



A.S.No.324 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit. No.324 of 2013

and

M.P.No.1 of 2013

G.Kalanayagi

... Appellant

-Vs-

1. C.K.Krishna Mohan

2. The Chief Manager,
Oriental Bank of Commerce

... Respondents

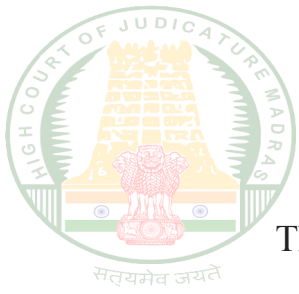
Prayer:- Appeal Suit filed under Section 96 of Civil Procedure Code to set aside the Judgment and Decree passed in O.S.No.94 of 2008 dated 18.10.2012 on the file of the learned IV Additional District and Sessions Judge, Coimbatore.

For Appellant	:	Mr.M.Guruprasad
For Respondents	:	Mr.R.Thiyagarajan for Mr.V.J.Arul Raj for R1 No Appearance for R2

J U D G M E N T

This Appeal has been filed to set aside the Judgment and Decree passed in O.S.No.94 of 2008, dated 18.10.2012 on the file of the learned IV Additional District and Sessions Judge, Coimbatore.

2. The brief averments made in the plaint are as follows.



A.S.No.324 of 2013

WEB COPY The suit properties belongs to the first Defendant through a sale deed dated 15.10.1993. The first Defendant entered into a sale agreement with the Plaintiff on 13.02.2006. The total sale price was fixed at 22 lakhs. On the same day, 8 lakhs was paid as advance and possession was also given to the Plaintiff. Time for performance is fixed as one year. However, in spite of repeated demands, the defendants did not come forward to execute the sale deed. Later, the first Defendant asked the Plaintiff for extension of time till 31.12.2007, and the same was agreed by the Plaintiff. Later, when the Plaintiff demanded the execution of the deed through notice, the Defendant did not come forward to execute the deed. The notice returned as unserved. Again on 16.01.2008, the Plaintiff issued a notice. It was again returned as unserved. The Plaintiff had sufficient capacity to pay the balance amount. He has also been paying the Kist for the suit property.

3. In the written statement, the first Defendant stated that, he has borrowed some loan from the 2nd Defendant but he did not mention the total loan amount, name of the Company etc. On verification, it was found that an original application was filed before the Debt Recovery Tribunal at Chennai. So the Bank is added as a party to the suit. The 2nd Defendant has also been taking steps to enforce the mortgage. Though the Plaintiff is ready to get the sale deed executed, it is subject to the mortgage of the 2nd Defendant. So, suit



WEB COPY

is filed seeking relief for specific performance and cost; and in the alternative, relief for the refund of the advance amount along with 12% interest from the date of agreement till realization is sought for, by creating a charge over the suit properties.

4. The 2nd Defendant remains ex-parte.

5. The written statement filed by the first Defendant contains the following averments:-

5.1. The sale agreement mentioned in the Plaint is denied. It was executed as a security for a loan obtained by the first Defendant from the husband of the Plaintiff.

5.2. The husband of the Plaintiff was indebted to the first Defendant through one K.T. Ragupathy of V.Kaliapuram, Pollachi, Taluk. He was in urgent need of Rs.8 lakhs for his business activities. At that time, it was brought to the notice of the Defendant that the husband of the Plaintiff and his maternal uncle were doing money lending business. So, the Defendant was introduced to the husband of the Plaintiff by K.T.Ragupathy. At that time, the Defendant obtained a loan from a financial institution, and due to the default committed by the Partnership firm, it instituted proceedings, to recover the loan. For the purpose of getting the loan, the Defendant mortgaged the suit properties by deposit of title deeds. These facts were also told to the husband of the Plaintiff. So, he was fully aware of the affairs at that time. In spite of that,



A.S.No.324 of 2013

WEB COPY

the husband of the Plaintiff agreed to give the loan amount on the basis of pro note or any other mode. He also demanded that agreement of sale must be executed as a security in the name of the Plaintiff. For the repayment of the loan and towards the interest of the loan amount, property was also handed over, since income from the coconut trees can be adjusted towards the interest. The yearly interest was calculated at Rs.1.5 lakhs. So only on the said terms and conditions, the suit agreement was executed and possession was also handed over. The husband of the Plaintiff died in the year of 2005. The Defendant could not settle the amount within 2 years period. So, he asked more time for the settlement of amount. The Plaintiff agreed, but he again demanded that, the Defendant must execute a similar sale agreement as that of one executed in 20.2.2004. So on the said terms only, the suit sale agreement was executed. So, there was no intention on the part of the Defendant to sell the property to the Plaintiff. If really the intention was to sell the property then a period of 3 years time would not have been mentioned in the document. The inaction on the part of the Plaintiff to take action immediately after the expiry of the time shows that it was not really a sale agreement. After the expiry of one year, the Defendant approached the Plaintiff to discharge the loan amount and deliver the properties. But, the Plaintiff was evasive. Knowing fully well that the Defendant had shifted his residence to Kotagiri, he issued a legal notice to Chennai Address. Whenever he visited Kotagiri, he had telephonic



conversation with the Plaintiff.

WEB COPY

5.3. Since the Plaintiff was postponing the delivery of Possession and discharge of the loan, the Defendant issued a notice on 16.10.2008, terminating the sale agreement. After sending the reply notice, a rejoinder was issued on 29.10.2008.

5.4. The Plaintiff was not ready to get the sale deed executed, even if admitted that, the sale agreement is true one. So, prays to dismiss the suit with cost.

6. On the basis of the above pleadings, the trial Court framed the following issues:

- 1. Whether the suit agreement dt.13.02.2006 is true, valid and enforceable in law?*
- 2. Whether the Plaintiff is entitled to relief of specific performance of above agreement as prayed by her?*
- 3. Whether the Plaintiff in the alternative is entitled for recovery of a sum of Rs.8 lakhs with future interest at 12% per annum being the refund of advance amount as prayed by her?*
- 4. Whether the Plaintiff is entitled to charge over the suit property for the above amount as prayed by her?*
- 5. To what other relief the Plaintiff is entitled?*

7. On the side of the Plaintiff, the Plaintiff was examined herself as



A.S.No.324 of 2013

WEB COPY

P.W-1 and two other witnesses were examined as P.W-2 and P.W-3 and marked documents under Ex.A-1 to Ex.A-11. On the side of the Defendants, two witnesses were examined as D.W-1 and D.W-2 and marked documents under Ex.B-1 to Ex.B-8.

8. On the perusal of the evidence and on hearing both sides, the learned IV Additional District Judge, Coimbatore, had partly decreed the Suit. Aggrieved, the Plaintiff had preferred this Appeal before this Court.

9. The learned Counsel for the Appellant submitted that the learned trial Judge had explicitly admitted the case of the Appellant as true and genuine and further, observed the conduct and behaviour of the first Respondent as highly suspicious. Despite of such favourable and constructive observations by the learned trial Judge, the Suit has been partially decreed wherein the relief of specific performance had been dismissed. The learned trial Judge had falsely admitted the Ex.B-6 which is the copy of the application in O.A.No.196 of 2003 filed before the Debt Recovery Tribunal, Chennai by the second Respondent against the first Respondent as he had not repaid the loan amount. This Exhibit was only filed when the Suit was posted for arguments, that is, at the last stage of Suit, even then the same had been erroneously admitted. Ex.B-6 had not been properly verified and only on the bare submission of the

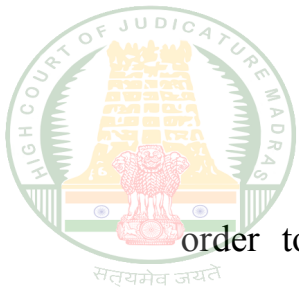


WEB.COM

first Respondent, the recovery proceedings has been initiated and the Suit property is one among the other property listed in the schedule, the relief of execution of sale deed had been dismissed.

10. The learned Counsel for the Appellant further submitted that the first Respondent had not even attempted to prove Ex.B-6 and the second Respondent who had been impleaded after marking of Ex.B-6 had also turned ex-parte. Thus, the learned trial Judge had simply based on the vague and bare averments of the first Respondent came to a conclusion that the Suit property is in the recovery proceedings. The sale price of the Suit property has been properly determined at the time of execution of sale agreement between the Appellant and the first Respondent. The lame and new stand taken by the first Respondent that the sale price is lower is absolutely inappreciable and suspicious. The learned trial Judge although acknowledged the readiness and willingness of the Appellant to remit the balance sale consideration to the first Respondent, had erroneously denied to grant the relief of execution of sale deed.

11. The learned Counsel for the Appellant submitted that the Court below has misconstrued the provision under Section 13 (1) (c) of the Specific Relief Act, 1963 and declined the relief to the Plaintiff. The first Defendant in



WEB COPY

order to prejudice the Court had marked Ex.B-6 showing there is Debt Recovery Tribunal proceedings. However, there are no materials to show that the Suit property was mortgaged and the outstanding liabilities. The first Defendant cannot taken advantage of Section 13 (1) (c) of the Specific Relief Act, 1963. It is the Plaintiff who can ask the vendor to redeem the property. The trial Court has misconstrued the provision. Further, the Judgment cited below **2010 (7) SCC 717** clearly says in para 18 about the construction of Section 13 (1) (c) of the Specific Relief Act. Apart from that the Defendant has not preferred separate Appeal and a Cross Appeal can support the decree but he cannot challenge the findings against him. The feeble attempt by the first Defendant regarding the validity of the agreement, the readiness and willingness of the Plaintiff has been in favour of the Plaintiff. This was not questioned by the first Defendant by filing separate Appeal or cross objection. Henceforth, the first Defendant cannot canvass the points which has been rendered against him. The trial Court extensively dealt with the conduct of the first Defendant.

12. The learned Counsel for the Appellant relied on the ruling reported in **(2010) 7 SCC 717** in the case of ***Laxman Tatyaaba Kankate and Another Vs. Taramati Harishchandra Dhatrak***. The relevant portion reads as follows:-



WEB COPY

"18. The learned counsel appearing for the appellants drew our attention to Section 13 (1) (c) of the Specific Relief Act, 1963 (for short 'the Act'), which clearly postulates that where a person contracts to sell immovable property with an imperfect title and the property is encumbered for an amount not exceeding the purchase money, the purchaser has the right to compel the seller to redeem the mortgage and obtain a valid discharge and then specifically perform the contract in its favour. Even from this point of view, the right of the present respondent is fully protected.

19. It will also be useful to refer to the provisions of Section 20 of the Act which vests the Court with a wide discretion either to decree the suit for specific performance or to decline the same. Reference in this regard can also be made to the case of Bal Krishna v. Bhagwan Das [(2008) 12 SCC 145], where this Court held as under :

"13.The compliance with the requirement of Section 16(c) is mandatory and in the absence of proof of the same that the Plaintiff has been ready and willing to perform his part of the contract suit cannot succeed. The first requirement is that he must aver in plaint and thereafter prove those averments made in the plaint. The Plaintiff's readiness and willingness must be in accordance with the terms of the agreement. The readiness and willingness of the Plaintiff to perform the essential part of the contract would be required to be demonstrated by him from the institution of the suit till it is culminated into decree of the court.

14. It is also settled by various decisions of this Court that by virtue of Section 20 of the Act, the relief for specific performance lies in the discretion of the court and the court is not bound to grant such relief merely because it is lawful to do so. The exercise of the discretion to order specific performance would require the court to satisfy itself that the circumstances are such that it is equitable to grant decree for specific performance of the contract. While exercising the discretion, the court would take into consideration the circumstances of the case, the conduct of parties, and their respective interests under the contract. No specific performance of a contract, though it is not vitiated by fraud or misrepresentation, can be granted if it would give an unfair advantage to the Plaintiff and where the performance of the contract would involve some hardship on the Defendant, which he did not foresee. In other words, the court's discretion to grant specific performance is not exercised if the contract is not equal and fair, although the contract is not void."

20. Similar view was taken by this Court in the case of Mohammadia Cooperative Building Society Ltd. v. Lakshmi Srinivasa Cooperative Building Society Ltd. & Ors. [(2008) 7 SCC 310], where the



WEB COPY

Court reiterated the principle that jurisdiction of the Court to grant specific performance is discretionary and role of the Plaintiff is one of the most important factor to be taken into consideration.

21. We may also notice that in the case of P.V. Joseph's son Mathew v. N. Kuruvila's Son [AIR 1987 SC 2328], this Court further cautioned that while exercising discretionary jurisdiction in terms of Section 20 of the Act, the Court should meticulously consider all facts and circumstances of the case. The Court is expected to take care to see that the process of the Court is not used as an instrument of oppression giving an unfair advantage to the Plaintiff as opposed to the Defendant in the suit.

22. The discretion of the Court has to be exercised as per the settled judicial principles. All the aforesaid principles are squarely satisfied in the present case and it is the appellants before us who have taken advantage of the pendency of the proceedings. They have used the sum of Rs. 10,000/-, which was given as earnest money for all this period, as well as, have enjoyed the fruits of the property. The present case does not fall within the ambit of any of the aforesaid cases specified under Section 20 (2) of the Act. In the present case, it is not only lawful but even equity and facts of the case demand that a decree for specific performance should be granted in favour of the respondent. Besides all this, the respondent before us has agreed to pay much higher consideration than what was payable in terms of the agreement to sell between the parties.

23. The onus to prove that the respondent had obtained signatures of the appellants on blank papers on the pretext of advancing a loan of Rs. 2,000/- was entirely upon the appellants. No evidence, much less cogent documentary or oral evidence, was led by the appellants to discharge this onus. The averment has rightly been disbelieved and the plea was rightly rejected by the concerned Courts in the judgment under appeal. The appellants led no evidence and nothing was brought to our notice, even during the course of the hearing, to show that this plea could be accepted.

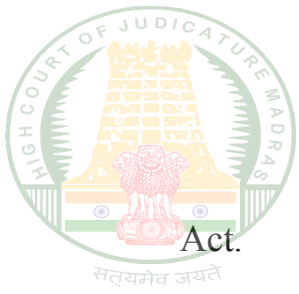
24. It is a settled principle of law that before the First Appellate Court, the party may be able to support the decree but cannot challenge the findings without filing the cross objections. As it appears from the record, the present appellants have neither filed cross objections nor their appeal challenging the findings recorded by the learned Trial Court. In fact, the entire conduct of the present appellants shows that they have not only failed to prove their claim before the Courts of competent jurisdiction but have even not raised proper pleas in their pleadings.



WEB COPY

25. It was contended on behalf of the appellants that there has been considerable increase in the price of the land in question. Though that may be true, it cannot be a ground for denying the decree of specific performance to the respondent. The learned First Appellate Court, by a well reasoned judgment, has granted the relief of specific performance instead of only granting refund of money, as given by the Trial Court. The judgment of the First Appellate Court has been upheld by the High Court and we see no reason whatsoever to interfere with the concurrent findings of facts and law as stated in the judgment under appeal. However, the learned counsel appearing for the respondent volunteered and after taking instructions stated that they would be willing to pay a sum of Rs. 1,50,000/- instead of Rs. 40,000/- as the total sale consideration. We find this offer of the respondent to be very fair."

13. The learned Counsel for the first Respondent submitted that when there is a subsisting loan availed by the Partnership Firm from the Oriental Bank of Commerce, Chennai for a Principal amount of Rs.2,64,41,657/- how can the alleged sale agreement dated 13.02.2006 be executed for a lesser value with the Plaintiff. Therefore there arises a question of law, how the sale agreement is enforceable for a value lesser than the loan. The same was discussed in the judgment of Trial court and it was opined that if the purchase price is less than the mortgage price, then the contract will become frustrated due to impossibility of performance because a purchaser will not be ready to purchase a property which is subject to encumbrance and which is more than the agreed sale price. Therefore, the conclusion made by trial court that the agreement is not enforceable in law is to be appreciated by this Honorable Court and this Honorable Court should uphold the alternate relief granted by Trial Court, which is in consonance with Section 13(3) (c) of Specific Relief



A.S.No.324 of 2013

WEB COPY

14. He invited the attention of this Court to Section 13(3)(c) of the Specific Relief Act of 1963 which states that if a vendor claims to sell a property that is unencumbered, but it is actually mortgaged, the purchaser can force the vendor to redeem the mortgage and get a valid discharge. Moreover, the trial court had observed that the suit properties is one among the properties which is mortgaged with Oriental Bank of Commerce, Chennai and therefore the trial Court is not able to decipher the liability upon the suit property. The liability on the mortgaged property is indivisible. So, when mortgage amount is more than that of the sale price, then naturally, it will be onerous upon the Plaintiff to enforce the contract and on that reason alone, the Honorable trial Court came to a conclusion to order refund of the alleged amount which was paid pursuant to Ex. A-1/ Sale agreement dated 13.02.2006. The Defendant had complied with the decree of Trial court wherein a sum of Rs. 8,00,000/- with accrued interest and costs was ordered to be paid to the Plaintiff. Accordingly, the Defendant paid a sum of Rs. 17,74,018/- as per the E-Challan dated 22.07.2024 and paid the amount before the Trial Court. The remittance of such amount is also duly informed to the Plaintiff and her counsel and the challan is available in Court record. The purpose of executing yet another alleged sale agreement dated 13.02.2006 was that Defendant could not repay the principal



A.S.No.324 of 2013

WEB COPY

amount as assured by him. Therefore in order to extend the time period to repay the principal amount, yet another sale agreement was executed on 13.02.2006 by the Defendant with the same recitals as stated in alleged sale agreement dated 20.02.2004/Ex.B-1 which was entered with the Plaintiff. The recitals of both the alleged sale agreement would remain same, except the date and amount mentioned as advance. The conduct of the parties at the relevant time is to be considered and that would clearly establish that the Ex. A1 is not meant for enforcement of contract. It is not a property dealing, but a Loan (Money) transaction. The Exhibits relied by the Plaintiff through PW2 is for the period from 2010 and that would clearly establish that it is a document created for the purpose of grabbing the property and that the Plaintiff had all along not been ready and willing to perform her part of the contract with respect to Ex. A-1. It is a point to be considered by this Honorable Court that the appeal in A.S. No. 324/2013 was dismissed for default on 21.11.2019 by this Honorable Court under the caption dismissal for non prosecution. The Defendant had all along been available for the arguments at that time. Subsequent to the same, Defendant had approached the Plaintiff Mrs. Kalanayagi to handover the possession on receipt of the alternate relief granted by Trial Court dated 18.10.2012 with accrued interest and costs. The said discussions went on till Jan 2022 as no fruitful results arrived, this Defendant had issued a legal notice dated 28.02.2022 calling upon her to receive the

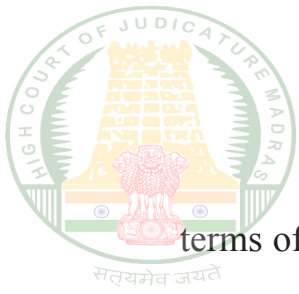


A.S.No.324 of 2013

WEB COPY

amount in compliance with the decree passed in O. S. No. 94/2008 and to handover the vacant possession. Having received the said legal notice, the plaintiff had not come forward to deliver possession to the respondent/Defendant and she was left with no other option. This Defendant had filed yet another suit for possession against the above named Plaintiff on 15.03.2022 in O.S. No. 258/2022 on the file of Honorable V Additional Judge of Coimbatore for recovery of possession, mesne profits, and other reliefs. In the said suit, the above Plaintiff who is the Defendant in O.S. 258/2022 had filed her written statement only on 15.11 2022. The Plaintiff who had filed the application to condone the delay of 1011 days had not even mentioned the date of dismissal of the appeal in A. S. No. 324/2013, which shows her intention, that is to enjoy the income out of the suit property for the loan amount paid by her during 2004.

15. The learned Counsel for the first Respondent submitted that after the dismissal of the appeal in A. S. No. 324/2013, it was informed by the Defendant during the months of November 2019 and February 2020, and continuously thereafter. He had issued a legal notice dated 28.02.2022 calling upon the appellant/Plaintiff to furnish the Bank details to comply with the decree for remitting the Decreetal amount. Having received the legal notice sent by the Defendant on 03.03.2022, she had not come forward to comply the



A.S.No.324 of 2013

WEB COPY

terms of the decree passed by the trial court and hence, the Defendant had filed a suit in O.S. 258/2022 on the file of V Additional District Judge Coimbatore, directing her to handover the possession in respect of the subject matter of the suit properties within a date to be fixed by this Honorable Court. So the Appellant knowing well that Appeal was dismissed and through suit in O.S. No. 258/2022 the Defendant had sought for possession, had belatedly filed an application to condone the delay of 1011 days in filing the restoration of the Appeal Suit. There is absolutely no *bona fide* reasons to grant relief for specific performance in favour of the Plaintiff. The Defendant further submits that in the above suit before the trial court, the appellant had examined herself as P.W-1, and another witness namely Krishnasamy as PW-2. Among the witnesses, through PW-1, Exhibits A1 to A-10 are marked and during cross examination, she had admitted that there was yet another agreement of sale which was executed during 2004 and the same also came to be marked as Ex-B-1. She had also admitted the execution of that document, which the Appellant/Plaintiff had suppressed in her pleading and has approached the Honourable Court with unclean hands for the relief of specific performance which shall not be granted to such a person whose conduct is not free from blemish. The Defendant though had let out the suit property at the relevant point of time for plucking the coconuts, it's meant for adjustment towards portion of interest alone which is enjoyed by the appellant till date. Therefore, her intention is to enjoy the



WEB COPY

interest by way of taking yield from the standing coconut trees and not for the purpose of enforcing the agreement of sale. If at all she wanted to enforce the agreement, she would have taken steps through Ex.B-1. not through Ex.A-1; and that too immediately thereafter P.W-2 had spoken in his cross examination that he had verified original document belonging to the Defendant. But at a later stage, he had deposed that the original document was in the custody of the mother of the Defendant, which could not be furnished for one reason or the other. He had also admitted during cross examination that on the date of Ex.A-1 no consideration passed on to the Defendant from the Plaintiff. Hence the conduct of parties to be considered and as such the Plaintiff had not come to court with clean hands. With respect to the same, there is no pleading made by Plaintiff. Hence, the deposition of witness PW-2 can't be acceptable at any point of time.

16. In this regard this Defendant relied upon the judgment of Honorable Supreme Court, ***Shenbagam Vs. K. K. Rathinavel (2022 SCC OnLine SC 71)*** wherein it was held that in deciding whether or not to grant the relief of specific performance, the courts must be cognizant of the conduct of the parties, the escalation in the price of the suit property and consider whether one party will unfairly benefit from the decree. In the absence of satisfactory evidence to show that the Plaintiff was having sufficient funds with him to



A.S.No.324 of 2013

WEB COPY

discharge his obligations in terms of the contract and the failure of the Plaintiff to prove his readiness and willingness and considering the conduct of the Plaintiff prior and subsequent to the filing for the suit especially the delay of more than 2 years in getting the suit restored, along with other attending circumstances, we find that the Plaintiff is not entitled for the relief of specific performance and a decree for return of advance amount with interest will meet the ends of justice. The Defendant further submitted that on his side, he was examined as DW-1 and Mr.K.T.Ragupathy was examined as DW-2 who is one of the witnesses to sale deed dated 15.10.1993 stands in favour of the Defendant and also in Ex.A-1 and Ex.B-1. He had deposed that the Defendant was in need of loan for which he had arranged the loan facility with his friend, Mr. Ganesan, who is the husband of the Plaintiff. Accordingly Mr. Ganesan had arranged loan amount on 20.02.2004 and paid the same to the Defendant with arrangement to adjust the interest on such lending from the yield of standing coconut trees for which possession with limited purpose was entrusted. That is the only reason why the Defendant had handed over possession to the Plaintiff. Though under an unregistered sale agreement, possession can't be handed over, but in the case, the Defendant who was in Chennai during the said time, for his need to pay to his loan account in Oriental Bank of commerce, had availed the loan amount from Plaintiff and handed over the possession of the property to pluck the coconut trees which was to be



adjusted towards interest for the loan amount availed. In the suit before the Trial Court, neither the Plaintiff nor her son proved their readiness and willingness from the date as referred in Ex. B-1 and also through Ex. A-1. But through the act of Plaintiff, it is emphasised that her intention was to take income out of the suit property even during the period of dismissal, which shows that she is not at all ready and willing to purchase the suit properties as she is aware that the property is secured with Oriental Bank of Commerce, Chennai towards credit facilities availed by this Defendant through his partnership firm.

17. The Respondent/Defendant relied upon Judgments of the the Hon'ble Supreme Court and the same are as follows:-

17.1. In *(2022 Live Law (SC) 588) dated 12 July 2022 in Civil Appeal No. 4703 Of 2022 [ARISING Out Of Slp (C) No. 19463 Of 2018) U.N. Krishnamurthy (SINCE Deceased) Thr Lrs. Versus A.M. Krishnamurthy* Specific Relief Act, 1963; Section 16(c) – Relevant Paras are extracted hereunder, Para 22. The primary question for determination is whether the Respondent/Plaintiff has proved his readiness and willingness to perform his part of the contract or not?

24. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the Plaintiff to actually tender money to the Defendant or to deposit money in Court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, explanation (i) says the Plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.



WEB COPY

25. To aver and prove readiness and willingness to perform an obligation to pay money as per the terms of a contract, the Plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the Plaintiff would have to plead that the Plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the Plaintiff does not have sufficient funds with him to discharge his obligations as per the terms of a contract, which requires payment of money, the Plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the Plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.

26. In ***Man Kaur v. Hartar Singh Sanghal [(2010) 10 SCC 512]***, wherein it is held as follows:

"40A person who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him (other than the terms the performance of which has been prevented or waived by the Defendant) is barred from claiming specific performance. Therefore, even assuming that the Defendant had committed breach, if the Plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the Plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the Respondent that readiness and willingness on the part of the Plaintiff is something which need not be proved, if the Plaintiff is able to establish that the Defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs. 15 lakhs. In such a case there is a clear breach by the Defendant. But in that case, if the Plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the Plaintiff will not be entitled to specific performance, even if he proves breach by the Defendant, as he was not "ready and willing" to perform his obligations."

27. In ***Pi. Prem Raj v. D.L.F. Housing and Construction (Private) Ltd. And Anr. cited by Mr. Venugopal, this Court***



WEB COPY

speaking through Ramaswami J. held that "it is well settled that in a suit for specific performance the Plaintiff should allege that he is ready and willing to perform his part of the contract and if the fact is traversed, he is required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. For such conclusion the learned Judge relied upon the opinion of Lord Blanesburgh, in *Ardeshir Mama v. Flora Sassoon* [55 1. A. 360, at p. 372.].

28. In ***D.L.F. Housing and Construction (Pvt.) Ltd. (supra)***, in the absence of an averment on the part of the Plaintiff in the plaint, that he was ready and willing to perform his part of the contract, it was held that the Plaintiff had no cause of action so far as the relief for Specific Performance was concerned. In this case, of course, there is an averment in the plaint that the Respondent Plaintiff was all along ready and willing to perform his obligations under the contract. The question is whether the Respondent Plaintiff had proved his readiness and willingness to perform his obligations under the contract.

29. In ***N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao and Ors.***⁴, this Court reiterated that Section 16(c) of the Specific Relief Act, 1963 envisages that the Plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which were to be performed by him other than those terms, the performance of which has been prevented or waived by the Defendant. In *N.P. Thirugnanam (supra)* this Court said that the continuous readiness and willingness on the part of the Plaintiff was a condition precedent for grant of the relief of Specific Performance.

30. This Court, in effect, held that for determining whether the Plaintiff was ready and willing to perform his part of the agreement it is necessary for the Court to consider the conduct of the Plaintiff prior and subsequent to filing the suit for specific performance. The relevant part of the judgment is extracted hereinbelow:

"5. ...Section 16(c) of the Act envisages that Plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been



WEB COPY

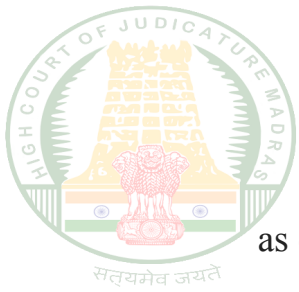
prevented or waived by the Defendant. The continuous readiness and willingness on the part of the Plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief"

31. In *Umabat v. Nilkanth Dhondiba Chavan*, this Court held that a finding as to whether the Plaintiffs were all along and still ready and willing to perform their part of the contract, was a mandatory requirement under Section 16(c) of the Specific Relief Act. The Court would necessarily have to arrive at the finding that the Plaintiff all along were, and still are ready and also willing to perform their part of the contract, taking into account the entirety of the pleadings as also the evidence brought on record. To quote this Court:

"So far there being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the Plaintiff. This at the most could be the desire of the Plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved."

32. In *K.S. Vidyadnam v. Vairavani, Justice B.P. Jeevan Reddy* said that grant of the relief of specific performance is discretionary and the Court is not bound to grant it. This Court further held that though time is not of essence to a contract relating to transfer of property, such contracts need to be completed within a reasonable time period. Thus the time element cannot be completely ignored

33. In a suit for Specific Performance of a contract, the Court is required to pose unto itself the following questions, namely: (1) Whether there is a valid agreement of sale binding on both the vendor and the vendee and (2) Whether the Plaintiff has all along been and still is ready and willing to perform his part of the contract



as envisaged under Section 16(c) of the Specific Relief Act, 1963.

WEB COPY

34. There is a distinction between readiness and willingness to perform the contract. Both ingredients are necessary for the relief of Specific Performance. In His Holiness Acharya Swami Ganesh Dasaji x. Sita Ram Thapar⁷ cited by Mr. Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the Plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the Plaintiff. The same view was taken by this Court in Kalawati v. Rakesh Kumar.

35. Even in the first appeal, the first Appellate Court is duty bound to examine whether there was continuous readiness and willingness on the part of the Plaintiff to perform the contract. This proposition finds support from Balraj Taneja v. Sunil Madan, and H.P. Pyarejan v. Dasappal) where this Court approved the view taken by the Privy Council in Ardeshir Mama v. Flora Sassoon

36. In Malluru Mallappa v. Kuruvathappa, this Court observed and held:-

"13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the Trial Court is open for reconsideration. Therefore, the first appellate court is required to address all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions, B.M. Narayana Gowda v. Shonthamma [B.M. Narayana Gowda v. Shanthamma, (2011) 15 SCC 476 (2014) 2 SCC (C) 619] H.K.N. Swami v. Irshad Basith [H.K.N. Swami v Irshad Bosith, (2005) 10 SCC 243] and Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar [Sri Raja Lakshmi Dyeing Works v. Rangaswamy (1980) 4 SCC 259]] 14. A first appeal under Section 96 CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is



WEB COPY

involved in a case and the question of law so involved is substantial in nature. *** 18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

38. In this case, we cannot overlook the fact that the suit property is located in the industrial town of Hosur that is located about 30/40 kms. from Bengaluru. The Court is obliged to take judicial notice of the phenomenal rise in the price of real estate in Hosur. The proposition finds support from case reported in K.S. Vidyanadam v. Vairavan (supra). To quote this Court "we cannot be oblivious to 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."

39. Mr. Venugopal argued that the Plaintiff had only paid an insignificant amount of Rs. 10,001/- as advance when the consideration was Rs. 15,10,000/- Having paid an insignificant amount the Plaintiff was not entitled to discretionary equitable relief of Specific Performance, as observed by this Court in Saradamani Kandappan v S. Rajalakshmi, The relevant paragraph of the judgment of this Court is set out herein below:-

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches



WEB COPY

and "non-readiness" The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and receiving rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees."

46. It is a settled law that for relief of specific performance, the Plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the Plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds. Mere statement or averment in plaint regarding readiness and willingness, would not suffice.

47. In this case, the Respondent Plaintiff has failed to discharge his duty to prove his readiness as well as willingness to perform his part of the contract, by adducing cogent evidence. Acceptable evidence has not been placed on record to prove his readiness and willingness. Further, it is clear from the Respondent Plaintiff's balance sheet that he did not have sufficient funds to discharge his part of contract in March 2003. Making subsequent deposit of balance consideration after lapse of seven years would not establish the Respondent Plaintiff's readiness to discharge his part of contract. Reliance may be placed on *Umabai v. Nilkanth Dhondiba Chavan* (supra) where this Court speaking through Justice SB Sinha held that deposit of amount in court is not enough to arrive at conclusion that Plaintiff was ready and willing to perform his part of contract. 20 (2020) 3 SCC 311 Deposit in court would not establish



WEB COPY

Plaintiff's readiness and willingness within meaning of section 16(c) of Specific Relief Act. The relevant part of the judgment is reproduced below: "45. ... Deposit of any amount in the court at the appellate stage by the Plaintiffs by itself would not establish their readiness and willingness to perform their part of the contract within the meaning of Section 16(c) of the Specific Relief Act..."

48. It is therefore, patently clear that the Respondent Plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. This Court finds that the Respondent Plaintiff was not entitled to the relief of specific performance.

49. The Respondent Plaintiff may have been willing to perform his part of contract. It however appears that he was not ready with funds. He was possibly trying to buy time to discharge his part of contract

50. In *Bhavyanath v. K.V. Balan* cited by Mr. Raju to contend that the Respondent Plaintiff was entitled to relief of specific performance and the courts had rightly granted such relief, the Plaintiff had filed the suit for specific performance three days after the last day for execution of the sale deed. In this case however, the Respondent Plaintiff waited for nearly 3 years and filed the suit for specific performance just before expiry of the limitation period. Furthermore, in *Bhavyanath v. K.V. Balan* (supra) the Plaintiff had adduced cogent evidence to prove his readiness and willingness to discharge his part of the contract and to prove that he had sufficient funds to discharge his obligation. No such evidence has been adduced by the Respondent Plaintiff in this case either to show his readiness or to prove that sufficient funds were available with him to enable him to discharge his part of contract. Therefore, *Bhavyanath v. K.V. Balan* (supra) is of no assistance to the Respondent Plaintiff

51. In view of the foregoing cases, this Court is of the considered opinion that the Respondent Plaintiff was not entitled to the relief of specific performance. The Trial Court and the Appellate Court erred both in law and on facts in granting such relief.

52. The appeal is accordingly allowed. The impugned



WEB COPY

judgment of the High Court and the judgment and decree of Trial court are accordingly set aside. The Appellants shall return the earnest money to the Respondent Plaintiff within 4 weeks from today with interest at the rate of 7% per annum from the date of deposit of the same, till the date of refund. It will also be open to the Respondent Plaintiff to withdraw the deposit if any of the balance consideration is with Court. Parties to bear their own costs.”

18. The Plaintiff did not have resources for paying the balance consideration of Rs. 14,00,000/- and also for paying registration charges and stamp duty. Further Ex.B-1 and Ex.A-1 both are admitted documents and Plaintiff had not taken any steps whatsoever to get the sale deed executed. Only after lapse of more than eight months, the Plaintiff issued a notice to the address of the Defendant, which she very well knows that Defendant is not available in the said address as the Defendant had shifted his residence long before to Kotagiri. Delay on the part of the Plaintiff is also writ large on the face of the record, sending notices to Defendant's old address intentionally, suppressing Ex.B-1 from the plaint, and not having funds/means to pay the balance sale consideration (plus Stamp duty plus registration charges appx. More than two lakhs) (Ex.A-11 series) etc amply makes in clear that Plaintiff has no legs to stand on in this Appeal and liable to be dismissed. There are Judgments to the effect that due to efflux of time, property prices surge and specific performance could not be granted. Hence the alternate relief granted by Trial Court is to be upheld in the interest of justice.



Point for determination:-

Whether the Judgment of the learned IV Additional District Judge, Coimbatore in O.S.No.94 of 2008 dated 18.10.2012 dismissing the Suit of the Plaintiff for specific performance and granting the alternate relief of refund of the advance amount of Rs.8,00,000/- and creating a charge over the property is erroneous warranting interference by this Court under Section 96, Order 41 of the Code of Civil Procedure?

19. Heard the arguments of the learned Counsel for the Appellant Mr.M.Guruprasad and the learned Counsel for the first Respondent Mr.R.Thiyagarajan for Mr.V.J.Arul Raj.

20. Perused the original records in O.S.No.94 of 2008 on the file of the learned IV Additional District Judge, Coimbatore.

21. The Appeal had been preferred by the Plaintiff against the dismissal of the Suit for specific performance and granting alternate relief of refund of advance amount. On perusal of the Plaintiff, the Plaintiff was amended by the Plaintiff by impleading the second Defendant/General Manager, Oriental Bank of Commerce, and the paragraph 8-A is included whereby the Plaintiff seeks specific performance by seeking to clear the debts and the liabilities of the Defendant for which the proceedings are pending before the



A.S.No.324 of 2013

Debt Recovery Tribunal over the Suit property and Plaintiff undertaking to file a Petition before the Debt Recovery Tribunal and seeking to release the property as she is interested in purchasing the property.

22. The learned Judge in the appreciation of evidence, while answering the Issue No.2, in the course of the discussion of evidence had observed that the property is under the proceedings of the Debt Recovery Tribunal, Chennai, the total claim before the Debt Recovery Tribunal is more than Rupees Two and half Crores. The first Defendant is the sixth Respondent in the Original Application. The certified copy of the proceedings before the Debt Recovery Tribunal was marked as Ex.B-6 in the course of the trial before the learned IV Additional Judge, City Civil Court in O.A.No.196 of 2003, when the recovery proceedings are pending as per the evidence of the first Defendant, the decree for specific performance cannot be granted. The learned IV Additional Judge observes in the discussion that as per Section 34 of the SARFAESI Act, 2002, the Suit is barred. The arguments put forth by the learned Counsel for the Plaintiff, he had relied on the exception to Section 34 and Section 31 (i) of the SARFAESI Act, 2002 wherein agricultural lands are exempted from the provisions of the Act. If that argument is accepted, and if the Plaintiff claim for specific performance is to be considered, he has to clear the mortgage with the second Defendant. The learned IV Additional Judge



WEB COURT

raised a question whether the argument put forth by the learned Counsel for the Plaintiff can be considered. The Plaintiff can claim the relief only if he satisfies the condition imposed under Section 13 (1) (c) of the Specific Relief Act, is extracted hereunder:-

“13 (1) (c) - where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;”

23. The learned IV Additional Judge observed in his judgment in paragraphs as follows:

“22.As per this provision, the mortgage amount should not exceed the purchase money, which means that the purchase money must be more than that of the mortgage amount. If this condition is satisfied, then he can compel the vendor to redeem the mortgage and he can also get a conveyance from the mortgage. In simple term, we can say that, a purchaser is entitled to purchase a property subject to encumbrance, he may undertake to discharge the encumbrance by himself or ask the vendor to discharge the liability. Again, which means that a purchaser can purchase the property along with equity of redemption and this is a basic law, with regard to purchase subject to encumbrance.”

24. The learned Judge had observed that if the purchase price is less than the mortgage price, then the contract will be frustrated due to impossibility of performance. Because, the purchaser will not be ready to purchase a property which is subject to encumbrance and which is more than the agreed sale price. The learned Judge had perused Ex.A-1. It did not



A.S.No.324 of 2013

WEB COPY

contain such recital that the Defendant had disclosed the fact that the property is under Debt Recovery Tribunal proceedings and subject to clearance of the liability before the Debt Recovery Tribunal. It only states that the Defendant undertakes to execute the sale deed for Rs.22,00,000/- in favour of the Plaintiff on accepting advance amount of Rs.8,00,000/- on 15.12.1993 and had handed over possession to the Plaintiff and agreed to execute the sale deed after receiving the balance of sale consideration of Rs.14,00,000/-. The recital does not mention the mortgage pending before the Oriental Bank of Commerce. Therefore, the learned Judge in the course of the discussion of evidence observed the conduct of the Defendant that the Defendant had stated in the written statement that the sale agreement did not come into existence with intention to sell the property but only executed as a security for the loan received by the Defendant. Further, he had observed that the notice sent by the Plaintiff was not received and it was returned to the Plaintiff as the Defendant had shifted his residence. Therefore, the learned Judge had observed that a purchaser will not be ready to purchase a property which is subject to encumbrance which is more than the agreed sale price. If the mortgage amount is less than the agreed sale price, the Court is within its discretion to grant specific performance. Therefore, the learned Judge had observed that it is onerous condition that cannot be imposed on the Plaintiff. Further, the conduct of the Defendant was observed that he had intention to cheat the Plaintiff.



A.S.No.324 of 2013

WEB COPY

Therefore, to protect the interest of the Plaintiff, the Court has a duty under the principles of fairness, equity and good conscience which governs a Civil Court in granting a decree. Therefore, the learned Judge had analysed the probability of the case in the light of SARFAESI Act and in the light of the Specific Relief Act, particularly under Section 13 (1) (c).

25. The reasoning of the learned Judge cannot be faulted under the principles of SARFAESI Act and under the principles of Specific Relief Act, particularly under Section 13 (1) (c). In the Appeal, the Plaintiff as Appellant states that the observation by the learned Judge regarding Ex.B-6, property under mortgage is for Rs.2,62,00,000/- is beyond the sale price. In the Appeal, the Plaintiff as Appellant claims that the observation of the learned Judge is misconceived as there are number of properties under the proceedings before the Debt Recovery Tribunal between the second Defendant and the first Defendant in O.S.No.94 of 2007 before the learned IV Additional District Judge, Coimbatore. If it is so, it is for the Plaintiff to obtain appropriate orders by approaching the Debt Recovery Tribunal, the Civil Court cannot exercise discretion, ignoring the SARFAESI Act by granting a specific decree in favour of the Plaintiff for Rs.22,00,000/- for one particular property. It will create legal complications defeating the jurisdiction of the learned Debt Recovery Tribunal in securing the properties to recover the outstanding dues to the Bank.



A.S.No.324 of 2013

WEB COPY

Therefore, the learned Judge had rightly rejected the claim of the Plaintiff for specific performance of contract and instead, granted the decree in equity for Rs.8,00,000/- which is the amount paid as per Ex.A-1. The evidence of the Defendant during trial was observed by the learned Judge in the light of the documents filed by the Defendant under Ex.B-1 to Ex.B-6. The Defendant was found unreliable and the learned Judge had found that his intention was to cheat the Plaintiff by not disclosing the encumbrance created by him, the mortgage in favour of the second Defendant. Even though the second Defendant had remained *ex parte*, the Court cannot grant a decree ignoring the interest of the Bank as per the SARFAESI Act which was enacted by the Parliament to protect the interest of the Banking Institutions to recover the loans by excluding the jurisdiction of Civil Court and creating new statutory bodies to recover the dues by setting up exclusive Tribunals for appropriate actions to recover the dues. Under those circumstances, the Civil Court exercising jurisdiction the moment the Civil Court came to know of the overlapping jurisdiction due to the marking of Ex.B-6 had on appreciation of evidence, had arrived at a conclusion that it is not fair on the part of the Civil Court to ignore the proceedings under Ex.B-6 and mechanically grant a decree for specific performance. This Court as Appellate Court cannot reject the finding of the learned IV Additional Judge and the reasoning of the learned IV Additional Judge, Coimbatore in rejecting the relief of specific performance



A.S.No.324 of 2013

and granting the alternate relief of refund of the advance amount.

WEB COPY

26. It is to be noted that the Plaintiff had sought alternate relief only after the argument stage by including the alternate relief and amending the Plaint by including the second Defendant/Bank as a party to the proceedings. Under those circumstances, the reasoning of the learned District Judge rejecting the claim of specific relief is found proper particularly when the SARFAESI Act is invoked and the Debt Recovery Tribunal has seized the matter. When Ex.A-1 states that the value of the properties is only Rs.22,00,000/- whereas the mortgage created by the first Defendant is only for Rs.22,00,000/-, whether it was suppression of the value for the property. The learned Judge had found that Ex.A-1, sale agreement is true, but at the same time the intention of the first Defendant was to cheat the Plaintiff. He has shifted his residence from Anna Nagar, Chennai and given an alternate address at Kotagiri whereas even in Kotagiri address, he was not found. Under those circumstances, it is not fair on the part of the learned IV Additional Judge to grant decree for specific performance. It is a well-reasoned Judgement.

27. In the reported ruling of the Hon'ble Supreme Court in ***Betal Singh -vs- State of M.P.*** reported in (1996) 8 SCC 205 and in ***V.Sejappa - Vs - State*** reported in 2016 (12) SCC 150, if the trial Court had on proper



A.S.No.324 of 2013

appreciation of evidence arrived at a finding, the finding of the learned trial Judge shall not be disturbed by the Appellate Court. Even if the same set of evidence, the Appellate Court comes to opposite finding, the finding of the trial Court shall not be thrust on the trial Court, because, the trial Court had the advantage of observing the demeanour of the parties to the dispute which is not available to the Appellate Court.

28. In the Appeal, the Appellant did not come to argue the case in spite of repeated adjournments. Therefore, the then learned Judge of the Court by Judgment dated 21.11.2019 dismissed the Appeal. Subsequently, the learned Counsel for the Appellant filed restoration Petition along with the petition to condone delay in filing restoration petition. Before allowing the condone delay Petition, the learned Counsel for the Appellant was directed to argue the case on merits, if he had merits, the Petition to condone delay will be allowed on costs. Accordingly, after hearing the learned Counsel for the Appellant, for a length of time, the Petition for condone delay was allowed on 12.11.2024 in the presence of the learned Counsel for the Respondent, after due notice. Subsequently, the Petition for restoration of the Appeal was posted along with the Second Appeal. At this stage, the learned Counsel for the Respondent is also present and the learned Counsel for the Respondent was heard and restoration Petition was allowed on 11.12.2024. After hearing the



A.S.No.324 of 2013

learned Counsel for the Respondent on 18.12.2024, the case came up for three hearings as “part-heard”. Subsequently, the subject matter was “reserved for Judgment”.

29. The learned Counsel for the Respondent invited the attention of this Court to Section 16 (c) of the Specific Relief Act (as amended) and Section 55 of the Contract Act and Article 54 of the Limitation Act. He further submitted that Section 55 of the Contract Act deals with implied covenant and explicit covenant. It is the contention of the learned Counsel for the first Respondent that time is essence of the contract.

30. The learned trial Judge had observed the demeanour of the parties before the trial Court and also outside the Court shifting his residence frequently. The learned Judge had appreciated evidence in particular Ex.A-1, sale agreement deed dated 13.02.2006, which is the subject matter of the Suit in O.S.No.94 of 2008 and the earlier agreement between the parties under Ex.B-1 dated 20.02.2004. Ex.B-1 is the earlier sale agreement between the Plaintiff and Defendant where the sale price was fixed at Rs.22,00,000/- and advance paid by the Plaintiff was Rs.6,00,000/-. The sale agreement was executed on 16.12.1993 and in which the possession was handed over to the Plaintiff in the year 1993 and agreeing to execute the sale deed between



A.S.No.324 of 2013

20.02.2004 and 19.02.2006 after receiving balance sale consideration.

WEB COPY

Subsequently, a new sale agreement was executed under Ex.A-1 for the same property. In both these agreements, the claim made by the first Defendant that there was encumbrance, that is, mortgage with the Bank had not been stated and combined to that fact, the conduct of the Defendant in shifting his residence and not informing the Plaintiff of the shifting of his residence, was considered by the learned Judge while granting relief in equity, thereby protecting the interest of the Plaintiff, and at the same time, protecting the interest of the Bank which is adjudicating its interest before the Debt Recovery Tribunal concerned. Therefore, the learned Judge felt that it is not fair on the part of the Civil Court, ignoring the provisions of the SARFAESI Act and granting a decree for Rs.22,00,000/-. When the subject matter of the mortgage for which the Debt Recovery Tribunal is seized of the matter is Rs.2 ½ crores, the Court cannot grant a decree for Rs.22,00,000/-. The argument of the learned Counsel for the Plaintiff was that the agriculture properties are exempted from Debt Recovery Tribunal proceedings and also under Section 34 of the SARFAESI Act, the learned Judge had observed that no one will be permitted to play a game of chance in the Court. The learned Judge further observed that the transaction under Ex.B-1 and the conduct of the Defendant throughout the proceedings does not inspire confidence of the learned Judge. Therefore, it is the duty cast upon the Judge to pass appropriate Orders,



A.S.No.324 of 2013

WEB COPY

protecting the interest of the Debt Recovery Tribunal and the second Defendant/Bank before the Debt Recovery Tribunal to recover the dues from the first Defendant through the SARFAESI proceedings and at the same time, protecting the interest of the Plaintiff. Therefore, he had rightly rejected the claim of the Plaintiff seeking specific performance of contract for Rs.22,00,000/-. The subject matter of the property before the Debt Recovery Tribunal is not before the Court. How many items of the properties are under the SARFAESI Act before the Debt Recovery Tribunal to exclude the particular property by invoking the right of the Civil Court, ignoring the SARFAESI provisions. Therefore, the learned Judge had rightly rejected the claim of the Plaintiff. The Plaintiff had preferred this Appeal only to invoke the jurisdiction of the Civil Court to enforce the contract under Ex.A-1 for specific performance of contract, instead of the alternate relief. It is to be noted that only at the stage of argument, the Plaintiff had amended the plaint by including second Defendant and seeking permission of the Court to clear the mortgage before the Debt Recovery Tribunal and seek the alternate relief of refund of the advance amount. Therefore, the learned Judge had protected the interest of the Plaintiff. Now at this stage, the Plaintiff cannot expect the Appellate Court to grant relief, particularly specific relief against the interest of the Bank for a mortgage for the value of two and half Crores for which SARFAESI Act proceedings had been initiated by the Bank before the Debt Recovery Tribunal



A.S.No.324 of 2013

whereas the subject matter of the sale agreement under Ex.A-1 is Rs.22,00,000/-, particularly when the Appeal was dismissed as on 21.11.2019 and restored only in the year November, 2024. Therefore, within three years period what transpired before the Debt Recovery Tribunal is not before this Court as the observation of the learned IV Additional Judge holds good even at this stage. Regarding the observation that for two and half Crores worth of mortgage, the Plaintiff cannot be forced to clear the mortgage to execute sale deed for Rs.22,00,000/-. Therefore, the attempt of the Plaintiff as Appellant seeking specific performance of contract has to be rejected by this Court.

31. The ruling cited by the learned Counsel for the Appellant reported in **(2010) 7 SCC 717** in the case of ***Laxman Tatyaba Kankate and Another Vs. Taramati Harishchandra Dhatrak*** will not hold good in the facts and circumstances of this case as the subject matter of the sale agreement under Ex.A-1 was even prior to that of mortgage with the second Defendant Bank which was suppressed while entering Ex.A-1, sale agreement with the Plaintiff. The property was shown to be worth Rs.22,00,000/- for which the Plaintiff had created Ex.A-1, sale agreement by availing loan amount Rs.6,00,000/- as advance in the year 1993 as per Ex.B-1 and subsequently, renewed by a fresh sale agreement under Ex.A-1 for Rs.22,00,000/- as though Rs.8,00,000/- was paid including the amount Rs.6,00,000/- already paid as advance and granting



A.S.No.324 of 2013

the possession to the Plaintiff.

WEB COPY

32. The Judgment of the learned IV Additional District Judge, Coimbatore in O.S.No.94 of 2008 dated 18.10.2012 is found well-reasoned in the light of the Specific Relief Act and SARFAESI Act. There is no ground to interfere with the well-reasoned Judgment of the learned IV Additional District Judge, Coimbatore.

In the light of the above discussions, **the point for determination is answered against the Appellant/Plaintiff and in favour of the Respondent/Defendant.**

In the result, this *Appeal Suit is dismissed* as having no merits. The Judgment and Decree in O.S.No.94 of 2008 dated 18.10.2012 on the file of the learned IV Additional District and Sessions Judge, Coimbatore is confirmed. Consequently, connected Miscellaneous Petition is closed. No orders as to costs.

30.06.2025

dh

Index : Yes/No

Internet: Yes/No

39/41

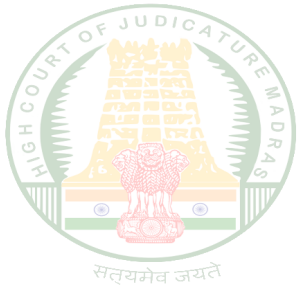


A.S.No.324 of 2013

Speaking/Non-speaking order

WEB COPY

- To
1. The IV Additional District
and Sessions Judge, Coimbatore.
 2. The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



A.S.No.324 of 2013

SATHI KUMAR SUKUMARA KURUP, J.,

dh

Judgment made in
A.S.No.324 of 2013

30.06.2025