



A.S.No.406 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 08.07.2025

Pronounced on: 18.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.406 of 2022
& C.M.P.No.14620 of 2022

S.Sujatha,
W/o.P.Subramani,
No.15, Mettu Street,
Bodi Naidu Kandigai Village,
Kizhavanam Post,
Arakonam Taluk,
Vellore Taluk

... Appellant/1st Defendant

/versus/

1. N.Elumalai
S/o.Narasimma Reddy,
No.1/79, Pillaiyar Koil Street,
Kizhavanam Village and Post,
Arakkonam Taluk,
Vellore District.

... 1st Respondent/Plaintiff

2. The Sub Registrar,
Tiruttani,
Thiruvallur District.

... 2nd Respondent/2nd Defendant

Prayer:- Appeal Suit has been filed under Section 96 read with Order 41 of the Civil Procedure Code, to set aside the Judgment and Decree dated 24.02.2021 passed in O.S.No.24 of 2018 by the I Additional District Judge, Thiruvallur by allowing the appeal suit.



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For Appellant : Mr.P.Rathanavel
For Respondents : Mr.S.Udaya Kumar, for R1
: Mr.R.Siddharth,
Additional Government Pleader, for R2

J U D G M E N T

This appeal arises from the decree passed by the trial Court in the suit for specific performance. The appellant, who is the owner of the suit schedule property, was the first defendant in the suit. The jurisdictional Sub-Registrar, is arrayed as a *pro forma* party, is the second defendant.

2. Plaintiff averments:-

The plaintiff/respondent is the absolute owner of the suit schedule property as per the registered settlement deed dated 04.07.2016. The plaintiff offered to sell the property to the first defendant. After negotiations, the plaintiff and the first defendant on 06.07.2016 entered into a written agreement for the sale of the suit schedule property, for a total consideration of Rs.20,00,000/- (Rupees Twenty lakhs only). An advance amount of Rs.15,00,000/- with a promise to pay the balance within 19 months from 06.07.2016 i.e., on or before 05.02.2018 and get the sale deed register. The title documents were handed over to the plaintiff, however, the possession of the property remained with the defendant. The



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agreement for sale was duly registered at the Sub-Registrar Office, Thiruthani, as

document No:2476/2016.

3. Even before the expiry of the 19 months period, the plaintiff, expressing his 'ready and willingness' to pay the balance sale consideration, requested the first defendant to execute the sale deed. However, the first defendant evaded meeting with the plaintiff. Claiming that he is ready with the balance sale consideration and the incidental charges such as registration fees and stamp papers, the plaintiff caused legal notice to the defendant through his lawyer on 29.11.2017, calling upon the defendants to come and execute the sale deed.

4. The suit was filed for the relief of specific performance, or in alternate, for a refund of the advance money of Rs.15,00,000/- with interest at the rate of 12% per annum.

5. Averment in the written statement:-

In her written statement, the first defendant denied the execution of the sale agreement dated 06.07.2016. She contended that it was her husband, a



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farmer, had loan transactions with the plaintiff. Due to failure of crop during the year 2014, her husband was unable to repay the loan. The loan amount payable was Rs.15,00,000/-. The sale agreement was entered only as a security for the said loan. The first defendant had no intention of selling the property. Only for security purpose, the document was created. The first defendant claimed that the title deed of the property was stealthily taken away by her husband and handed over to the plaintiff. After receipt of the notice, the first defendant came to know about the false narration about the document given only for security purposes. Thereafter, negotiation through one Mr.Suresh was conducted. Hence, she did not reply to the notice.

6. The first defendant further contended that the suit property is worth more than Rs.50 crores. The sale agreement showing for a lessor value shown and registered only to create security for the loan advanced. Neither of parties had intention to sell or purchase the property. Of late to grab the property for peanut, the plaintiff has filed the present suit.



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7. Based on the pleadings, the trial Court framed five issues and went

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1. Whether the defendant executed the sale agreement dated 06.07.2016 as security for the loan received by the defendant from the plaintiff?

2. Whether the plaintiff is entitled to the relief of specific performance?

3. Whether the plaintiff is entitled to the alternative relief of refund of earnest money Rs.15,00,000/- with interest at 12% p.a.?

4. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

5. To what other relief that the plaintiff is entitled for?

8. The plaintiff and one Murali, who is one of the witness to the sale agreement, were examined as PW-1 and PW-2 respectively. Six documents were marked on the side of the plaintiff as Ex.A-1 to Ex.A-6. On behalf of the defendants, three witnesses were examined, however, no documents were marked.



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9. The trial Court *vide* its judgment dated 24.02.2021 allowed the suit.

The plaintiff was granted one month time to deposit the balance sale consideration of Rs.5,00,000/-. The defendant was given three months time to execute the sale deed, with permission to withdraw the balance sale consideration.

10. The learned counsel for the appellant submitted that, a pure and simple loan transaction and the execution of the sale agreement on good faith without any intention to sell the property been misused by the plaintiff to lay the suit for specific performance. The plaintiff never expressed his ready and willingness. In fact, the balance sale consideration was paid only in the year 2021. Mere issuing of notice and calling upon the vendor to come and register the property is not ready and willingness in the true sense. The Learned Counsel also pointed out that the suit property is worth more than Rs.50 lakhs and no prudent person will sell the property for Rs.20 lakhs. The trial Court failed to consider the principles laid down by the Hon'ble Supreme Court in ***Jagjit Singh (Dead) through Legal Representatives v. Amarjit Singh [(2018) 9 SCC 805]*** and ***J.P.Builders v. A.Ramados (2011) 1 SCC 429.***



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11. Per Contra, the Learned counsel for the respondent submitted that

the receipt of Rs.15 lakhs has been admitted by the defendant. The execution of Ex.A1 (the sale agreement) is also admitted. Contrary to the contents of the said document, the appellant/defendant is now projecting a story of loan transaction and deny her intention to sell the property.

12. To support this version, the defendant examined her husband and one Elumalai as D.W-2 and D.W-3. Though they had deposed that the plaintiff is a money lender and he used to get agreement for sale and get it registered for security purpose while giving loan. Later, he used to cancel the registered agreement for sale after collecting exorbitant interest. If the borrower fail to pay the demanded interest, he will misuse the sale agreement deed and file suit for specific performance to knock away the properties.

13. The testimony of DW-2 and DW-3 is contrary to the contents of the document Ex.A-1 is inadmissible in evidence. Any fact contradicting or varying the terms of written contract cannot be through oral evidence. Section 95 of the *Bharathiya Sakshya Adhiniyam* (formerly Section 92 of the Indian Evidence



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Act) excludes oral evidence to contradict written agreement. Hence, the learned

Counsel for the respondent submitted that the defence put forth by the appellant is baseless and need to be rejected.

14. Point for determination:-

Whether the trial court erred in holding the document Ex.A-1 is an agreement for sale and not a security for the loan transaction and whether its conclusion that the plaintiff was ready and willing to perform the contract, as required under Section 16 (c) of the specific relief Act?

Point 1:-

Contrary to the content of the document Ex.A-1, it is contended by the appellant that her intention was not to sell the property. She executed this document only for the purpose of security for the loan availed by her husband.

15. The following circumstances are relied by the appellant to buttress her above submissions:-



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i) The appellant got the property by way of a settlement deed (Ex.A4)

from her mother and brother hardly two days prior to the disputed agreement for sale. There is no plausible reason for her to sell the property for a sum of Rs.20,00,000/- granting 19 months to the purchaser to complete the contract.

ii) The sale agreement is dated 06.07.2016. As per the document, a part sale consideration of Rs.15,00,000/- was paid and the balance amount of Rs.5,00,000/- to be paid within 19 months. However, no evidence placed by the plaintiff regarding passing of this part of sale consideration. Nothing pleaded to show his ready and willingness from the date of agreement.

16. According to the plaintiff, the reason for granting 19 months was that, in the suit land standing casuarina trees were not ready for harvest. Therefore, time was granted to harvest the trees and deliver the vacant possession. Except for the self-serving oral evidence, they plaintiff has not produced any substantial evidence to prove that in the suit property there were standing trees at the relevant point of time.



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17. In response to the above submission, the learned counsel for the respondent contended that, apart from the evidence of P.W-1 and P.W-2, the husband of the defendant, who was examined as DW-2, had admitted that, at the time of the agreement, there were standing trees and it took 18 months for harvesting it. Further, the debt of Rs.15,00,000/- payable to the plaintiff is an admitted fact by both the defendant and her husband. Therefore, they cannot plead that there was no passing of consideration.

Section 92 of Indian Evidence Act:-

S.92 Exclusion of evidence of oral agreement:

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms;

Proviso (1): Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party want or failure of consideration, or mistake in fact or law:

Proviso (2): The existence of any separate oral agreement as to any matter on which a document is silent,



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and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document:

Proviso (3): The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4): The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5): Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved; Provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract:

Proviso (6): Any fact may be proved which shows in what manner the language of a document is related to existing facts.

18. In an identical set of facts, a Learned Judge of this Court, in ***P.Veerassamy vs. V.Soundararajan*** reported in ***2014 SCC Online Mad 88***, after considering the effect of Sections 91 and 92 of the Indian Evidence Act, which are almost identical to present Sections 94 and 95 of the *Bhartiya Sakshi Adiniam*,

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held that:-

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"**22.** Section 92 of the Indian Evidence Act has to be read along with proviso No. 1 which speaks about facts invalidating the document; proviso No. 2 separate oral agreement as to matters which are silent and not inconsistent with the terms of the document; proviso No. 3 separate oral agreement constituting condition precedent to the attaching of any obligation; proviso No. 4, distinct subsequent oral agreement to rescind or modify any such contract or grant; proviso No. 5 usage or custom to annex incidence to contract "provided that annexing of such incidence would not be inconsistent" and proviso No. 6 extrinsic evidence of surrounding circumstances. In fact, Section 92 is controlled by the proviso 1 to 6 as enumerated under Section 92 of Indian Evidence Act.

23. It would be relevant to point out that there are opposite contentions with regard to true character of the writing (with reference to Ex. A1). It is the contention of the learned counsel for the appellant that when there is a dispute in regard to the true character of writing, evidence dehors the document can be let in to show that the writing was not the real nature of transaction but was only an illusory fictitious and colourable device which cloaked something else and that the apparent state of affairs was not the real state of affairs (*Krishna Bai v. Appasahen* reported in (1979) 4 SCC 60 : AIR 1979 SC 1880).

24. The decision reported in AIR 1936 PC 70 (*Tyagaraja Mudaliar v. Vedathani*) would go to show that



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oral evidence is admissible to show that a document executed by a person was never intended to operate as an agreement, but was brought in existence solely for the purpose of creating evidence about some other matter.”

19. Therefore, the oral testimony of D.W-2 and D.W-3, though admissible under the proviso to the Section 92 of Indian Evidence Act, to contradict the contents of the written document at the end such evidence must lead to a substantial conclusion that the true intention of at least one of the parties to the document was not to sell the property but only to create encumbrance over the property. For that purpose, apart from the oral evidence, some documents to show that the plaintiff used to get sale agreements from the borrowers and will cancel it on recovery of the loan must have been placed before this Court. If the said averment is true, then getting a certified copies of the sale agreement deeds and its cancellation is not an impossible task. Had those documents were before this Court, it would have lend some credence to the evidence of DW-2 and DW-3. In the absence of such evidence, the contention of the learned counsel for the appellant that the appellant did not execute Ex.A1 with any intention to sell her property is liable to be rejected.



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20. Ready and willingness:-

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For the relief of specific performance, the plaintiff has to prove his 'readiness and willingness' to perform his part of contract. 'Readiness' and 'Willingness' are two separate ingredients for a contract to enforce specifically.

21. In *U.N.Krishnamurthy (Since Deceased) through Legal Representatives vs. A.M.Krishnamurthy* reported in 2023 (11) SCC 755, the Hon'ble Supreme Court of India, while considering the test of ready and willingness under Section 16 (c) of the Specific Relief Act, held as below: -

"20. It is well settled that, in a suit for Specific Performance of an agreement, it is for the Plaintiff to prove his readiness and willingness to perform his obligations under the agreement. Where a certain amount has been paid in advance and the balance is required to be paid within a stipulated time, it is for the Plaintiff to show that he was in a position to pay the balance money. The Plaintiff has to prove that he has the money or has alternatively made necessary arrangements to get the money.

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23. 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



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

24. To aver and prove readiness and willingness to perform an obligation to pay money, in 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 in 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.

25. In *Man Kaur v. Hartar Singh Sangha* reported in (2010) 10 SCC 512, this Court held that:

“40.A person who fails to aver and prove that he has performed or has always



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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,



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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."

26. *In PT. Prem Raj v. D.L.F. Housing and Construction (P) Ltd. 1968 SCC Online SC 151 cited by Mr.Venugopal, this Court speaking through Ramaswamy, J. held that:*

"5...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 (1928 SCC Online PC 43)

27. *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."*



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The question is whether the Respondent/Plaintiff had proved his readiness and willingness to perform his obligations under the contract.

28. In *N.P.Thirugnanam v. Dr.R.Jagan Mohan Rao and Ors (1995) 5 SCC 115*, the Hon'ble Supreme 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 are to be performed by him. In *N.P.Thirugnanam* (cited supra), it was also held that the continuous readiness and willingness on the part of the Plaintiff was a condition precedent for grant of the relief of Specific Performance."

22. Thus, when Section 16(c) of the Specific Relief 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 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.



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23. While testing the pleadings and the evidence in the case in hand, it is seen in the plaint at paragraph No.7, the plaintiff had stated that he was ready with the balance of sale consideration of Rs.5,00,000/- and also having sufficient amount for purchasing stamp papers and for paying the registration charges, etc. However, along with the plaint or soon after filing the suit, the plaintiff had not taken any steps to deposit the balance amount in order to prove his ready and willingness. It was only after passing of decree on 24.02.2021, i.e., nearly five years after the agreement, that the balance sale consideration of Rs.5,00,000/- was deposited in the suit account on 18.03.2021. The said lapse indicate that the plaintiff was not willing for execution of his part of contract at the earliest and took almost five years.

24. In addition, it is to be noted that the agreement is dated 06.07.2016 and the period for completion of the contract fixed as 19 months. The plaintiff has issued notice to perform on 29.11.2017 and the suit for specific performance is presented on 24.01.2018. However, neither in the pre-suit notice (Ex.A5), nor in the plaint, nor in his evidence, the plaintiff had disclosed his



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source of funds. Though he has consistently claimed that he is ready and willing to perform the contract, there is no whisper about how he will perform, whether he have cash at home or enough balance in his bank account or he will mobilize funds through other sources. A minimum disclosure about the plaintiff's readiness, apart from bare claim that his ready and willing, is required to satisfy the conditions envisaged under Section 16 (c) of the Specific Relief Act.

25. In this case, this Court finds that there is conspicuous silence on the part of the plaintiff regarding his source of funds to comply with the contractual obligation. Contrarily, his conduct proves that he was not ready to tender the balance sale consideration in any known form till the disposal of the suit, which took nearly five years.

26. The Court cannot be oblivious to the fact that the escalation of price in respect of landed property. An agreement holder cannot withhold the sale consideration and tender it after few years, thereby causing prejudice to the vendor. The Specific Relief is an equitable relief and either of the parties shall suffer for the fault of other side. No doubt, in this case, the appellant had not



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come forward to execute the sale deed after receiving the balance sale consideration, at the same time, it is also proved that the respondent also did not come forward to tender the balance sale consideration at the earliest point of time.

27. In view of this Court, under the aforesaid circumstances, the plaintiff/agreement holder is entitled only for a refund of the money advanced with reasonable interest and not the property.

28. Accordingly, *Appeal Suit is partly allowed.* The decree for specific performance is set aside. The 1st respondent is granted the alternate relief of refund of Rs.15,00,000/- with interest at 12% p.a., from the date of agreement i.e., 06.07.2016, till the date of decree along with the cost of the suit. From the date of decree till date of realisation, the appellant shall pay interest at the rate of 9% p.a., Consequently, connected Miscellaneous Petition is closed. No costs.

29. The Learned Counsel for the respondent submits that pursuant to decree, the balance sale consideration of Rs.5,00,000/- already been deposited in the Court. Taking note of the said submission, direction is issued to the Court



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below to permit the respondent to withdraw the money deposited till the payment
of the decree amount, there shall be a charge over the suit property.

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Index : Yes
Neutral citation : Yes/No.
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To,

1. The I Additional District Judge, Thiruvallur.
2. The Sub Registrar, Tiruttani, Thiruvallur District.
3. The Section Officer, V.R. Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
Appeal Suit No.406 of 2022

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