BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.02.2024

PRONOUNCED ON : 21.05.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

A.S.(MD)No.240 of 2022
and
C.M.P.(MD)No.11110 of 2022

A.Uma ... Appellant / 1st Defendant

Vs.

1.G.Pakkirisamy

2.Kalaiselvi

3.Vinodhini

4.Vigneshwaran ... Respondents No.1 to 4 / Defendants

5.A.Murugan ... Respondents / Respondents

(On behalf of respondents 2 to 4, their power agent namely Pakkirisamy, S/o. Govindasamy, residing at No.18, Malligai Street, Rahuman Nagar, Medical College Road, Thanjavur.)

PRAYER: This Appeal Suit filed under Section 96 of C.P.C., to set aside the Judgment and Decree dated 27.06.2022 in O.S.No.133 of 2018 on the file of II Additional District and Sessions Judge, Thanjavur and allow the First Appeal.

For Appellant : Mr.S.Sankar

For R-1 to R-4 : Mr.T.A.Ebenezer

For R-5 : No appearance

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S. No. 133 of 2018 on the file of 2nd Additional District and Sessions Judge, Thanjavur, dated 27.06.2022.

2. The respondents / plaintiffs have filed the above suit claiming the following reliefs:

(i) To pass a judgment and decree of specific performance of contract, directing the first defendant to execute a sale deed with respect to the suit scheduled property on the basis of the agreement for sale dated 16.09.2016 executed between the first plaintiff and his former partners namely Dharmaraj and Murugan along with the first defendant.

(ii) Cost of the suit.

(iii) To pass such other reliefs as the Court deems fit and proper.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status / ranking in the original suit.

4. **The plaintiff's case in short is as follows:**

4.1. The suit property originally belonged to one Mariyappan from whom the first defendant by the strength of a sale deed dated 16.08.2010 had purchased the same and from the date of purchase of the suit property, the first defendant had been continuously in possession, enjoyment and title over the suit property to the knowledge of everyone. The suit property is a house plot, in which the title of the same has been perfected by the first defendant by effective mutation in her name and patta was also issued in her favour on 01.07.2016. The first plaintiff, the second plaintiff's husband, that is, the father of the 3rd and 4th plaintiffs, namely Dharmarajan, son of Ganesan and one Murugan, son of Arunagiri were partners in real estate business on the basis of oral partnership. The said Murugan is the 2nd defendant in the suit. While so, during 2016 in the month of September, the 1st defendant entered into an understanding with the 1st plaintiff, Dharmarajan and the 2nd defendant for the purpose of selling the suit scheduled property for a sale consideration of Rs.16,00,000/- (Rupees Sixteen Lakhs only).

4.2. Thereafter, on the same day, that is, on 16.09.2016, the agreement entered into between the 1st defendant and the 1st plaintiff along with his partners Dharmarajan and the 2nd defendant was reduced in writing and on the same day itself an advance sale consideration of Rs.15,00,000/- (Rupees Fifteen Lakhs only) was received by the 1st defendant from the 1st plaintiff Dharmarajan and the 2nd defendant. On receipt of the same, the 1st defendant had signed the said sale agreement in the presence of witnesses. One of the witnesses who had signed the said agreement for sale is the 1st defendant's husband. The time limit which has been agreed upon the said unregistered agreement for sale to perform the whole part of the said agreement was three months. It was agreed upon by the 1st plaintiff Dharmarajan and the 2nd defendant that the balance sale consideration of Rs.1,00,000/- (Rupees One Lakh only) would be paid within a period of three months to the 1st defendant and on completion of the said payment, the 1st defendant is entitled to execute a sale deed in favour of the 1st plaintiff, Dharmarajan and Murugan. The 1st defendant on the date of the agreement for sale, that is, on 16.09.2016 itself had handed over the original sale deed, patta, mutation order, chitta along with two encumbrance certificates for the period from 01.01.1987 to 08.02.2009. It has been specifically pleaded by the 1st plaintiff that he had always been ready and willing to perform his part of agreement for the purpose of paying the remaining balance amount of sale consideration of Rs.1,00,000/- (Rupees One Lakh only), so as to facilitate the 1st defendant from executing a sale deed in her favour.

4.3. While so, one of the partners of the 1st plaintiff, namely, Dharmaraj was affected by cancer for which he was continuously travelling between Chennai and Coimbatore for appropriate medical treatment, following which he passed away on 28.06.2017. In the meanwhile, the 2nd defendant who was the other partner had his share of investment releasing his part of partnership in favour of the 1st plaintiff. The 2nd defendant has also given an acknowledgement letter in this regard in favour of the 1st plaintiff on 02.09.2018. Under such circumstances, even after completion of three months from the date of agreement, that is, from 16.09.2016, the legal heirs of the deceased partner of the 1st plaintiff, namely, Dharmarajan were not able to execute their part of contract within a reasonable time, due to the unforeseen circumstances, which had arisen due to the death of Mr. Dharmarajan. Despite the difficult situation, the 1st plaintiff and the legal heirs of the Dharmarajan were continuously ready and willing to perform their part of agreement so as to facilitate the 1st defendant in executing a sale deed in their favour.

4.4. Though a time limit of three months has been specifically mentioned in the aforesaid agreement, time is not the essence of the said agreement for sale. Despite the 1st plaintiff's diligent efforts by approaching the 1st defendant for the purpose of payment of the balance sale consideration of Rs.1,00,000/- (Rupees One Lakh only) and facilitating the 1st defendant in executing a sale deed in their favour, the 1st defendant evaded from fulfilling her part of agreement as agreed in the agreement dated 16.09.2016. Hence, on 08.09.2018, the 1st plaintiff on behalf of herself and on behalf of the 2nd to 4th plaintiffs had caused a legal notice calling upon the 1st defendant to fulfill her part of contract in term of the agreement for sale dated 16.09.2016 through her advocate. On receipt of the same, reply notice was issued by the 1st defendant on 14.09.2018 with false and evasive contentions. Hence, this suit.

5. **The defendant's case in short is as follows:**

5.1. The first plaintiff is a known person to the first defendant's husband. In the year 2016, the first plaintiff in the capacity of the power of attorney of one Amirthalingam son of Vaidhyalingam had executed an agreement for sale dated 30.06.2016 with respect to the house property wherein the 1st defendant is residing along with her family. Thereafter on 19.09.2016, the 1st plaintiff had executed a sale deed in favour of the 1st defendant with respect to the house property. Due to the aforesaid sale transaction, the 1st defendant and family incurred heavy debts for which the 1st plaintiff had ensured that he would help them by finding an appropriate person to purchase the suit scheduled property for a handsome sale consideration. On that friendship when the 1st plaintiff approached the 1st defendant and her husband along with his partners one Dharmarajan and Murugan by enticing them with promising words that they would offer them with a promising sale consideration in terms of the market value of the suit property and had induced them to execute an agreement for sale on 16.09.2016 with respect to the suit scheduled property, fixing a time limit of three months and on payment of an advance sale consideration of Rs. 15,00,000/- (Rupees Fifteen Lakhs only).

5.2. For the purpose of security to the said amount paid, the 1st plaintiff had received blank cheques of the 1st defendant's husband drawn at State Bank of India, Account No. 10857798306 bearing cheque numbers 983885 and 983886. That apart, he also received from the 1st defendant a promissory note and all the title deeds with respect to the suit scheduled property. It was ensured by the 1st plaintiff and his partners that the same would be returned to the 1st defendant on the day of full satisfaction of the agreement for sale. However, when the 1st defendant and her family were of the genuine belief that the 1st plaintiff and his partners would offer them with an appropriate sale consideration in tune to the market value, the plaintiffs went on evading from the process of performing their part of contract, even after the expiry of the period of three months as mandated in the agreement for sale. Since the entire title deeds and other related documents with respect to the suit properties were in the custody of the 1st plaintiff and his partners, the 1st defendant and her family were handicapped to execute sale deed in favour of other promising vendees who offered to pay more promising sale consideration to the suit property, as a result of which, the 1st defendant was subjected to unforeseen mental agony and irreparable loss.

5.3. In fact, whenever the 1st defendant and her family approached the plaintiffs for full satisfaction of the agreement for sale, the plaintiffs actually evaded from performing their part of contract by paying the remaining sale consideration as agreed by them in the said agreement. While so, on 30.06.2017 when the 1st defendant came to know the death of Dharmarajan and on approaching the plaintiffs seeking to perform their part of agreement, the plaintiffs to the shock and unexpectation of the 1st defendants required the first defendant to return the advance amount of Rs.15,00,000/- (Rupees Fifteen Lakhs only) which had been received by the 1st defendant. However, when the

1st defendant requested them to return the title deeds which had been already handed over to them without handing over the same, they insisted for the return of money. Due to the unforeseen delay caused by the plaintiffs in performing their part of agreement in terms of the agreement for sale dated 16.08.2010, the 1st defendant has incurred heavy loss, since in due course of time the market value of the suit property has raised multifold to an extent of Rs.2,500/- (Rupees Two Thousand and Five Hundred only) per square feet.

5.4. Having suppressed all these information especially the unwillingness of the plaintiffs in fulfilling their part of agreement, the plaintiffs have caused a legal notice dated 08.09.2018 through their advocate to the 1st defendant. The 1st plaintiff had completely kept the 1st defendant in dark as to the revocation of the partnership between the 2nd defendant and that of the 1st plaintiff on 02.09.2018. Hence, on receipt of the said legal notice, the 1st defendant had issued a reply notice dated 14.09.2018 explaining the entire details especially as to the unwillingness on the part of the plaintiffs in performing their part of contract and the fact that the market value of the suit property has increased multifold, the 1st defendant had required the plaintiffs to return the title deeds whatever remained in their custody. It was also specifically pleaded by the 1st defendant that after detecting the loss incurred by the 1st defendant in this regard, the 1st defendant is always willing to return the amount, remaining amount back to the plaintiffs at any point of time in accordance with law. On that basis, the defendant's counsel had pressed for dismissal of the suit for specific performance of contract.

6. On the side of the plaintiffs P.W-1 and P.W-2 were examined and Exhibit A1 to A11 were marked. On the side of defendant's D.W-1 was examined and Exhibit B1 to B3 were marked.

7. The Trial Court, upon considering the above pleadings, has framed the following issues:

(i) Whether the plaintiffs are entitled to the relief of specific performance of contract?

(ii) Whether the plaintiffs were ready and willing to perform their part of contract?

(iii) Whether the suit is barred by limitation?

(iv) Whether the plaintiffs are entitled to the relief of specific performance?

(v) To what reliefs the plaintiffs are entitled to?

8. The learned Trial Judge, upon considering the pleadings and evidence both oral and documentary and on hearing the arguments of both sides has passed the judgment and decree dated 27.06.2022, by answering all the issues in favour of the plaintiffs, decreed the suit, almost as prayed for.

9. Aggrieved by the impugned judgment and decree, the first defendant has preferred the present Appeal Suit.

10. The learned counsel for the appellant submitted that the learned Trial Court failed to appreciate the fact that the agreement in question dated 16.09.2016 was an unregistered sale agreement. He further insisted that in terms of the 2012 Amendment to the Tamil Nadu Registration Act, it is mandatory under the Registration Act that an agreement to sell an immovable property to be registered. Hence, if at all the plaintiffs could file a suit the same could be only for recovery of money, but not specific performance of contract on the basis of the unregistered agreement. The Trial Court has erred by proceeding in favour of the plaintiffs without discussing or touching upon the

point that the entire suit revolves around an unregistered agreement to sell and without considering the 2012 State Amendment to the Registration Act. Categorically contending that the judgment and decree passed by the learned Trial Court negating these provisions are *perse* illegal, pressed for allowing the appeal.

11. Per contra, the learned counsel for the respondent submitted that the question of non-registration of agreement was raised either in the written statement or in the grounds of appeal and hence the counsel for the appellant is not entitled to raise the same at the time of arguments. When the execution of the agreement for sale and the signature of the first defendant has been explicitly admitted, the plaintiffs are entitled for the relief of specific performance of contract. The suit has been filed well within the three years period of limitation and hence the plaintiffs are entitled to release as sought for.

12. The learned counsel for the appellant further replied that the factual aspects has to be pleaded before the Trial Court and proved in accordance with law, but question of law can be raised even in appeals even without pleadings in the Original Suit. Mere admission of signature will not amount to proof of the document.

13. The points for consideration are as follows:

(i) Whether the learned Trial Court erred in not considering that the agreement for sale dated 16.09.2016 was an unregistered document?

(ii) Whether the suit as framed is maintainable?

(iii) Whether the judgment and decree dated 27.06.2022 passed in O.S. No.133 of 2018 on the file of the 2nd Additional District and Sessions Judges Court at Thanjavur is liable to be interfered with?

(iv) To what reliefs, the parties are entitled to?

14. The plaintiffs, both in their pleadings and evidence, have duly proved that the 1st defendant is the absolute owner in possession and title over the suit property by the strength of sale deed dated 16.08.2010. Apart from marking the said sale deed in favour of the 1st defendant as Exhibit A2, the patta which stands in the name of the 1st defendant has been marked as Exhibit A3 and the chitta with respect to the suit property has been marked as Exhibit A4. The 1st plaintiff has also marked the encumbrance certificate with respect to the suit property for the period from 27.09.1997 to 08.02.2009 as Exhibit A5. The detail as to the fact that the 1st defendant had purchased the suit property from Mariyappan is reflected in the aforesaid encumbrance certificate which has

been marked as Exhibit A5. The plaintiffs have also duly pleaded and the 1st plaintiff in his evidence as P.W-1 has deposed that the 1st plaintiff jointly with one Dharmarajan and Murugan were doing real estate business and during 2006 in the month of September, the 1st defendant and her husband approached the 1st plaintiff for the purpose of selling the suit scheduled property for which an agreement for sale dated 16.09.2016 was executed between the 1st plaintiff, his partners Dharmarajan and Murugan along with the 1st defendant on agreeing for a total sale consideration of Rs.16,00,000/- (Rupees Sixteen Lakhs only) and on payment of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as advance sale consideration, thereby fixing a time limit of three months for the payment of the remaining sale consideration of Rs.1,00,000/- (Rupees One Lakh only).

15. It was pleaded and deposed by the 1st plaintiff that the agreement for sale was reduced into writing on the same day, that is, on 16.09.2016 immediately on the receipt of Rs.15,00,000/- (Rupees Fifteen Lakhs only) as advance sale consideration by the 1st defendant and her husband himself has signed the aforesaid agreement as one of the witnesses. It was also pleaded and deposed that though a time limit of three months has been fixed for the completion of the said contract, the plaintiff had contended that time is not essence of the said contract. That apart, the reason for the delay in performing

their part of contract has been properly explained by the 1st plaintiff in his pleading and evidence by explicitly proving the medical condition and death of one of his partners namely Dharmarajan who passed away on 28.06.2017 suffering cancer. The 2nd plaintiff is the wife of the said Dharmarajan and the 3rd and 4th plaintiffs are the children of the said Dharmarajan and the 2nd plaintiff. The plaintiffs have categorically pleaded and the 1st plaintiff has deposed in his evidence that, even after the death of his partner Dharmarajan, both the 1st plaintiff and the legal heirs of the deceased Dharmarajan were willing and ready to perform their part of contract.

16. However, since the 1st defendant was not cooperating with them, a suit notice was issued on 08.09.2018 through the first plaintiff's advocate in this regard for which the 1st defendant has caused a reply notice dated 14.09.2018 with evasive contentions. It is pertinent to mention here that, on the completion of three months from the date of agreement, that is, from 16.09.2016, the first defendant neither gave any notice as to the cancellation of the said agreement for sale nor the said agreement itself had any recitals to the effect that or in case of default to perform their part of contract by the plaintiffs on completion of three months from 16.09.2006, the said agreement would automatically lapse and the advance amount would be forfeited. In the absence of any such specific

clause in the agreement for sale which has been marked as Exhibit A1, and in the absence of any initiative from the 1st defendant to cancel the said agreement for sale on the completion of three months from the date of agreement, since the execution of the same has been categorically admitted by the 1st defendant both in her written statement as well as in her evidence, on the basis of the pleadings and on the basis of the evidence deposed by P.W-1 that the plaintiffs have been continuously been ready and willing to perform their part of contract by making a payment of the balance sale consideration of Rs.1,00,000/- (Rupees One Lakh only). However, the same could not be done only because of the non-cooperation from the side of the 1st defendant is fairly found to be reliable by the learned Trial Court.

17. However, the learned counsel for the Appellant vehemently contended that the learned Trial Court ought not to have proceeded to pass a judgment and decree in favour of the plaintiffs as prayed for without touching upon the aspect that the entire suit revolves around an unregistered agreement for sale dated 16.09.2016, which is invalidated by Section 17 and 49 of the Registration Act. He categorically contended that the learned Trial Court ought to have framed a preliminary issue as to the admissibility of the agreement dated 16.09.2016 in evidence. It was the case on behalf of the appellant that in

view of the Tamil Nadu Amendment Act No. 29 of 2012 to the Indian Registration Act, under which the instruments of agreement relating to sale of immovable property of value of Rs.100/- (Rupees One Hundred only) and upwards is compulsorily required to be registered, the said unregistered document shall be inadmissible in evidence. That apart, relying upon Section 49 (a) and (c) of the Registration Act, the learned counsel contended that an unregistered agreement to sell cannot be admitted as evidence of a contract in a suit for specific performance.

18. However, the admissibility of an unregistered agreement for sale as evidence of a contract in a suit for specific performance has already been dealt with in the case of ***R. Hemalatha versus Kashthuri by the Honorable Supreme Court of India reported in 2023 Live Law (SC 304)*** and the relevant portion of the same is extracted as follows :

> *"7. Section 17 of the Registration Act, 1908, post Tamil Nadu Amendment Act, 2012 reads as under :*
>
> *"17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the*

Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

[(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] Provided that the [State Government] may, by order published in the [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

[(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to—
(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv)any endorsement upon or transfer of any debenture issued by any such Company; or

(v)

(v) [any document other than the documents specified in sub-section

(1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by [Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

[(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt

for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.
[Explanation.—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]"

8. By Tamil Nadu Amendment Act, 2012, Section 17(1)(g) has been inserted and "explanation" to Section 17(2) has been omitted. Section 17(1) (g) as inserted by Tamil Nadu Amendment Act, 2012, reads as under:
"17(1)(g) instruments of agreement relating to sale of immovable property of the value of one hundred rupees and upwards."

9. Thus, on and after the Tamil Nadu Amendment Act, 2012, as per Section 17(1) (g), instrument of agreement relating to sale of immovable property of the value of Rs.100/and upwards is required to be registered compulsorily. However, despite the same and despite the "explanation" to sub-section (2) of Section 17 has been omitted, there is no corresponding amendment made to Section 49 of the Registration Act. Section 49 of the Registration Act is as under :

"49. Effect of non-registration of documents required to be registered. —No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:
*[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) , *** or as evidence of any collateral transaction not required to be effected by registered instrument.]"*

10. Thus, as per proviso to Section 49, an unregistered document affecting the immovable property and required by Registration Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered document.

11. At this stage, the primary statement of objects and reasons to the Tamil Nadu Amendment Act, 2012, is also required to be referred to and considered. The primary statement of objects and reasons seem to suggest that amendment has been introduced by the State of Tamil Nadu bearing in mind the loss to the exchequer as public were executing the documents relating to sale of immovable property etc. on white paper or on stamp paper of nominal value.

12. At this stage, it is required to be noted that the proviso to Section

49 came to be inserted vide Act No.21 of 1929 and thereafter, Section 17(1A) came to be inserted by Act No. 48 of 2001 with effect from 24.09.2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of the Transfer of Properties Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the purposes of said Section 53A. So, the exception to the proviso to Section 49 is provided under Section 17(1A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable.

13. Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49."

19. Fully fortified by the law laid down by the Honorable Supreme Court in the aforesaid case, I am of the considered view that the learned Trial Court had properly proceeded with the trial of the suit by permitting the plaintiff to let in evidence on the basis of the unregistered agreement to sell which has been marked as Exhibit A1. I don't find any illegality or irregularity in this regard.

20. As far as the contention of the counsel for the appellant that time is essence of the contract and the attitude of the plaintiffs for not performing their part of contract within a period of three months as explicitly reflected in the recitals of the agreement for sale marked as Exhibit A1 itself would prove the tale of the plaintiffs that they had been willing and ready to perform their part of contract a farce.

21. The Honorable Apex Court has dealt with the case of specific relief in the case of ***Gaddipati Divija and another .vs. Pathuri Samrajyam and others reported in 2023 Live Law Supreme Court 327*** and the relevant portion of the same is extracted as follows: 23 to 35

"23. At the outset, we would like to mention that Section 16 (c) of the Specific Relief Act, 1963 (along with its explanation) is the relevant

provision of law which is attracted in the present case, and as has also been held by the High Court. The 2018 Amendment to the Specific Relief Act made certain amendments to Section 16 as well. However, it has been clarified in the recent 3-Judge Bench judgment of this Court in Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd. & Ors., that the 2018 Amendment was not a mere procedural enactment, but it had substantive principles built into its working, and, as such, the said Amendment is prospective in nature and cannot apply to those transactions that took place prior to its enforcement. Therefore, in the present case, Section 16, as it stood prior to the 2018 Amendment, would be applicable, since the matter dates back to 2002. Section 16 (as it then stood) is being reproduced hereunder:-

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

(a) who would not be entitled to recover compensation for itsbreach; or

(b) who has become incapable of performing, or violates anyessential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) who fails to aver and prove that he has performed or hasalways been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.
Explanation.— For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

24. On a bare perusal of the aforementioned section, it becomes clear that prior to the 2018 Amendment, clause (c) of Section 16 laid down that the plaintiff is entitled for a specific performance of contract if he avers and proves that he has performed or has always been ready and willing to perform his obligation under the contract. The explanation attached to clause (c) further clarified that in a contract involving the payment of money, the plaintiff need not actually deposit the money to the defendant, and that he must aver that he has performed, or is ready and willing to perform the contract according to its true construction.

*25. Before delving further into the discussion of Section 16 (c) of the Act, we would like to trace a bit of history of the said provision. The old Specific Relief Act of 1877 did not contain any express provision regarding the averment of readiness and willingness as being necessary in a suit for specific performance, but this was the law of the land. As early as 1928, Their Lordships of the Privy Council in **Ardeshir H. Mama vs Flora Sassoon**, while taking note of the fact that there was an absence of an express provision in Indian law regarding readiness and willingness, held that the requirements of Indian and English law in this matter are the same.*

26. In the present case, the High Court while discussing Section 16 (c) of the Specific Relief Act, 1963 (hereinafter referred to as ***'Act'****), observed that it is necessary for the Plaintiff to perform his part of the contract from the date of contract till the date of hearing. The High Court also stated that it is fairly well settled that mere stipulation of time would not make time the essence of the contract and in case of sale of immovable property normally the time may not be essence of the contract. It was also stated that the explanation to Section 16 (c) of the Act provides that there must be pleading by the Plaintiff that he was always ready and willing to perform his part of contract. The High Court then noted that a specific plea was taken by the Plaintiff in her plaint that she was ready and willing to perform her part of the contract. Moreover, PW1 (Plaintiff's husband who testified on her behalf) categorically stated that he and the Plaintiff were ever ready to perform their part of contract with regard to the payment of the balance sale consideration, but the Defendants failed to perform their part of the obligations. At this juncture, the High Court took note of a very crucial fact that the aforementioned part of the evidence (with regard to the Plaintiff's readiness and willingness) was not challenged by the counsel appearing for Defendant Nos. 1 to 3 in the Trial Court, and when a fact has been stated by witness and the same has not been challenged, it can be said that such a fact is admitted. PW2 (scribe of the sale agreement) categorically stated that it was agreed that the extent of land would be measured for the purpose of calculation at the time of the execution of the sale deed. Therefore, it was observed that the recitals in the sale agreement coupled with the evidence of PW1 and PW2 shows that the extent of land has to be measured within three months, and unless the land is measured and demarcated, it would be impossible for the Plaintiff to get a sale deed executed, and as such, the* *question of paying the balance sale consideration does not arise. The High Court was of the view that the obligation with regard to the demarcation of the property was not performed by either the deceased G. Venugopala Rao or his legal heirs (Defendants in the suit, including the Appellants herein) thereafter, while the Plaintiff had established that she was always ready and willing to perform her part of contract by paying the balance sale consideration which is the primary requirement as per Section 16 (c) of the Act. It was held that these aspects were not considered by the Trial Court and there was no appreciation of evidence with reference to Section 16 (c) of the Act.*

27. In ***Syed Dastagir vs T.R. Gopalakrishna Setty****, it was held, "the language in Section 16 (c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So, the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form."*

28. In ***Aniglase Yohannan vs Ramlatha & Ors****., this Court held:-*

"11. Lord Campbell in Cort v. Ambergate, Nottingham and Boston and Eastern Junction Rly. Co. [(1851) 117 ER 1229 : 17 QB 127] observed that in common sense the meaning of such an averment of readiness and willingness must be that the noncompletion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it, had it not been renounced by the defendant.

12. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of *contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief."*

29. In our view, the High Court has rightly held that the deceased G. Venugopala Rao or his legal heirs (Defendants in the suit, including the Appellants herein) failed to perform their obligation with regard to the demarcation of the property, while the Plaintiff had established that she was always ready and willing to perform her part of contract by paying the balance sale consideration which is the primary requirement as per Section 16 (c) of the Act.

30. In light of the aforementioned ***Aniglase Yohannan*** *judgment (supra), and as held by the High Court, the primary requirement to seek relief under Section 16 (c) of the Act is that the Plaintiff was ever ready and willing to perform his part of the contract. It is clear from the facts of the case at hand that the Plaintiff (Respondent No. 1 herein) was ever ready and willing to pay the balance sale consideration. In the sale agreement, it was clearly mentioned that within three months the deceased G. Venugopala Rao will get the suit schedule property measured and demarcated and the Plaintiff (Respondent No. 1 herein) shall pay the balance sale consideration. It appears that, at first, the deceased G.Venugopala Rao while agreeing to sell 90 cents of land, concealed that he is the owner of only 50 cents of the land. Subsequently, he failed to measure and demarcate the land. On the other hand, the Plaintiff (Respondent No. 1 herein), from the outset, has* *been clear and blemishless in his conduct. She had paid the advance sale consideration of Rs. 4,00,000/-. When the deceased G. Venugopala Rao failed to measure and demarcate the land, the question of the Plaintiff (Respondent No. 1 herein) paying the balance sale consideration does not arise. However, even then the averments of the Plaintiff, her conduct and the testimony of her husband show that the Plaintiff, since the signing of the sale agreement, was ever ready and willing to pay the balance consideration.*

31. The Appellants have contended that Respondent No. 1 (Plaintiff) was not having sufficient funds to pay the balance sale consideration. On the other hand, as noted above, Respondent No. 1 has been ever ready and willing to pay the balance sale consideration. In ***Gomathinayagam Pillai & Ors. vs Palaniswami Nadar****, this Court referred to the judgment of Their Lordships of the Privy Council in Bank of India Limited vs Jamsetji A.H.*

Chinoy and Chinoy and Company. The relevant portion of the said judgment is reproduced as under:

"18. ....In Bank of India Limited v. Jamsetji A.H. Chinoy and Chinoy and Company [(1949) LR 77 IA 76] the Privy Council decreed specific performance of the contract to sell shares. On the question of readiness and willingness of the buyer to perform the contract, Lord MacDermott observed at p. 91 of the Report:

"It is true that the first plaintiff stated that he was buying for himself, that he had not sufficient ready money to meet the price and that no definite arrangements had been made for finding it at the time of repudiation. But to prove himself ready and willing a purchaser has not necessarily to produce the money or to vouch a concluded scheme for financing the transaction.""

Therefore, even if the aforementioned contention of the Appellants herein was to be considered, the same does not have any substance, as the Plaintiff has successfully established her readiness and willingness to perform her part of the contract by paying the balance sale consideration.

32. Before parting with the judgment, we would like to clarify another aspect, i.e., with regard to whether time is of the essence in the sale agreement in the present case or not. In Siddamsetty Infra Projects (P) Ltd. (supra), this Court was dealing with a similar question with respect to a sale agreement for an immovable property, while referring to an earlier judgment in Chand Rani v. Kamal Rani, it was reiterated that in sale of immovable property there is no presumption that time is the essence of the contract, however, the court may infer performance in a reasonable time if the conditions are evident from the express terms of the contract, from the nature of the property, and from the surrounding circumstances.

33. However, the set of facts and circumstances in ***Siddamsetty (supra)*** *were substantially different from the case at hand. The relevant portion of the said judgment is reproduced as under:*
"33. At the outset, this Court has perused Clause 3 of the agreements, which is in two parts. The first part provides for the purchaser's obligation, while the second part details the obligation of the vendors to provide the requisite certificates. Although both the obligations were required to be completed within the stipulated period of three months, there is a substantive difference between these two sets of obligations. The obligation upon the vendors concerned was production of certain

certificates, such as income tax exemption certificate and agriculture certificate. No consequences were spelt out for non-performance of such obligations. Whereas the obligation on the purchaser, was to make the complete payment of the sale consideration within three months. The clause further mandates forfeiture of the advance amount if the payment obligation is not met within the time period stipulated therein.

34. In this context, this Court in Chand Rani v. Kamal Rani [Chand Rani v. Kamal Rani, (1993)
1 SCC 519] , held as under : (SCC p. 528, para 25)
"25. From an analysis of the above case law 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. 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." .....
73. From the above, we can safely conclude that the purchaser was not ready or willing to perform his part of the contract within the time stipulated and accordingly, specific performance cannot be granted for the entire contract. "

34. From a perusal of the above extracted portion of Siddamsetty (supra), it is clear that in the said case, the agreement stipulated that both the purchaser as well as the vendor were to fulfil their obligation within three months. But, in case of non-compliance of the vendor's *obligations (of producing certain documents) within three months, no consequences were mentioned; whereas, on the other hand, in case of non-compliance of the purchaser's obligations (of paying the balance sale consideration) within three months, the advance amount would be forfeited. This Court while concluding that the purchaser was not ready or willing to perform his part of the contract within the stipulated time period, denied to grant specific performance for the entire contract. However, what is to be seen in the present case, is that the sale agreement dated 14.08.2002 stipulated that the vendor (deceased G. Venugopala Rao) was required to get the land measured and demarcated within three months, following which, the purchaser (Respondent No. 1 herein /Plaintiff) was required to pay the balance sale consideration. So, it can be clearly observed that the performance of the purchaser's obligation to pay the balance sale consideration within three months is dependent upon the fulfilment of the vendor's obligation to get the land measured and demarcated within three months.*

35. Therefore, it can be deduced that unless the vendor got the subject land measured and demarcated within three months, it would be impossible for the purchaser (Respondent No. 1 herein/Plaintiff) to get a sale deed executed, and as such, the question of paying the balance sale consideration does not arise. This was also observed by the High Court while placing reliance on the recitals in the sale agreement coupled with the evidence of PW1 and PW2. Moreover, as has been held above, it is clear that the vendor (deceased G. Venugopala Rao) failed to perform his part of the obligations by getting the subject land measured and demarcated, while the purchaser (Respondent No. 1 herein/Plaintiff) was ever ready and willing to pay the balance *consideration. As such, when specific performance of the terms of the contract has not been done, the question of time being the essence does not arise. In this way, the facts of the present case are distinguishable from that of Siddamsetty (supra), and the Appellants herein cannot claim that time was of the essence of the contract."*

22. Section 16 of the Specific Relief Act, 1963 deals with personal bars to relief. However, the 2018 Amendment to the Specific Relief Act made certain that amendments to Section 16 is only prospective. But the agreement for sale in question was executed on 16.09.2016, that is, well before the 2018 Amendment and hence the position of law which was available during 2016 would be applicable to the facts and circumstances of this case. Thus, it becomes clear that prior to the 2018 Amendment, Clause (c) of section 16 laid down that the plaintiff is entitled for a specific performance of contract if he avers and proves that he has performed or has always been ready and willing to perform his obligation under the contract. That apart the explanation attached to Clause (iii) further clarified that in a contract involving the payment of money, the plaintiff need not actually deposit the money to the defendant, and that he must plead that he has performed, or is ready and willing to perform the contract according to its true construction.

23. In the instant case, the plaintiffs have paid an amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs only), of the total sale consideration of Rs. 16,00,000/- (Rupees Sixteen Lakhs only). Only an amount of Rs.1,00,000/- (Rupees One Lakh only) has to be paid towards performance of their part of contract within a period of 3 months. However, the delay has been duly averred and proved by proper evidence by narrating the death and medical conditions suffered by one of the partner of the first plaintiff, namely, Dharmaraj. That apart, the conduct and testimony of the first defendant would prove the genuinity of the agreement for sale marked as exhibit A1, especially, taking into consideration of the fact that the first defendant's husband himself has made his signature as one of the attesting witnesses in the aforesaid document.

24. Hence, I am of the considered view that in a sale of immovable property there is no presumption that time is the essence of the contract. So, it can be clearly observed that the performance of the purchaser's obligation to pay the balance sale consideration within 3 months is dependent upon the fulfillment of the vendor's obligation to call upon the purchaser to perform his part of contract on the completion of 3 months from the date of agreement for the purpose of executing a sale deed in his favour. In the instant case, on completion of 3 months from the date of agreement that is from 16.09.2016, the

first defendant neither cancelled the said agreement for sale nor called upon the plaintiffs to perform their part of conduct till the plaintiffs have caused a legal notice on 08.09.2018.

25. In view of the above, I am of the considered opinion that the learned Trial Court was justified in allowing and decreeing the suit for specific performance filed by the plaintiffs. Accordingly, the findings of the Trial Court is hereby upheld. The present appeal, in my view, has no merit and is liable to be dismissed.

26. Accordingly, the Appeal Suit is hereby dismissed and the judgment dated 27.06.2022, passed by the learned Trial Court is confirmed. However, in the facts and circumstances of the case, I do not make any order as to costs. Consequently, connected miscellaneous petition is closed.

21.05.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

1. The Additional District and Sessions Judge,
   Fast Track Court, Dindigul.

2. The Section Officer,
   Vernacular Records,
   Madurai Bench of Madras High Court,
   Madurai.

L.VICTORIA GOWRI, J.,

Sml

A.S.(MD)No.240 of 2022

21.05.2024