



S.A.No.461 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.08.2025
Pronounced on	14.11.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.461 of 2019 and Cros.Obj. No.31/2022

and

C.M.P. No.7521 of 2019

R. Krishnan	...Appellant in S.A. No.461/2019 / Respondent in Cros.Obj.No.31/2022
K. Devarajan	Vs. ...Respondent in S.A. No.461/2019 / Cross Objector in Cros.Obj.No.31/2022

Prayer in S.A. No.461 of 2019 : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 19.11.2018 passed in A.S. No.41 of 2016, on the file of the Additional District Court (FTC), Villupuram, confirming the Judgment and decree dated 20.04.2016 passed in O.S.No.335 of 2013, on the file of the I Additional Sub Court, Villupuram, in respect of relief of specific performance.

Prayer in Cros.Obj.No.31 of 2022 : Cross Objection filed under Order 41

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Rule 22 CPC against the judgment and decree dated 19.11.2018 passed in A.S. No.41 of 2016, on the file of the Additional District Court (FTC), Villupuram, partially reversing the Judgment and decree dated 20.04.2016 passed in O.S.No.335 of 2013, on the file of the I Additional Sub Court, Villupuram.

Appearance in S.A. No.461/2019

For Appellant : Mr. N. Suresh
For Respondent : Mr. D. Rajasekar

Appearance in Cros. Obj. No. 31/2022

For Cross Objector : Mr. D. Rajasekar
For Respondent : Mr. N. Suresh

COMMON JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 19.11.2018 in A.S. 41/2016 on the file of Additional District Court, Villupuram, confirming the judgment and decree dated 20.04.2016 in O.S.No. 335/2013 on the file of I Additional Sub Court, Villupuram.

2. Briefly stated, the respondent as plaintiff filed the above suit for



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specific performance. According to him the defendant had entered into a sale agreement dated 16.06.2012 with the plaintiff in respect of the suit properties and the sale consideration was fixed at Rs.4,32,000/-. The plaintiff paid a sum of Rs.2,00,000/- as advance and agreed to pay the balance of Rs.2,32,000/- within a period of 18 months from the date of agreement. The plaintiff was ready to pay the balance amount from June 2013 and approached the defendant several times to execute the sale deed in his favour. Since the defendant failed to perform his part of contract, the plaintiff issued a legal notice on 25.09.2013 and in spite of receipt of the said notice, the defendant failed to execute the sale deed. Instead, the defendant issued a reply notice on 04.10.2013 with false allegations for which the plaintiff issued a rejoinder notice on 09.10.2013 with correct facts. The plaintiff was always ready and willing to perform his part of contract. The plaintiff had also deposited the balance amount of Rs.2,32,000/- into the court. Hence, the suit.

3. The claim of the plaintiff was resisted on the side of the



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defendant stating that he never executed any sale agreement in favour of the plaintiff and that he never received any amount from the plaintiff. The defendant had no necessity to alienate his property especially the vacant site. At the instigation of the defendant's brother Dharman who tried to grab the properties of the defendant, the present suit is filed by the plaintiff. Hence prayed for dismissal of the suit.

4. Considering the oral and documentary evidence adduced, the trial court, though held that the suit agreement is genuine, dismissed the suit on the ground that the plaintiff failed to establish his readiness and willingness to perform his part of the contract. The first appellate court also on the very same lines dismissed the appeal filed by the plaintiff, however, directed the defendant to repay Rs.2,00,000/- with interest at the rate of 9% per annum from the date of sale agreement till the date of plaint and 6% per annum from the date of plaint till the date of realisation.

5. Assailing the same, the present Second Appeal is filed by the



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plaintiff and Cross Objection is preferred by the defendant challenging the judgment and decree of the first appellate directing the defendant to pay a sum of Rs.2,00,000/- with interest.

6. The Second Appeal is admitted on the following substantial questions of law:

"A) Whether the courts below are right in not granting the relief of specific performance in favour of the plaintiff especially when it has allowed the appeal in favour of plaintiff with costs?

B) Whether the courts below in law are right in declining the relief of specific performance when on material findings, viz., readiness and willingness, execution of the agreement to sell and validity of the agreement have all been considered and rendered in favour of the plaintiff?"

7. The learned counsel for the appellant would submit that, the



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plaintiff was always ready and willing to perform his part of contract. In fact the plaintiff deposited the balance sale consideration on the date of filing the suit itself. While so, the courts below erred in disallowing the relief of specific performance on flimsy ground. Hence, prayed for allowing the Second Appeal.

8. On the other hand, the learned counsel for the respondent would submit that, the courts below have dealt with the issue of 'readiness and willingness' in a proper perspective. Emphasizing on Section 16(c) of the Specific Relief Act, 1963, the learned counsel would submit that, the plaintiff failed to demonstrate his continuous 'readiness and willingness' by acceptable evidence, which the plaintiff was required to prove, regardless of any default by the defendant. Considering the above, the courts below rightly denied the relief of specific performance sought for by the plaintiff. Hence prayed for dismissal of the Second Appeal.

9. In the Cross objection, it is submitted that the first appellate



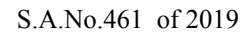
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court erred in granting the alternative relief of repayment of advance sale amount in the absence of any such prayer made in the plaint and when the due execution of sale agreement dated 16.06.2012 itself is denied and not proved in accordance with law. He would submit that in the absence of specific prayer in plaint for refund, court cannot grant refund *suo motu* without such prayer being sought. To support his contention he has relied upon the decision of the Hon'ble Supreme Court in the case of ***K.R.Suresh vs. R. Poornima and others*** reported in **2024 (3) CTC 837**. Hence, the learned counsel appearing for the defendant prays for allowing the Cross Objection.

10. Pending Second Appeal, the plaintiff took out an application to amend the plaint prayer for including the prayer for refund of advance amount. The said application was allowed and necessary amendment was incorporated in the plaint.

11. Heard on both sides. Records perused.



12.1. Now it has to be seen whether the plaintiff has proved his



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readiness and willingness to perform his part of contract.

12.2. Section 16 of the Specific Relief Act, 1963, as it stood at the material time (prior to amendment with effect from 1-10-2018), inter alia, provides:

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

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

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

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



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Explanation.—For the purposes of clause (c),—

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

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

12.3. 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 (ii) says the plaintiff must aver performance or readiness and willingness to perform



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the contract according to its true construction. Therefore, for determining whether the plaintiff is 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.

12.4. The Hon'ble Supreme Court in the case of ***Umabai v. Nilkanth Dhondiba Chavan*** reported in ***(2005) 6 SCC 243***, 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. The relevant portion is extracted as here under:

“So far these 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



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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.'

12.5. In the case of ***K.S. Vidyanadam v. Vairavan*** reported in ***(1997) 3 SCC 11*** , ***Justice B.P. Jeevan Reddy***, the Hon'ble Supreme Court said that grant of the relief of specific performance is discretionary and the Court is not bound to grant it. It is 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.



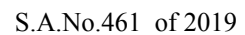
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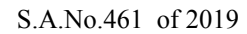
12.6. Therefore, in a suit for specific performance of a contract, the Court is required to pose unto itself the following questions, namely:

- (i). Whether there is a valid agreement of sale binding on both the vendor and the vendee.
- (ii). 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.

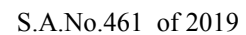
There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of specific performance. In *Acharya Swami Ganesh Dassji v. Sita Ram Thapar* reported in **(1996) 4 SCC 526** the Hon'ble Supreme Court has held that there was a difference 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 the Hon'ble Supreme Court in *Kalawati v. Rakesh Kumar* reported in **(2018) 3 SCC 658**.



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13. With regard to refund of advance money, the trial court denied refund on the ground that prayer not found in plaint. But, the first appellate court directed to refund the advance amount without any such prayer. Hence, the same is objected on the side of the defendant by way of cross objection. Admittedly, in the absence of specific prayer in plaint for refund, Court cannot grant refund *suo motu*. However, the plaintiff sought for amendment of plaint during second appeal stage for including the prayer for refund. Refund can be sought 'at any stage of proceedings' including appellate proceedings. Hence, the defendant is directed to return the advance amount of Rs.2,00,000/- to the plaintiff within a period of two months from the date of receipt of a copy of this order with interest at the rate of 9% per annum from the date of sale agreement till the date of plaint and 6% per annum from the date of plaint till the date of realization.



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WEB COPY 14. In the result,

- i. S.A.No.461 of 2019 is partly allowed and Cros.Obj. No.31/2022 is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The judgment and decree dated 19.11.2018 passed in A.S. No.41 of 2016, on the file of the Additional District Court (FTC), Villupuram, is upheld.

14.11.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Additional District Judge (FTC), Villupuram
2. The I Additional Subordinate Judge , Villupuram,
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
bga

Pre delivery Common Judgment in
S.A.No.461 of 2019 and Cros.Obj. No.31/2022
and
C.M.P. No.7521 of 2019

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