- v. *To what other relief the plaintiff is entitled ?”*

9.On the first issue whether the 1st defendant's wife is a necessary



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party to the suit, the trial Court, just based on the evidence of D.W.1 during cross-examination that his wife is also a joint owner of the suit property, held that the suit is bad for non-joinder of necessary party.

10.However, the trial court elaborately discussed the second issue whether the plaintiff has proved his readiness and willingness to perform his part of the contract. Taking note of several facts and circumstances, as seen from records, the trial Court held that the plaintiff has not proved his readiness and willingness to perform his part of the contract in terms of the suit agreement. The trial Court considered the admission of plaintiff himself that the 1st defendant was in need of money for the purpose of his daughter's marriage and accepted the contention of defendants that the 1st defendant obtained patta even in the month of June, 2006, on the basis of evidence of D.W.1 and D.W.2, apart from the documents Ex.B1, namely, the patta which was issued in favour of the 1st defendant. The trial Court also relied upon the evidence of P.W.1, admitting the fact regarding the patta obtained by the 1st defendant. Since the plaintiff had not come forward to lead any evidence to show that he had the money, the trial Court also noticed the fact



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that the plaintiff has not proved by evidence that he was ready with the money to fulfill his contractual obligation, namely, to pay the balance amount of Rs.29,55,000/- during the relevant point of time.

11.On the issue whether the defendants 2 to 4 are *bona fide* purchasers of the suit property, the trial Court held that the defendants 2 to 4 are *bona fide* purchasers. Surprisingly, the conclusion was on the basis that the sale deeds obtained by defendants 2 to 4 were not challenged in the suit.

12.The trial Court, also relying upon the plaint filed in O.S.No.242 of 2006 on the file of the District Munsif Court, Chengalpattu, observed that the suit is also liable to be dismissed under Order II Rule 2 of CPC.

13.Finally, the trial Court also held that the plaintiff is not entitled to the discretionary relief by referring to several circumstances. Ultimately, the trial Court dismissed the suit for specific performance.

14.Aggrieved by the judgment and decree of the trial Court dismissing



the suit for specific performance, the plaintiff has preferred the above appeal.

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15.After hearing the arguments of the learned counsel on either side, this Court is inclined to frame the following points for determination :

- i. *Whether the suit is bad for non-joinder of wife of 1st defendant ?*
- ii. *Whether the plaintiff was always ready and willing to perform his part of the contract in terms of the suit agreement ?*
- iii. *Whether the defendants 2 to 4 are bona fide purchasers for value ?*
- iv. *Whether the suit is barred by Order II Rule of CPC in view of the previous suit filed in O.S.No.242 of 2006 ?*
- v. *Whether the plaintiff is entitled to the equitable relief of specific performance ?*
- vi. *Whether the plaintiff is entitled to refund of money paid by him as advance under the suit agreement ?*

Point No.(i) :

16.Mr.M.S.Krishnan, learned Senior Counsel, appearing for the appellant/plaintiff, referring to the facts, submitted that the wife of the 1st respondent is not the owner of any portion of the suit property and the



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reasoning of the trial Court for holding that the suit is bad for non-joinder of wife of the 1st respondent, cannot be sustained.

17.This Court has no difficulty in agreeing with the learned Senior Counsel on this issue. The suit agreement is between the plaintiff and the 1st defendant. It is not the case of the 1st defendant that his wife has some interest in any of the portion of the suit property. Merely because the wife of the 1st respondent has joined with the 1st respondent to execute the sale deed in favour of defendants 2 to 4, in a suit for specific performance based on the agreement that was between plaintiff and the 1st defendant, the wife of 1st defendant is not a necessary or proper party, especially when no relief is permissible as against the wife of the 1st defendant. In all the sale deeds executed by 1st defendant along with his wife in favour of defendants 2 to 4, the recitals would indicate that the properties were duly acquired by the 1st respondent out of his own funds and that the 1st respondent is in possession as absolute owner of the properties. It is stated that the wife of 1st respondent has joined in the sale deed by way of abundant caution. Therefore, the conclusion of the trial Court that the suit is bad for non-



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joinder of wife of 1st defendant is erroneous and unsustainable.

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Point No.(ii) :

18.On the issue of readiness and willingness, learned Senior Counsel appearing for the appellant/plaintiff tried to convince this Court by referring to the evidence to show that the plaintiff was ready and willing to pay the balance.

19.From a reading of pleadings and documents, this Court is able to extract the sequence of events as under :

19.1.The 1st defendant has acquired the entire suit property under different sale deeds and there is no dispute with regard to the absolute title of 1st defendant and the agreement of sale, dated 02.12.2005, executed by 1st defendant in favour of the plaintiff for a total consideration of Rs.44,55,000/- for an extent of 2.97 Acres at the rate of Rs.15,000/- per Cent.

19.2.As per the terms of the sale agreement, the 1st defendant acknowledged the receipt of a sum of Rs.15,00,000/- as advance (a sum of



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Rs.10,00,000/- by way of cheque dated 02.12.2005 and further sum of Rs.5,00,000/- by way of cash). It was agreed between parties that the plaintiff should pay the balance of sale consideration, namely, a sum of Rs.29,55,000/- within two months from the date on which the 1st defendant hands over patta, chitta and adangal in respect of the suit property.

19.3.From Ex.B1, it is seen that patta was issued by the Deputy Tahsildar on 02.04.2006 and computer generated patta, certified by the Revenue Official, was issued on 23.06.2006.

19.4.Almost on identical pleadings, the plaintiff filed the earlier suit in O.S.No.242 of 2006 on the file of the District Munsif Court, Chengalpattu, for permanent injunction restraining the 1st defendant from alienating the suit properties.

19.5.On 06.10.2006, the plaintiff sent the suit notice for the present suit through his Advocate to the 1st defendant and the suit notice was returned stating that the post was not delivered due to improper address.

19.6.On 01.12.2006, the 1st defendant executed five independent sale deeds in respect of different parcels of suit property in favour defendants 2 and 3.



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WEB COPY 19.7. On 23.03.2007, the 1st defendant executed a sale deed in favour of the 4th defendant in respect of the remaining extent of 77 Cents.

19.8. On 04.12.2006, the plaintiff filed the suit for specific performance.

20. Before the trial Court, the plaintiff took a specific stand that time is not the essence of the suit agreement. The defendant has specifically stated in his written statement and in evidence that he was in urgent need of money for the marriage of his daughter and therefore, he entered into the suit agreement in favour of plaintiff. It is also his specific stand that the plaintiff agreed to pay the balance within two months from the date of agreement. The plaintiff knew at the time of agreement that the 1st defendant had title and that Revenue records have been transferred in the name of the 1st defendant. Ex.B1 is the computer generated patta that was signed by the Deputy Tahsildar on 02.04.2006. This only shows that the patta, as reflected from Revenue records, had been uploaded online. The plaintiff himself admits during cross-examination as follows :



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“8.8.2006ம் தேதி போனில் 1ம் பிரதிவாதி என்னிடம் பேசியபோது அவரது பெயருக்கு பட்டா, சிட்டா மற்றும் அடங்கல் மாற்றப்பட்டதாக சொன்னார்.”

Therefore, the plaintiff very well knew the transfer of patta in favour of 1st defendant. The plaintiff categorically admitted that the 1st defendant entered into the suit agreement with the plaintiff for performing his daughter's marriage and for purchasing some other property. The said admission is as follows :

“முதல் பிரதிவாதி அவரது மகளின் திருமண செலவிற்காகவும், வேறு இடம் வாங்குவதற்காகவும், தாவா சொத்திற்கான ஒப்பந்தத்தை போட்டார் என்று சொன்னால் சரிதான்.”

21.The 1st respondent (D.W.1) has given evidence to the effect that the plaintiff was unable to pay the balance, as he was not ready with the money and that he was dragging on without proper response when the 1st defendant approached the plaintiff during the relevant point of time. He has also stated that he was waiting for four months and on account of the delay, his daughter's marriage was postponed. The 1st defendant has marked the



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marriage invitation of his daughter and it is seen that the marriage of 1st respondent's daughter was scheduled to be held on 02.05.2007.

22.The evidence of D.W.2 assumes importance in this circumstance. He has also spoken to the fact that patta obtained by the 1st respondent was handed over to the plaintiff. D.W.2 is the person, who is the broker, who introduced the plaintiff to the 1st defendant when 1st defendant approached him to sell his land for mobilising funds for his daughter's marriage. In his cross-examination, he categorically disclosed that it is the habit of plaintiff to drag on after entering into agreements.

23.From the overall circumstances, this Court finds that time was agreed to be the essence of the agreement. The properties are located in the outskirts of Chennai where the value of properties is steadily going up. Therefore, the time specified in the sale agreement cannot be ignored. This Court is unable to discard the specific evidence of D.W.1 and D.W.2 to the effect that the plaintiff was not ready and willing to pay the balance, despite the 1st respondent approached the plaintiff after getting patta for the suit



properties. Ex.B1 shows that the patta was issued on 02.04.2006 and the same was generated through computer again on 23.06.2006. The plaintiff appears to have satisfied with the title of the 1st defendant even before entering into the suit agreement. The sale agreement refers to the source of title of 1st defendant and the various documents under which the 1st defendant purchased the property from 1993. The plaintiff, even after knowing that the 1st defendant refused to execute the sale deed by demanding more amount and expressed his intention to sell the suit property in favour of third parties for higher price, did not issue any notice. The plaintiff, however, filed the suit in O.S.No.242 of 2006 on the file of the District Munsif Court, Chengalpattu, for permanent injunction restraining the 1st defendant from in any manner alienating or encumbering the suit property to third parties.

24.In the plaint in O.S.No.242 of 2006, it is stated that the right of enforcement on the part of the plaintiff arises only on refusal to comply with the pre and essential term of the agreement, i.e., getting and handing over patta, chitta and adangal for the suit property. It is stated by the plaintiff



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therein that, without getting patta, the plaintiff cannot pressurise the 1st defendant. It is stated in the plaint that the plaintiff cannot compel the 1st defendant to get patta and therefore, he cannot file a suit for specific performance even though the 1st defendant refuses to execute sale deed. Quite surprisingly, the plaintiff has specifically averred in the previous plaint that the 1st respondent has threatened the plaintiff that he would execute sale deed in favour of third parties for a higher price. The earlier suit for injunction was filed only when the plaintiff came to know that the 1st defendant was making attempts to alienate the properties in favour of third parties. Nearly two months after the filing of the previous suit, the present suit notice came to be issued to the 1st defendant. It is admitted that the suit notice was not served on the 1st defendant before the present suit was filed. Only after the 1st defendant executed five different sale deeds in favour of defendants 2 and 3 on 01.12.2006, the suit came to be filed on 04.12.2006.

25. In a suit for specific performance, it is mandatory that the plaintiff should prove his continuous readiness and willingness to get the relief of specific performance. When the readiness and willingness on the part of the



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plaintiff is specifically questioned by the defendants, it is the duty of the plaintiff to prove that he had financial wherewithal and was ready with the money to pay the balance in terms of the suit agreement. Even though it is not necessary for the plaintiff to deposit the money when he files a suit for specific performance, the question of readiness and willingness has to be assessed on the date whether the plaintiff had the money and was ready and willing to pay the balance as agreed under the sale agreement. This Court has already seen that time is the essence of the contract, as the 1st defendant was in urgent need of money to perform his daughter's marriage, even as per the admission of plaintiff (P.W.1). When specific time is prescribed in the agreement and there are acceptable evidence that 1st defendant had obtained patta and handed over the same to the plaintiff, the plaintiff's failure to pay the balance within two months as agreed under the sale agreement would dis-entitle the plaintiff from getting the relief of specific performance.

26.Regarding the question of readiness and willingness, the Hon'ble Supreme Court, in the case of *Man Kaur (dead) by LRs v. Hartar Singh Sangha* reported in *2010 (10) SCC 512*, has held as follows :



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



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not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by defendant, as he was not 'ready and willing' to perform his obligations.”

27. In the present case, the plaintiff has not let in any evidence to prove his readiness. The plaintiff was required to pay a sum of Rs.29,55,000/- atleast in August, 2006, as per the agreement. Except stating that the plaintiff was producing films and was capable of mobilising funds, no evidence is let in to prove that the plaintiff had the money from August, 2006, to pay the balance. In the absence of any evidence to prove the plaintiff's readiness by showing his financial wherewithal, his readiness cannot be presumed. As it has been held repeatedly by this Court and Hon'ble Supreme Court, the continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. The plaintiff, having failed to demonstrate or prove his readiness and willingness, cannot get the equitable relief.



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28. Therefore, Point No.(ii) is answered by holding that the plaintiff has failed to prove his readiness and willingness and this Court finds no reason to differ from the view expressed by the trial Court on this issue.

Point No.(iii) :

29. Defendants 2 and 3 purchased the substantial portion of the suit property under five different sale deeds, dated 01.12.2006, executed by the 1st defendant. A specific stand is taken by the defendants 2 to 4 that they are *bona fide* purchasers for value.

30. The plea of 4th respondent that he is a *bone fide* purchaser cannot be accepted, as he purchased the property only on 23.03.2007, i.e., after the filing of the suit. As far as the 4th respondent is concerned, he is only a purchaser *pendente lite*. Therefore, his purchase is hit by *lis pendens*.

31. Though there is no direct evidence to show that the defendants 2



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and 3 had knowledge of the sale agreement, this Court cannot ignore the fact that the sale agreement executed by the 1st defendant in favour of the plaintiff is a registered one. Normally, any purchaser is expected to verify any alienations by getting an Encumbrance Certificate from the Registrar's Office. In the present case, though there is evidence to the effect that Encumbrance Certificate obtained by the defendants did not reflect the suit agreement, no document is produced to show that the agreement was not revealed from the Encumbrance Certificate. When a question arises whether the subsequent purchaser is a *bona fide* purchaser to give him the benefit of Section 19(b) of the Specific Relief Act, 1963, the Court is expected to examine whether the subsequent purchaser has made any enquiry. A registered agreement would have come to the knowledge of the defendants 2 and 3, if they had really made an enquiry as a prudent purchaser. In the absence of any other circumstance in favour of defendants 2 and 3, this Court is unable to give them the benefit under Section 19(b) of the Specific Relief Act by holding that they are *bona fide* purchasers for value without notice of the sale agreement.



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32.However, the trial Court has held that the defendants 2 to 4 are *bona fide* purchasers of the suit properties on the ground that the sale deeds obtained by them are not challenged by the plaintiff. The findings of the trial Court on this aspect cannot be sustained. However, the point which should be taken note of is that the prayer is not amended by seeking relief of specific performance as against defendants 2 to 4. Even though the sale deed in favour of 4th defendant is subject to the outcome of the suit for specific performance, as the same is after the suit for specific performance, the sale deeds obtained by defendants 2 and 3 are before the suit. However, the plaintiff has not sought for any relief as against defendants 2 and 3. As pointed out by the trial Court, the plaintiff did not ask for any prayer to set aside the sale deeds in favour of defendants 2 to 4. It is admitted that the plaintiff knew about the sale in favour of the defendants 2 to 4 even in 2007.

33.In the said circumstances, though defendants 2 to 4 are not *bona fide* purchasers for value without notice of the sale agreement, the plaintiff,



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who has failed to amend the prayer, cannot get a valid and effective decree and therefore, this Court may not grant a decree of specific performance as against 1st defendant alone.

Point No.(iv) :

34.It is seen that the plaint in the previous suit is filed as Ex.A3 by the plaintiff himself. A plea is also raised about the maintainability of the present suit by referring to previous suit in O.S.No.242 of 2006. However, the trial Court has not framed a specific issue whether the suit is barred under Order II Rule of CPC. But the trial Court, after referring to a judgment of this Court in ***R.Chendilven v. G.Damodaran and others*** reported in ***2015 (2) CTF 129***, wherein omission to file a suit for specific performance was considered fatal and leave was not granted to file comprehensive suit later, has only observed that the plaintiff is not entitled to file a suit for bare injunction before filing a suit for specific performance. Since the trial Court has not framed an issue on this aspect, the issue was not considered with reference to the pleadings.



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35. In the absence of any attempt by the defendants to canvass the point before the trial Court and in the absence of any issue being framed, this Court is not inclined to rest this judgment on the new plea of Order II Rule of CPC, even though this Court finds that the suit for specific performance is barred by the principle of Order II Rule 2 of CPC, as the cause of action to file the suit for specific performance existed even when he filed the previous suit for permanent injunction in O.S.No.242 of 2006.

Point No.(v) :

36. The Hon'ble Supreme Court, in the case of ***Kamal Kumar Vs. Premlata Joshi and others*** reported in ***2019 [3] SCC 704***, has considered the scope of Section 20 of the Specific Relief Act and the material questions which are required to be looked into by Court. It is useful to refer to Paragraph No.7 of the said judgment:-

“7. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are:



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7.1.First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.

7.2.Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract.

7.3.Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;

7.4.Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;

7.5. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.”

37.Even though Section 20 of the Specific Relief Act has now been amended, the Hon'ble Supreme Court in ***Smt.Katta Sujatha Reddy &***



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another v. Siddamsetty Infra Projects Pvt Ltd & Others [Appeal Nos.5822

to 5824/2022, dated 25.08.2022] has held that the amendment is only prospective. Therefore, the question has to be considered in the light of Section 20 of Specific Relief Act as it stood before amendment. While exercising the discretion, the Court is expected to consider the facts and circumstances of the case, the conduct of the parties, the unfair or undue advantage to the plaintiff by granting specific performance, or the irreparable loss that would be caused to the defendant.

38.In the present case, this Court has already held that the plaintiff has not proved his readiness and willingness as required in terms of Section 16(c) of the Specific Relief Act. This Court has also seen that the plaintiff has not even prayed for a relief as against defendants 2 to 4 who are subsequent purchasers. The evidence of D.W.2 would support the case of 1st defendant that the agreement was at the time when the 1st defendant was in urgent need of money to perform his daughter's marriage. It is also in evidence that the 1st defendant had postponed his daughter's marriage on account of the failure of the plaintiff to pay the balance as agreed under the



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terms of the agreement. The conduct of plaintiff in filing the suit for permanent injunction would only show that a conscious attempt was made by the plaintiff to prevent the 1st defendant from mobilising funds by other means. The plaintiff, therefore, has not come with clean hands in the present suit. The plaintiff's case in the plaint that time was never made as essence of the contract is not only against the terms of the agreement, but also reflects the intention of plaintiff to wriggle out his contractual obligations.

39.This Court has already seen that the suit property is just in the outskirts of Chennai and the value of property is increasing every day on account of the dire requirement of space in and around Chennai. From the consideration for which the properties have been sold in favour of defendants 2 to 4, it could be seen that the 1st defendant has entered into an agreement with the plaintiff for a much lower price compared to the market value, only for the purpose of meeting out the marriage expenses of 1st defendant's daughter. The property has now been sold in favour of defendants 2 to 4 and title has been conveyed in respect of substantial



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portion of property in favour of defendants 2 and 3 even before filing of the suit. Though this Court has not accepted the case of defendants 2 to 4 that they are *bona fide* purchasers, the fact that the suit property has been purchased by them for a price of more than Rs.2 Crores within one year from the date of suit agreement speaks for itself. When the 1st defendant is not at fault and he never committed any default and the plaintiff did not show his readiness, this Court is not in a position to now exercise its discretionary powers, especially when the trial Court has refused to exercise the discretion by specifically holding that the plaintiff is not entitled to the equitable relief.

40. Therefore, this Court, having regard to the findings of the trial Court and facts and circumstances of this case, holds that the plaintiff is not entitled to the equitable relief of specific performance.

Point No.(vi) :

41. During the pendency of the appeal, the appellant filed a petition in C.M.P.No.5278 of 2023 to include the alternative relief to direct the 1st



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defendant to refund the plaintiff a sum of Rs.15,00,000/- together with interest @ 12% p.a. from the date of plaint till the date of payment. This Court allowed the application by order dated 17.04.2023.

42.Having regard to the facts and circumstances of the case, particularly the fact that the 1st defendant has in fact gained by selling the property in favour of defendants 2 to 4, this Court is of the view that the plaintiff is entitled to the alternative relief for refund of a sum of Rs.15,00,000/- together with interest @ 12% p.a. from the date of plaint till the date of payment.

43.As a result, this appeal is partly allowed. The judgment and decree of the trial Court in O.S.No.432 of 2006 dated 09.10.2015 rejecting the prayer for specific performance is confirmed. However, the plaintiff is entitled to alternative relief for refund as per amended plaint. Therefore, the suit in O.S.No.432 of 2006 on the file of the Additional District Court, Chengalpattu, is partly decreed by directing the 1st defendant to refund the sum of Rs.15,00,000/- (Rupees Fifteen



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Lakhs only) to the plaintiff, together with interest at the rate of 12% p.a.

from the date of plaint till the date of payment. There shall be no order as to costs.

(S.S.S.R., J.) (C.K., J.)
16.06.2023

mkn

Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

1.The Additional District Judge,
Chengalpattu.

2.The Section Officer,		<i>with a direction to return</i>
VR Section, High Court,		<i>the records to the Court below,</i>
Chennai.		<i>if any, forthwith</i>



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S.S. SUNDAR, J.
and
C.KUMARAPPAN, J.

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16.06.2023