



A.S.(MD).No.183 of 2015

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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Dated: 12.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

**A.S(MD) No.183 of 2015**

**and**

**M.P(MD) No.2 of 2015**

1. P. Vellammal (Died)
2. P.Shanmugavel,
3. P.Sakthivel,
4. P.Murugan,
5. J.Selvarani,
6. P.Gnanakumar,
7. P.Rajakumar,
8. P.Johnson,
9. P.Surendran

... Appellants

(Appellants 2 to 9 and 7<sup>th</sup> Respondent are Brought on record as legal heirs of the deceased sole appellant vide Court Order dated 12.07.2022 made in C.M.P.(MD).Nos.3460 and 3462 of 2019 and C.M.P.(MD).No. 3389 of 2022 in A.S.(MD).No.183 of 2015)

Vs.

1. R.S. Nithyanantham(Died)
2. Tiruppathi Devi,
3. Kameshkumar,
4. Lavanya,
5. Aswini,
6. Rashyamani Ammal,
7. M. Jamuna,

... Respondents



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(Respondents 2 to 6 are brought on record as legal heirs of the deceased sole respondent vide Court order dated 12.07.2022 made in C.M.P.(MD).Nos.3460, 3461 and 3462 of 2019 and C.M.P.(MD).No.3389 of 2022 in A.S.(MD).No.183 of 2015)

(7th Respondent is given up vide Court order dated 08.11.2023 made in A.S.NO.183 of 2015)

**Prayer :** This Appeal Suit has been filed under Section 96 of C.P.C., to set aside the judgment and decree made in O.S.No.11 of 2008 on the file of the II Additional District Judge, Thoothukudi, dated 30.04.2012.

For Appellants : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Meenakshi Sundaram  
Senior Counsel for R2 to R6  
for Mr.M.Senguvijay

(7<sup>th</sup> respondent is given up vide Court order dated 08.11.2023 made in A.S.(MD).No.183 of 2015)

### **JUDGMENT**

This appeal has been preferred as against the decree and Judgment passed by the learned II Additional District Judge, Thoothukudi, in O.S.No.11 of 2008, dated 30.04.2012, wherein, the respondent herein has filed a suit for specific performance on contract and alternative prayer for return of advance paid by the plaintiff. The trial Court decreed the suit



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and granted decree for specific performance. Aggrieved by the said judgment the present appeal has been preferred by the owner of the property, who is the defendant.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking before the trial Court.

3. The brief facts before the trial Court are as follows:

The defendant is the owner of the suit property. The plaintiff and the defendant entered into sale agreement in respect of the suit property, dated 29.10.2005 and the sale price was fixed as Rs.1,25,000/- per cent including the building. Time for completion of contract is four months. On the date of agreement itself the plaintiff paid an advance amount of Rs.2,00,000/-. The defendant agreed to measure the property and receive the balance at the time of execution of sale deed. The plaintiff was always ready and willing to perform his part of contract. Thereafter, the plaintiff paid a sum of Rs.1,05,000/- on 13.11.2005 and a sum of Rs. 1,00,000/- on 01.02.2006. In total he paid a sum of Rs.4,05,000/-. The defendant took time for vacating the tenants. When the property was



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measured, it is found that only 8.52 cents alone available on the ground and some portion of the property was taken over by the Government for forming road. The plaintiff also called upon the defendant for more than four times and requested to complete the sale in terms of measurements available on the ground and to receive the sale consideration. Since defendant was evading to complete the sale, a legal notice was issued to the defendant on 16.02.2008 and the same was acknowledged by the defendant on 18.02.2008. The defendant also sent telegram on 16.02.2008 and also sent reply notice on 19.02.2008 with false allegations. Due to increase of the value of the property, the defendant evading to execute the sale deed in favour of the plaintiff. Hence, the plaintiff filed the suit.

4. The brief contention of the written statement filed by the defendant are as follows:

The suit is not maintainable either in law or on facts. The agreement is dated 29.10.2005. Time for completion of contract was lapsed after 28.02.2006. Already the defendant sent telegram to the plaintiff and thereafter, only he issued legal notice alleging that he is



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ready and willing to perform his part of contract. In fact he has not taken any steps to get sale deed in his favour for the past two years. After the telegram was sent by the defendant only, he issued notice with false allegations. Therefore, the plaintiff was not ready and willing to perform his part of contract. There is no shortage of extent of the property and the plaintiff never measured the property. Based on the title deeds and parental deeds only the agreement was entered. The plaintiff has also know very well about the extent mentioned in the parent deeds and the agreement. Time is essence of contract and after two years from the date of completion of contract, the suit has been filed. Therefore, the plaintiff was not ready and willing to perform his part of contract. In spite of repeated requests and demands made by the defendant, the plaintiff was not ready to get sale deeds in his favour. It is false to state that the plaintiff approached the defendant for four times. The property mentioned in the plaint are not in consonance with the agreement. Therefore, the suit is liable to dismissed.

5. Based on the above said pleadings, the trial Court has framed the following issues.



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1. Whether the plaintiff was ready and willing to perform his part of contract?
2. Is it true that the defendant is avoiding the sale consideration with ulterior motive?
3. Whether that time is the essence of the contract?
4. To what reliefs?

6. Before the trial Court on the side of the plaintiff PW1 to PW5 were examined and Exs.A1 to A25 were marked. On the side of the defendant DW1 was examined and Ex.B1 was marked. Exs.C1 and C2 were also marked.

7. After analysing the evidence adduced on both sides, the trial Court has decreed the suit in favour of the plaintiff by granting the decree of specific performance.

8. Aggrieved by the said decree and judgment the present appeal has been preferred by the defendant on the following grounds.

1. The Judgment and Decree of the learned Additional



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District Judge is vitiated by law and errors of jurisdiction.

2. The learned Additional District Judge erred in mechanically granting the relief of specific performance without considering the circumstances to exercise such discretion as provided under Section 20 of this Specific Relief Act.
3. The learned Additional District Judge failed to consider that the cumulative effect of the facts of this case would not warrant a decree for a specific performance.
4. The learned Additional District Judge is erred in law in granting the discretionary relief of specific performance in favour of the respondent as the respondent had not revealed his readiness and willingness for a period of 2 years from the date of expiration of the sale agreement.
5. The learned Additional District Judge is erred in law in arrives at a conclusion that time is not the



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essence of contract in the agreement dated 29.10.2005 though the four months time is particularly specified to remit the balance sale consideration.

6. The learned Additional District Judge ought to have dismissed the suit as the respondent approached the court with false pleadings by stating that the petitioner given a wrong measurement of suit property and such contention is disproved by Exhibit C1 and C2 and hence the respondent made such false statement only to balance the long delay.
7. The learned Additional District Judge ought to have dismissed the suit as the respondent never approached this petitioner with the balance sale consideration within the agreement period i.e., before 01.03.2006 since the time is particularly specified in the agreement to pay the balance amount.
8. The learned Additional District Judge failed to



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consider the fact that the respondent have not proved his pleadings that he approached the petitioner in Madurai and through phone calls in between the date of agreement and the date of legal notice and hence there is no readiness and willingness by the respondent for a period of more than 2 ½ years and in such circumstance he cannot claim the discretionary reliefs.

9. The learned Additional District Judge erred in relying Exhibit PW2 and PW4 to find out the existence of tenancy which is immaterial as the respondent never approached this petitioner for more than 2 years and hence any prudent owner could not avoid the profit through rent.
10. The learned Additional District Judge is erred in law in decreeing the suit though it is proved from the Commissioner's plan and report that the respondent's pleading regarding measurement is false and hence no relief could be granted to a



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person who approached court with unclean hands.

11.The other reasons adduced are equally unsound and unsustainable.

9. Pending appeal proceedings both appellant/defendant as well as respondent/plaintiff died and their legal heirs were brought on record as appellants 2 to 9 and respondents 2 to 7.

10. The learned counsel appearing for the appellants contended that originally the property belongs to the defendant and she entered into the agreement with the plaintiff to sell the property. The date of agreement is 29.10.2005. The sale price is fixed as Rs.1,25,000/- per cent. On the date of agreement itself a sum of Rs.2,00,000/- was paid as advance of sale consideration and time for completion of sale is fixed as four months. Thereafter, the defendant received a sum of Rs.2,05,000/- on different dates. In total she received a sum of Rs.4,05,000/-. After completion of four months the plaintiff was not ready to get sale deeds in his favour and he failed to perform his part of contract. Thereby, the defendant sent telegram to the plaintiff on 16.02.2008. Thereafter, the



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plaintiff issued notice, dated 16.02.2008 and it was received by the defendant on 18.02.2008 and the same was suitably replied by the defendant through reply notice, dated 19.02.2008. The plaintiff was not ready and willing to perform his part of contract and not even issued notice after the completion of four months as agreed by the parties in the agreement. After issuance of the telegram only, he issued notice and filed the suit. In order to prove the case of the defendant he examined DW1 and marked Ex.B1. But the trial Court failed to consider the case of the defendant and erroneously decreed the suit. Therefore, the judgment and decree passed by the trial Court are liable to be set aside by allowing this appeal.

11. The learned counsel for the appellant relied upon the following Judgments passed by the Honourable Supreme Court of India,

1. In the case of *Alagammal and others Vs. Ganesan and another* made in Civil Appeal No.8185 of 2009; and
2. In the case of *Shenbagam and others Vs. KK Rathinavel* reported in **2022 SCC Online SC 71**.





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was only on the part of the defendant. The plaintiff was always ready and willing to perform his part of contract. In order to prove his case, the plaintiff examined PW1 to PW5 and marked Exs.A1 to A25 before the trial Court. After considering the exhibits and evidences adduced on both sides carefully, the trial Court granted decree for specific performance. There is no ground to allow this appeal and the appeal is liable to be dismissed.

13. The learned counsel for the respondents relied upon the following Judgments of the Honourable Supreme Court of India,

1. In the case of ***Ramathal Vs. Maruthathal and Others*** reported in ***(2018) 18 Supreme Court Cases 303;***
2. In the case of ***R.Lakshmikantham Vs. Devaraji*** reported in ***(2019) 8 Supreme Court Cases 62;*** and
3. In the case of ***P.Daivasigamani Vs. S.Sambandan*** reported in ***2023 SAR (CIV) 1.***

14. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.



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15. Points for consideration in this appeal are:

1. Whether the respondent/plaintiff has been always ready and willing to perform his part of contract?
2. Whether the time is essence of contract?
3. Whether the respondent/plaintiff is entitled to decree for specific performance?
4. Whether the respondent/plaintiff is entitled to alternative relief of return of advance amount?
5. Whether this appeal has to be allowed or not?
6. To what relief the parties are entitled to?

**Point No.1: Whether the respondent/plaintiff has been always ready and willing to perform his part of contract?**

16. In this case there is no dispute in respect of the execution of the agreement dated 29.10.2005 and receipt of advance amount by the defendant. As per the agreement the sale price fixed by the parties is Rs.1,25,000/- per cent. On the date of agreement itself Rs.2,00,000/- was paid as advance and the same was admitted by the defendant. Thereafter, she received Rs.2,05,000/- on various dates. In total, she received



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Rs.4,05,000/-. According to the appellants, the plaintiff was not ready and willing to perform his part of contract and after expiry of fourth months time, he had not taken any steps to get the sale deed in his favour. After two years, the defendant only issued telegram. After receipt of the telegram only, he issued notice to the defendant with false allegations. According to the respondent, as per the agreement the defendant has to vacate the premises, but not handed over the possession of the property. The fair price shop in the suit property was vacated only on 18.11.2006. Even thereafter, some other tenants were occupied the property. Therefore, the plaintiff waited for the eviction of the tenants in the suit property. In this context, the plaintiff stated that he was always ready and willing to perform his part of contract, but, due to the occupation of some of the tenants, the defendant was unable to hand over the possession of the property. To that effect he also filed documents Exs.A10 and A11. On perusal of said documents, it is seen that the fair price shop functioned in the property was vacated on 18.11.2006. In Ex.A6 the date of vacating the property is mentioned as 18.01.2006 instead of 18.11.2006, for that Ex.A11 also marked. As per Ex.A11 the date of vacation of fair price shop is 08.11.2006 and the same was



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wrongly mentioned as 18.01.2006. Further the plaintiff produced Ex.A4 stating that one Chellammal had occupied one of the property and he produced the electricity consumption charges in the name of Chellammal, who is the tenant of the property.

17. Further, on perusal of Ex.A7 it reveals that on the date of 16.02.2008, the defendant issued telegram to the plaintiff and thereafter, only the plaintiff issued notice to the defendant through Exs.A3 and A5. In that notice there is no recitals about the tenants occupied in the suit premises and the main contention is that the property is not 9.03 cents and the extent was only 8.5 cents. The issuance of the above said notice is denied by the defendant and the contention of the defendant is that after receipt of the telegram from the defendant only, they issued this notice and they never measured the property as alleged in the notice. Therefore, according to the defendant, the plaintiff has not taken any steps to get sale deed by expressing his willingness after four months from the date of agreement. In the notice Ex.A5 there is no mention about the particulars of fair price shop and other tenants, but only mentioned about the occupation of the mother of the defendant.



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According to the plaintiff he has not taken any steps till 16.02.2008 due to the tenants occupied the property and measurement is also not tallied with the agreement. Though the plaintiff stated in the evidence and pleadings that he already contacted the defendant for four times, but, she evaded from executing the sale deed, he did not issue any notice for the said reasons. However, from the Ex.P.6 it reveals that the fair price shop was vacated only on 18.11.2006. The date of agreement is 29.10.2005 and four months time lapsed on 28.02.2006 and thereafter, the plaintiff has issued notice on 16.02.2008. According to the plaintiff he was ready and willing to perform his part of contract, but the defendant was not ready to measure the property and tenants also occupied the property and the same was proved by the plaintiff through Ex.A.10 and A.11. The defendant has not vacated the tenants within four months and thereby the plaintiff's contention is acceptable that he was always ready and willing to perform his part of contract.

18. In view of the above said discussions this Court is of the opinion that the plaintiff was ready and willing to perform his part of contract. Thus the point is answered.



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**Point No.2: Whether the time is essence for contract?**

19. According to the defendant, he agreed to sell the property to the plaintiff within four months thereby time is essence for contract and within that time the plaintiff was not ready and to willing to get the sale deed in his favour and he failed to perform his part of the contract. According to the respondent/plaintiff, time is not essence of the contract, the plaintiff was always ready and willing to perform his part of the contract but the defendant only evaded from executing sale deed further she has not issued notice after the completion of four months by stating that the time is essence for contract. The defendant only evading to execute the sale deed and also not vacated the tenants and thereby the time is not the essence of the contract.

20. This Court has perused the entire records and nowhere stated special reasons to hold the time is essence of contract and merely four months time mentioned in the agreement is not sufficient to hold that time is essence of contract. Normally, as far as the specific performance suit in respect of immovable properties is concerned, the time is not



essence of the contract and it depends upon the nature of the case. In this case, there is no specific reason mentioned in the agreement to come to the conclusion that time is the essence of the contract.

21.The learned counsel appearing for the appellant relied upon the judgment of the Honourable Supreme Court made in the case of ***Alagammal and others Vs. Ganesan and another*** made in Civil Appeal No.8185 of 2009, wherein the Honourable Supreme Court in paragraph No.29 has held as follows:

*“The ratio laid down in K.S. Vidyadnam (supra) which had a similar factual matrix squarely applies in the facts and circumstances of the present case, on the issue that time was the essence of contract and even if time is not the essence of the agreement, in the event that there is no reference of any existence of any tenant in the building and it is mentioned that within a period of six months, the plaintiffs should purchase the stamp paper and pay the balance consideration whereupon the defendants will execute the Sale Deed, there is not a single letter or notice from the plaintiffs to the defendants calling upon them to the tenant to vacate and get the Sale Deed executed within time. Further, the Legal Notice was issued after two and a*



half years from expiry of the time period in K.S. Vidyanadam (supra), whereas in the present case, the Legal Notice has been issued after more than six and a half years. The relevant paragraphs from K.S. Vidyanadam (supra) read as under:

'10.It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party. That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani [(1993) 1 SCC 519]: (SCC p. 528, para 25)

"... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract.



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Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract.”

In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised. Now in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades — particularly after 1973 [ It is a wellknown fact that the steep rise in the price of oil following the 1973 Arab-Israeli war set in inflationary trends all over the world. Particularly affected were countries like who import bulk of their requirement of oil.]. In this case, the suit property is the house property situated in Madurai, which is one of the major cities of Tamil Nadu. The suit agreement was in December 1978 and the six months' period specified therein for completing the sale expired with 15-6-1979. The suit notice was issued by the plaintiff only on 11-7-1981, i.e., more than two years after the expiry of six months' period. The question is what was the plaintiff doing in this interval of more than two years? The plaintiff says that he has been calling upon Defendants 1 to 3 to get the tenant vacated and execute the sale deed and that the defendants were postponing the same representing that the tenant is not vacating the building. The defendants have denied this story. According to them, the plaintiff never moved in the matter and



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never called upon them to execute the sale deed. The trial court has accepted the defendants' story whereas the High Court has accepted the plaintiff's story. Let us first consider whose story is more probable and acceptable. For this purpose, we may first turn to the terms of the agreement. In the agreement of sale, there is no reference to the existence of any tenant in the building. What it says is that within the period of six months, the plaintiff should purchase the stamp papers and pay the balance consideration whereupon the defendants will execute the sale deed and that prior to the registration of the sale deed, the defendants shall vacate and deliver possession of the suit house to the plaintiff. There is not a single letter or notice from the plaintiff to the defendants calling upon them to get the tenant vacated and get the sale deed executed until he issued the suit notice on 11-7-1981. It is not the plaintiff's case that within six months', he purchased the stamp papers and offered to pay the balance consideration. The defendants' case is that the tenant is their own relation, that he is ready to vacate at any point of time and that the very fact that the plaintiff has in his suit notice offered to purchase the house with the tenant itself shows that the story put forward by him is false. The tenant has been examined by the defendant as DW 2. He stated that soon after the agreement, he was searching for a house but could not secure one. Meanwhile (i.e., on the expiry of six months from the date of agreement), he stated, the defendants told him that since the plaintiff has abandoned the agreement, he need not vacate. It is equally an admitted fact that between 15-12-1978 and 11-7-1981, the plaintiff has purchased two other properties. The



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*defendants' consistent refrain has been that the prices of house properties in Madurai have been rising fast, that within the said interval of 2 1/2 years, the prices went up three times and that only because of the said circumstance has the plaintiff (who had earlier abandoned any idea of going forward with the purchase of the suit property) turned round and demanded specific performance. Having regard to the above circumstances and the oral evidence of the parties, we are inclined to accept the case put forward by Defendants 1 to 3. We reject the story put forward by the plaintiff that during the said period of 2 1/2 years, he has been repeatedly asking the defendants to get the tenant vacated and execute the sale deed and that they were asking for time on the ground that tenant was not vacating. The above finding means that from 15-12-1978 till 11-7-1981, i.e., for a period of more than 2 1/2 years, the plaintiff was sitting quiet without taking any steps to perform his part of the contract under the agreement though the agreement specified a period of six months within which he was expected to purchase stamp papers, tender the balance amount and call upon the defendants to execute the sale deed and deliver possession of the property. We are inclined to accept the defendants' case that the values of the house property in Madurai town were rising fast and this must have induced the plaintiff to wake up after 2 1/2 years and demand specific performance.*

11. Shri Sivasubramaniam cited the decision of the Madras High Court in *S.V. Sankaralinga Nadar v. P.T.S. Ratnaswami Nadar* [AIR 1952 Mad 389 : (1952) 1 MLJ 44] holding that mere rise in prices is no ground for



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*denying the specific performance. With great respect, we are unable to agree if the said decision is understood as saying that the said factor is not at all to be taken into account while exercising the discretion vested in the court by law. We cannot be oblivious to the reality — and the reality is constant and continuous rise in the values of urban properties — fuelled by large-scale migration of people from rural areas to urban centres and by inflation. Take this very case. The plaintiff had agreed to pay the balance consideration, purchase the stamp papers and ask for the execution of sale deed and delivery of possession within six months. He did nothing of the sort. The agreement expressly provides that if the plaintiff fails in performing his part of the contract, the defendants are entitled to forfeit the earnest money of Rs 5000 and that if the defendants fail to perform their part of the contract, they are liable to pay double the said amount. Except paying the small amount of Rs 5000 (as against the total consideration of Rs 60,000) the plaintiff did nothing until he issued the suit notice 2 1/2 years after the agreement. Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties — evolved in times when prices and values were stable and inflation was unknown — requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so. The learned counsel for the plaintiff says that when the parties entered into the contract, they knew that prices are rising; hence, he says, rise in prices cannot be a ground for denying specific performance. May be, the parties knew of the*



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*said circumstance but they have also specified six months as the period within which the transaction should be completed. The said time-limit may not amount to making time the essence of the contract but it must yet have some meaning. Not for nothing could such time-limit would have been prescribed. Can it be stated as a rule of law or rule of prudence that where time is not made the essence of the contract, all stipulations of time provided in the contract have no significance or meaning or that they are as good as nonexistent? All this only means that while exercising its discretion, the court should also bear in mind that when the parties prescribe certain time-limit(s) for taking steps by one or the other party, it must have some significance and that the said time-limit(s) cannot be ignored altogether on the ground that time has not been made the essence of the contract (relating to immovable properties).*

xxx

13. In the case before us, it is not mere delay. It is a case of total inaction on the part of the plaintiff for 2 1/2 years in clear violation of the terms of agreement which required him to pay the balance, purchase the stamp papers and then ask for execution of sale deed within six months. Further, the delay is coupled with substantial rise in prices — according to the defendants, three times — between the date of agreement and the date of suit notice. The delay has brought about a situation where it would be inequitable to give the relief of specific performance to the plaintiff.'

(Emphasis supplied)



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On a careful perusal of the said judgment, it is clear that in the case of sale of immovable property, there is no presumption as to the time being the essence of contract, even if it is not of essence of contract, the Court may infer that it is to be performed in a reasonable time and the Court should look at all the relevant circumstances including the time limit specified in the agreement and deposition whether its discretion to grant specific performance should be exercised.

22. The learned counsel appearing for the respondents relied upon the judgment of the Honourable Supreme Court made in the case of Ramathal Vs. Maruthathal and Others reported in (2018) 18 Supreme Court Cases 303, wherein the Honourable Supreme Court in paragraph No.18 has held as follows:

*18. As per the law laid down by this Court in respect of sale of immovable property there is no presumption as to time being the essence of the contract. Even when there is no stipulation courts may infer that it has to be performed within a reasonable time taking into consideration the terms of the contract, the nature of the property and other surrounding circumstances. We feel that this proposition needs to be revisited in an appropriate case, as the value of an immovable property rate is fluctuating in recent times.*

23. On a careful perusal of the above judgment it is clear that in respect of sale of immovable property, there is no presumption as to time being the



essence of the contract. In the case on hand also, there is no specific reasons mentioned to make the time as essence of contract, there by one cannot presume the time is essence of contract.

24. The learned counsel appearing for the respondents relied upon the judgment of the Honourable Supreme Court made in the case of ***P.Daivasigamani Vs. S.Sambandan*** reported in ***2023 SAR (CIV) 1*** wherein the Honourable Supreme Court in paragraph No.10 has held as follows:

10. It cannot be gainsaid said that even though time is not considered as the essence of the contract in case of immoveable property and that the suit could be filed within three years as provided in [Article 54](#) of the [Limitation Act](#), the respondent - plaintiff had to perform his part of the contract within the reasonable time having regard to the term of the agreement prescribing the time limit. The time limit prescribed in the agreement cannot be ignored on the ground that time was not made the essence of the agreement or that the suit could be filed within three years from the date fixed for performance or from the date when the performance is refused by the vendor. Nonetheless, as discussed above, the suit having been filed by the respondent well within the prescribed time limit under [Article 54](#) of the [Limitation Act](#), the respondent could not have been non-suited on the ground of the suit being barred by limitation as sought to be submitted by learned counsel for the appellant.



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25. On a careful perusal of the said judgment it is clear that even though time is not considered as the essence of the contract in case of immovable property and the suit could be filed within time and provided in Article 54 of the Limitation Act.

26. Therefore, as discussed supra and in view of the said judgments, this Court is of the opinion that in this case, the time is not the essence of the contract. Thus, this point is answered.

**Point No.3:Whether the respondent/plaintiff is entitled to decree for specific performance?**

27. This Court in the previous points discussed and decided that the plaintiff was always ready and willing to perform his part of the contract. The defendant also admitted to execute sale deed after evicting the tenant and the plaintiff was waiting for the eviction of tenants and thereby he waited for long time and the defendant also admitted the fact that he executed the contract but he has not vacated the tenants immediately. Thereby, there is no delay on the part of plaintiff in getting the sale deed.



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28. At the time of arguments, the learned Senior Counsel appearing for the respondent/plaintiff brought to the knowledge of this Court that already decree has been executed and sale deed was also executed through execution proceedings and now it is pending for delivery of possession. The defendant has filed this appeal after two years from the date of decree with delay condone petition and by that time the balance sale price was deposited in to Court and sale deed was executed and now pending for delivery of the property. Therefore, at this stage if the appeal is allowed the appellant would get unfair Advantage. The delay is only on the part of appellant and no any fault on the side of respondent. The delay in getting sale is due to the occupation of tenants and the shortage in the extent of property. Even in the agreement there is a recital that the property has to be measured, but the defendant failed to measure the property prior to sale, therefore there is no delay on the part of respondent/ plaintiff.

29. To support of his contention, the learned counsel appearing for the respondents relied upon the judgment of the Honourable Supreme Court made in the case of *R.Lakshmikantham Vs. Devaraji* reported in (2019) 8 Supreme Court Cases

29/39



62, wherein the Honourable Supreme Court in paragraph No.11 has held as follows:

*11. The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18.12.2002 and 19.12.2002 had not been sent to the defendant. The High Court also erred in holding that despite having the necessary funds, the plaintiff could not be said to be ready and willing. In the aforesaid circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff – See [Mademsetty Satyanarayana v. G. Yelloji Rao and others](#) (paragraph 7) which reads as under:*

*“(7) Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a Court’s discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay –*



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*the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”*

30. On careful perusal of the above judgment, it is clear that In India it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, the delay cannot be put against the plaintiff.

31. The learned counsel appearing for the appellant has argued that even the sale deed is executed in favour of the respondent the appellant can workout their remedy by filing petition under Section 144 of C.P.C. Therefore, the appeal can be allowed by dismissing the suit. Further he relied upon the following judgments:

(i) ***Keshab Chandra Datta Vs.Ballygune Estate Private Limited*** reported in ***1972 SCC Online Cal 2.***



(ii) ***Karmat Ali Vs.Matlib Ali reported in 1952 SCC online Gau***  
**42.**

(iii) Judgment of the High Court of Karnataka, Kalaburagi case of  
***Manoj Bantia Vs. U.Devendra in R.F.A.No.200072/2018.***

(iv) ***Smt.Sanjeevamma and Others vs.G.Krishna and others in***  
***ILR 2004 KAR 2338.***

32. On a careful perusal of the above said judgments it is clear that when the decree has been executed if the appellate Court on merits had come to conclusion the judgment and decree of the trial Court shall require to be set aside in such an event appellate Court had every power to allow the appeal and the appellants are entitled to invoke provision of Section 144 of C.P.C and to request the Court for restitution. But the said case laws will not be applicable to the present facts of the case. In the present case, the suit properties were brought for auction and the sale deed was also executed and the appeal was preferred with a delay of two years, By that time the decree was executed and sale deed was executed by the Court and the case is pending for delivery of possession.

33. This Court has already in the previous point decided that the plaintiff was ready and willing to perform his part of contract. Therefore, as discussed supra the plaintiff is entitled to the decree for specific performance.



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**Point No.4: Whether the respondent/plaintiff is entitled to decree for return of advance amount?**

34. In view of the findings made in point No.3 that the plaintiff is entitled to decree for specific performance, the alternative relief of return of advance amount would not arise.

**Point No.5: Whether the appeal has to be allowed or not?**

35. This appeal has been preferred by the appellant as against the judgment and decree passed by the trial Court by granting the decree for specific performance. According to the appellant/defendant after the agreement, the plaintiff was not ready and willing to perform his part of the contract and he waited for more than two years and thereafter, only he filed this suit, that too, after the telegram issued by the defendant. According to the respondent/plaintiff, as per the agreement he has to surrender the vacant possession of the property. After completion of the time for sale, even after the lapse of agreement period the tenants were occupied in some portions of the property and thereby he contacted the defendant in person and they also assured to vacate the tenants, thereby



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there is a delay in sending the notices. In this regard this Court also elaborately discussed in the previous points and decided that the plaintiff is entitled to decree for specific performance of contract. The trial Court also passed the judgment after elaborate discussions about the readiness and willingness of the plaintiff and also discussed about the entitlement of the relief to the parties and decreed the suit and the decree and judgment are well reasoned and there is no infirmity or perversity found in the judgment and decree passed by the trial Court and thereby the appeal has no merits and it deserves to be dismissed.

**Point No.6: To what relief the parties are entitled to?**

36. Though the respondent/ plaintiff is entitled to decree for specific performance the case is pending for so many years and long time and thereby certainly the price of the property would have increased and thereby the plaintiff is liable to pay the excess amount to the defendant and thereby it is appropriate to direct the plaintiff to pay an additional amount to the appellant/defendant, to meet the ends of justice.



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37. The learned counsel appearing for the respondent/plaintiff brought to the knowledge of this Court that already the sale deed was executed and only the possession of the property is yet to be taken and the appellants are enjoying the income from the property through tenancy and already the plaintiff also had deposited the entire sale consideration price. Therefore, the plaintiff is entitled to decree for specific performance without paying any excess amount is the case.

38. The learned counsel appearing for the appellants also relied upon the Judgment of the Honourable Supreme Court of India in the case of ***Shenbagam and others Vs. KK Rathinavel*** reported in **2022 SCC Online SC 71**, wherein, it has been held in paragraph No.39 as follows:

*“39. In **Nirmala Anand v. Advent Corporation (P.) Ltd. and Others**, a three- judge Bench of this Court observed that in case of a phenomenal increase in the price of the land, the Court may impose a reasonable condition in the decree such as payment of an additional amount by the purchaser. In decreeing the suit for specific performance, the Court observed:*

*“6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always*



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*necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship*



***that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”***

*(emphasis supplied)*

39. On careful perusal of judgment it is clear that while balancing the equities, one of the considerations to be kept as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other and also the hardship that may be caused to the defendant by directing specific performance.

40. In view of the above judgment and considering the facts and circumstances of the case, this Court is inclined to direct the respondent/plaintiff to pay a sum of Rs.3,00,000/- to the appellant/defendant for the escalation of price.

41. In the result, this Appeal Suit is dismissed. However, the appellant/defendant is entitled to money decree for a sum of Rs.3,00,000/- (Rupees Three Lakhs only) and the respondent/plaintiff is directed to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the



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appellant/defendant within a period of three months from the date of receipt of copy of the judgment of this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

**12.03.2024**

NCC : Yes/No  
Index : Yes/No  
Internet: Yes/No  
TM/ebsi

**To:**

1. The II Additional District Judge,  
Thoothukudi.
2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P. DHANABAL,J.**

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**12.03.2024**