



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN  
AND  
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

**A.S.No. 322 of 2017**  
**and**  
**C.M.P.No. 12327 of 2017**

1. P.G.Immanuel (died)

2.Robert

3.Nirmala Paulraj

4.Gracy Louis

...Appellants

(A2 to A4 are brought on record as LR's of deceased  
sole appellant, vide Order of Court dated 06.12.2023  
made in CMP.No.27228 of 2023 in AS.No.322 of 2017)

Vs.

C.Natarajan Naicker (deceased)

1.Meenatchi Ammal

2.Rajasekar

3.Chandra Sekar

4.Vijaya

5.Vanaja



6. The Sub-Registrar,  
Pammal, Alandur Taluk.

7. The State of Tamil Nadu,  
Represented by District Collector,  
Kancheepuram,  
Kancheepuram District.

...Respondents

(5th respondent name amended vide order of the court  
dated 16.02.2018 made in CMP.No.1179/2018 in  
A.S.No.322 of 2017)

Prayer: First Appeal filed under Section 96 of the Code of Civil Procedure,  
against the judgment and decree in O.S.No.199 of 2012 on the file of the  
Principal District Court, Kancheepuram at Chengalpattu dated 03.04.2017.

For Appellants : Mr.C.Jagadish

For Respondents : Mr.N.R.Anantha Ramakrishnan  
for R1 to R5  
R6 & R7 - Given up

### **J U D G M E N T**

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The defendant is on appeal, aggrieved by the decree for specific  
performance granted in O.S.No.199 of 2012 on the file of the Principal  
District Court, Chengalpet.



2. The parties are referred as per their ranking in the suit for the purpose of convenience. The plaintiff sued for specific performance of the agreement dated 02.03.2012. According to the plaintiff, the first defendant had agreed to sell the property which is a dwelling house for a consideration of Rs.88,00,000/-. An advance of Rs.10,00,000/- was paid on the date of the agreement and three months time was fixed for performance of the contract. The plaintiff paid a further sum of Rs.20,00,000/- on 12.02.2012 and Rs.5,00,000/- on 15.03.2012. These payments are evidenced by endorsements made on the reverse of the agreement dated 02.03.2012. The last date for performance was fixed as 02.06.2012.

3. According to the plaintiff, when he approached the first defendant for executing the sale deed even during the last week of May, 2012, he assured the plaintiff that he would execute the sale deed on 04.06.2012 as 02.06.2012 happens to be a Saturday. Believing the defendant, the plaintiff went to the Registrar's Office at Pammal but, the defendant did not turn up. Therefore, the plaintiff met the defendant in his house on the same day evening and the defendant requested 10 days further time. Therefore, the



plaintiff sent a letter on 05.06.2012 to the defendant informing him that he would concede to the request and take the sale deed after 10 days. However, the defendant did not come forward to execute the sale deed as assured by him. A police complaint was given on 14.06.2012. The defendant who came to the Police Station at about 2 p.m. agreed to execute the sale deed on 18.06.2012.

4. It is also claimed that the defendant wanted part of the remaining sale consideration i.e., sum of Rs.16,00,000/- by way of a demand draft and the balance in cash. Therefore, the plaintiff had taken a demand draft for Rs.16,00,000/- in the name of the defendant and was waiting in the Sub-Registrar's Office on 18.06.2012. The defendant did not turn up on the said date also. The plaintiff again lodged a complaint with the police. The letter sent by the plaintiff on 05.06.2012 by Registered Post Acknowledgment Due was returned with an endorsement 'unclaimed'. Again, the plaintiff sent a notice on 28.06.2012 demanding performance of the agreement. The said notice was also returned with endorsement 'door locked'. Therefore, left without any other alternative option, the plaintiff sued for specific performance on 19.07.2012. The plaintiff was also claimed that he was



ready and willing to perform his part of the contract and it is the defendant who evaded the performance.

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5. The suit was resisted by the defendant contending that the plaintiff was not ready and willing to perform his part of the contract. While admitting the agreement, the defendant contended that he wanted the money in March, 2012 itself. Though the plaintiff assured him, failed to pay the money in March. He would also contend that the period fixed for performance having expired on 02.06.2012, the plaintiff having not exhibited his readiness and willingness within the period fixed under the agreement, is not entitled to specific performance. Insufficiency of funds and the absence of consent from the family members were also projected in defence.

6. On the pleadings, the learned Trial Judge framed the following issues:-

- 1. Whether the plaintiff is entitled to the relief of specific performance?*
- 2. Whether time is essence of the contract?*



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3. *Whether the plaintiff was always ready and wiling to perform his part of the contract?*

4. *To what relief the parties are entitled?*

At trial, the grandson of the plaintiff was examined as P.W.1 and Exs.A1 to A10 were marked. On the side of the defendants, the 1st defendant namely, Immanuel was examined as D.W.1 and Exs.B1 to B4 were marked.

7. On the consideration of the evidence, the Trial Judge concluded that time was not the essence of the contract, since it is a transaction of sale of immovable property. On issue No.3, the learned Trial Judge found that though the evidence of P.W.1 would be insufficient to conclude on the readiness and willingness of the plaintiff, the circumstance would clearly demonstrate the readiness and willingness on the part of the plaintiff to have the sale deed executed. On the said findings, the learned Trial Judge concluded that the plaintiff is entitled to specific performance and decreed the suit as prayed for granting the plaintiff three months time to pay the balance sale consideration. Hence, this appeal.



8. We have heard Mr.C.Jagadish, learned counsel appearing for the appellants and Mr.N.R.Anantha Ramakrishnan, learned counsel for the respondents.

9. Mr.C.Jagadish, learned counsel for the appellant would vehemently contend that non-examination of the plaintiff is fatal to the case. According to the learned counsel, readiness and willingness can be proved only by examining the person concerned and not otherwise. The learned counsel would also point out that though the time fixed under agreement expired on 02.06.2012, there is nothing to show that the plaintiff demanded performance within the time fixed under the agreement. He would also further point out that the plaintiff who claims to have been ready and willing to perform his part of the contract and take a demand draft only for Rs.16,00,000/- when the balance sale consideration was Rs.53,00,000/-. This conduct on the part of the plaintiff, according to Mr.C.Jagadish is fatal to the claim for specific performance. The learned counsel would also point out that the defendant had issued a notice on 16.06.2012, requiring the plaintiff to take back advance and only after the issuance of the said notice,



the plaintiff come forward with the legal notice seeking specific performance on 28.06.2012. Therefore, according to the learned counsel, the Trial Court was not right in concluding that the plaintiff was ready and willing to perform his part of the contract.

10. Contending contra, Mr.N.RAnantha Ramakrishnan, learned counsel for the respondents would submit that no doubt, it is incumbent upon the plaintiff to prove readiness and willingness in a suit for specific performance but, jingling of the coins is not necessary. All that is required for the plaintiff is to establish that he was ready and willing and he was possessed of sufficient means to pay the sale consideration.

11. The learned counsel for the respondents would submit that the following features militated against the plea of the defendant that the plaintiff was not ready and perform his part of the contract:

- i) The time fixed under the contract expired on 02.06.2012.



ii) On 05.06.2012, the plaintiff had written to the defendant stating that he was ready to have the sale deed executed on 04.06.2012 and it was the defendant who sought for ten days time.

iii) In the said letter, the plaintiff had made it clear that he has always been ready and willing to perform his part of the contract.

iv) The plaintiff had lodged a police complaint on 14.06.2012 through his wife again, reiterating that he has been ready and willing to perform his part of the contract.

v) The plaintiff has taken a demand draft for Rs.16,00,000/- on 16.06.2012, since according to him, the defendant had agreed to execute sale deed on 18.06.2012.

vi) The letter dated 05.06.2012 as well as the notice dated 28.06.2012 have been returned to the plaintiff without service.

vii) The defendant has chosen to issue a legal notice on 16.06.2012 wherein, the address of the defendant is shown as the same address to which, the letter dated 05.06.2012 and the legal notice dated 28.06.2012 were issued.



12. These factors, according to the learned counsel would demonstrate that the plaintiff has always been ready and willing and it is the defendant who has attempted to derail the agreement by not coming forward to execute the sale deed. Though it is claimed that notice dated 16.06.2012 was issued by the defendant, offering to refund the advance, there is no evidence of service of the said notice on the plaintiff. Neither the acknowledgment card nor the tracking sheet have been produced. Only the receipt has been produced. This according to the learned counsel would show that the defendant had made all attempts to wriggle out of the agreement. We have considered the rival submissions.

13. On the arguments of the learned counsel for the parties, the following points emerge for determination:-

*i) Whether the plaintiff was ready and willing to perform his part of the contract.*

*ii) Whether the plaintiff is entitled to specific performance of the agreement.*

14. Readiness and willingness to perform the contract has to be



established by the plaintiff. It is not necessary for the plaintiff to put the money before the Court. It is enough that the plaintiff shows that he was ready and willing through out the period. In the case on hand, the plaintiff has specifically stated that he had requested the defendant to execute the sale deed during last week of May, 2012 and the defendant had assured him to execute the sale deed on 04.06.2012. This fact has been averred even in the letter dated 05.06.2012, which is the first document that emanated after the agreement. The defendant has not denied the receipt of the advance of Rs.35,00,000/- from the plaintiff in three instalments. The remaining amount was a sum of Rs.53,00,000/-.

15. On 14.06.2012, the plaintiff had lodged a police complaint and he has further pleaded that the defendant had agreed to execute the sale deed on 18.06.2012 and he wanted the remaining sale consideration to be paid in cash and demand draft for Rs.16,00,000/- Therefore, he had taken the demand draft for Rs.16,00,000/- on 16.06.2012 itself. There is nothing on record to show that the plaintiff was not ready and willing. In fact, there is no plea that the plaintiff does not have the means to pay the balance sale consideration in the written statement. All that the defendant would allege



is that he is the land broker and he was looking for purchasers.

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16. The conduct of the plaintiff that could be gathered from the facts narrated above would show that the plaintiff has always been ready and willing. The grandson of the plaintiff who was examined as P.W.1 has also spoken about the readiness and willingness. Of course, the Trial Court has pointed out that his evidence alone may not be sufficient to reach a conclusion on readiness and willingness. It has however, relied upon the circumstance to conclude that the plaintiff has been ready and willing. We have been taken through the evidence both, documentary and oral. We do not find any reason to come to a different conclusion than the one reached by the Trial Court on the question of readiness and willingness.

17. No doubt, the learned counsel for the appellant would vehemently contend that the fact that the plaintiff has taken a demand draft only for Rs.16,00,000/- on 16.06.2012 would show that he did not have the remaining money. Even in the plaint, the plaintiff has specifically pleaded, the defendant wanted Rs.16,00,000/- by way of demand draft and remaining amount by way of cash. This conduct is quite normal and it does



not appear to be a result of a scheme to deny the rights of the defendant.

The conduct of the defendant is little intriguing. The letter dated 05.06.2012 and the notice dated 28.06.2012 sent to him to the same address have been returned with endorsements 'unclaimed' and 'door locked' respectively but, a legal notice was issued by the defendant to the plaintiff on 16.06.2012 wherein, he is stated to be residing in the very same address. The defendant has not chosen to produce that acknowledgment or the tracking sheet to show the receipt of the said notice by the plaintiff. In fact, we find that there is no reference to the said notice in the plaint. We find that the defendant has not proved service of the said notice dated 16.06.2012 marked as Ex.B1.

18. We therefore, conclude that the plaintiff was always ready and willing to perform his part of the contract and he has also filed the suit within a very reasonable time i.e., on 19.07.2012 itself. Of course, the plaintiff has not deposited the balance of sale consideration at the time of filing of the suit. Law is settled, that it is not necessary for the plaintiff to deposit the sale consideration whenever he or she files the suit for specific performance.



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19. Mr.N.R.Anantha Ramakrishnan informs that the balance sale consideration has also been deposited in the Trial court within the time granted by this Trial Court. We therefore, see no reason to interfere with the judgment of the learned District Judge. This First Appeal therefore, fails and it is accordingly, **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.M., J.) (C.K., J.)  
12.11.2024

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Internet:Yes

Index: No

Speaking

Neutral Citation : No



To:-

The Principal District Judge,  
Kancheepuram at Chengalpattu.

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**R.SUBRAMANIAN, J.**  
**and**  
**C.KUMARAPPAN, J.**

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**12.11.2024**