



S.A.No.500 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	31.07.2025
Pronounced on	19.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVIND THILAKAVADI

S.A.No.500 of 2019 and

C.M.P. No.8402 of 2019

N. Selvaraj

...Appellant

Vs.

1. Ramasamy (died)
2. R. Gowri
3. R. Prema
4. R. Sathyakala

...Respondents

R1 died, RR2 to 4 already on record are recorded as legal heirs of the deceased R1. Memo dated 04.06.2025 USR No.9323/2025 recorded vide court order dated 05.06.2025 made in S.A. No.500/19.

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 11.09.2018 passed in A.S. No.66 of 2013 (Old No. A.S. No.36/2008), on the file of the I Additional Sub Court, Coimbatore, reversing the Judgment and decree dated 11.04.2008 passed in O.S.No.82 of 2005, on the file of the District Munsif cum Judicial Magistrate Court, Palladam, Coimbatore District.

For Appellant : Mr. P. Santhosh

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For Respondents : for Mr. K. Govi Ganesan
: Ms. S.B. Madhura
for Mr. R. Bharath Kumar for R2 to R4

JUDGMENT

In this Second Appeal, challenge is made to the decree and judgment dated 11.09.2018 passed in A.S. No.66 of 2013 (Old No. A.S. No.36/2008), on the file of the I Additional Sub Court, Coimbatore, reversing the Judgment and decree dated 11.04.2008 passed in O.S.No.82 of 2005, on the file of the District Munsif cum Judicial Magistrate Court, Palladam, Coimbatore District.

2. The Plaintiff in O.S.No.82 of 2005, on the file of the District Munsif cum Judicial Magistrate Court, Palladam, Coimbatore District, is the appellant and the defendants therein are the respondents, in the present second appeal.

3. For the sake of convenience the parties are referred to as per



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4. The plaintiff filed the above suit for specific performance of the sale agreement dated 23.08.2004 against the defendants.

5. The case of the plaintiff is that he entered into a sale agreement on 23.08.2004 under Ex.A1 with the defendants for purchasing the suit property for a sale consideration of Rs.73,700/- and on the date of the sale agreement, a sum of Rs.10,000/- was paid as advance by the plaintiff to the defendants and three months time was fixed for execution of the sale deed. Time was not the essence of contract. It is further submitted that the plaintiff was always ready and willing to perform his part of contract and approached the defendants with balance sale consideration on several occasion, but the defendants did not come forward to execute the sale deed by stating that the 1st defendant was unwell and was admitted in the hospital and got the execution of sale deed postponed. On 18.01.2005, the plaintiff caused a legal notice to the defendants calling upon them to execute the sale deed as per the agreement, for which the defendants sent



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WEB COPY a reply notice on 21.01.2005 with false allegations. Hence, the plaintiff was constrained to file the suit for specific performance.

6. The claim of the plaintiff was resisted by the defendants. Though the defendants admitted the sale agreement and receipt of advance amount, they denied that time is not the essence of contract and also that the plaintiff approached them with balance sales consideration within the stipulated time. The further contention of the defendants is that as per the agreement, the plaintiff's advance amount would be forfeited if the balance sale consideration of Rs.63,700/- is not paid within three months from the date of sale agreement. The defendants denied that the plaintiff was ready and willing to perform his part of contract and it was the defendants who refused to execute the sale deed citing the health condition of the 1st defendant. The 1st defendant was never admitted in hospital and he was always hale and healthy. Further the defendants admitted receipt of legal notice sent by the plaintiff on 18.01.2005, to which they replied stating that the plaintiff has not come forward to pay the balance sale consideration before expiry of three



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months. Hence, the advance amount of Rs.10,000/- stood forfeited and the sale agreement stood cancelled. The defendants further stated that the plaintiff did not have any source to pay the balance sale consideration within the stipulated time. Therefore, the suit is liable to be dismissed.

7. The trial court, based on the materials on record, vide its judgment and decree dated 11.04.2008 decreed the suit infavour of the plaintiff. Aggrieved by this, the defendants preferred an appeal in A.S. No.66/2013 before the I Additional Subordinate Court, Coimbatore. The first appellate court reversed the judgment and decree of the trial court thereby allowing the said appeal by holding that time is the essence of contract and that the plaintiff failed to prove his readiness and willingness to perform his part of the contract. The first appellate court ordered for refund of advance money along with interest to the plaintiff since it was admitted by the defendants. Aggrieved by this, the present second appeal is filed by the plaintiff.

8. The following substantial questions of law were raised in the memorandum of second appeal.



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- A) When Ex.A1, Agreement of sale stipulates that NOC has to be obtained from panchayat before executing sale deed and when admittedly the defendants have not obtained the same, is it correct on the part of the lower appellate court to find that the plaintiff was not ready and willing to perform his part of the contract?
- B) When Ex.A1, Agreement of sale contains the clause of obtaining NOC from panchayat coupled with admission by D.W.1, is it correct to non suit the plaintiff by the lower appellate court on the ground of non pleading the same?
- C) When Ex.A8 to Ex.A14 has been marked to prove the means of the plaintiff and more especially Ex.A14 sale deed, is it correct on the part of the lower appellate court to hold that the plaintiff has no means to non suit him?

9. The learned counsel appearing for the appellant/plaintiff submits that the first appellate court erroneously reversed the well considered judgment of the trial court and dismissed the suit for specific performance and the same is liable to be set aside. His further contention is that duty



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is cast upon the defendants to obtain No Objection Certificate from the Panchayat within the contract period as per the clause incorporated in Ex.A1 sale agreement. In fact, the 1st defendant examined as D.W.1 himself has admitted that No Objection Certificate was not obtained and therefore, the sale could not be registered. Moreover, P.W.1 and P.W.2 have categorically spoken about the readiness and willingness of the plaintiff to perform his part of the contract, while so, the first appellate court ought not to have come to the conclusion that the plaintiff was not ready and willing to perform his part of the contract. The first appellate court failed to appreciate that the balance sale consideration was also deposited in the court. He would further submit that under Ex.A14 sale deed, the plaintiff has established that he had sufficient means to purchase the suit property and also Ex.A8 to Ex.A13 proves the capacity of the plaintiff to purchase the suit property. It is his further submission that time is not the essence of contract as the defendants failed to produce No Objection Certificate from panchayat before executing the sale deed. The presumption in agreement to sell immovable properties in that is not of the essence of the contract. Where there was no express stipulation in



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WEB COPY sale agreement saying that time was of the essence of the contract though it mentioned that within three months from the date of the agreement, the performance must be completed by executing and registering the sale deed and paying the balance price, such stipulation would not make time the essence of the contract. His further contention is that the defendants are trying to take excuse from the terms of the contract and having agreed to get No Objection Certificate from the panchayat for the purpose of completing the sale transaction, the defendants cannot simply say that it is not necessary unless it is proved before the court that no objection certificate is necessary. Hence, credit has to be given to the plaintiff's situation for having waited for getting the No Objection Certificate by the defendants, though that alone cannot be the reason for not being ready and willing to perform the contract. In support of his contentions, the learned counsel for the appellant relied on the following decision:

***I. Vairavan vs. K.S. Vidyanandam and others reported in AIR 1996
MADRAS 353***

II. Judgment of this Court dated 23.01.2025 in S.A. No.575 of



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WEB COPY **2014(V. Petchi vs. Ramasamy (deceased) rep by legal heirs)**

Hence, the first appellate court was not justified in reversing the well considered judgment and decree of the trial court and hence prayed for setting aside the judgment and decree passed by the first appellate court.

10. On the other hand, the learned counsel for the respondents/defendants submit that Section 16(c) of the Specific Relief Act, 1973 provides for personal bars to the relief, and one such bar under it is the failure to prove readiness and willingness. The plaintiff has relied upon Ex.A8 to Ex.A14 to show his financial capacity and readiness and willingness as per Section 16(c) of the Act. The above documents are monthly salary slips of the plaintiff showing his monthly salary at Rs.9,158/- and Rs.9,416/- per month. It is pertinent to note that the balance sale consideration to be paid by the plaintiff was Rs.63,700/- and the salary slips show that carry home salary is only a meagre amount of Rs.9,158/-, which does not in any way show that the plaintiff had sufficient means to pay the balance sale consideration. The plaintiff has



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also relied upon Ex.A8 bank passbook to show that he has sufficient bank amount to pay the balance sale consideration, but the same cannot be accepted because the above bank passbook pertains the period after the expiry of the stipulated period in the sale agreement dated 23.08.2004. Hence, the plaintiff failed to establish that he has sufficient financial capacity to pay the balance amount of Rs.63,700/- during the stipulated time. Thus the plaintiff failed to prove that he was ready and willing to perform his part of contract by establishing his financial capacity.

10.1. The learned counsel further submits that the Hon'ble Supreme Court in catena of judgments regarding proving of 'readiness and willingness' has reiterated that the plaintiff need not jingle his coins before the court, but he has to adduce to show availability of funds to make payments in terms of the contract in time. If the plaintiff does not have sufficient funds with him to discharge his obligations, then he would have to specifically plead how the funds would be made available to him through making arrangement for loans to perform his part of contract in time. It is well settled position that readiness is the financial capacity of



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the plaintiff to pay the balance sale consideration as per the contract terms and willingness is the intention to pay and both ought to be individually proved by the plaintiff, both of which have not been met in the present case. Hence, the first appellate court rightly concluded that the plaintiff failed to prove his readiness and willingness to perform his part of the contract. The further submission of the learned counsel for the respondents is that under Ex.A1 sale agreement the time fixed for the contract is three months which expired on 22.11.2004. A specific clause is incorporated in the sale agreement that failure on the part of the plaintiff to pay the balance sale consideration within the stipulated period would lead to the forfeiture of the advance money paid by him and that the agreement would be cancelled. In the present case, the express terms of the contract for a fixed period of 3 months and additionally a forfeiture clause of the advance money paid by the plaintiff on failure to perform his part of contract within the stipulated 3 months and cancellation of the agreement, along with the surrounding circumstances that the plaintiff could not prove that he was ready and willing to perform his part of the contract to pay balance sale consideration within the stipulated time



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period under the contract, and that the plaintiff failed to send any pre-suit notice when the agreement was in force within the stipulated three months period, all would show that the intention of the parties was to make time the essence of contract. The defendants in the reply notice have clearly stated that since the plaintiff did not come forward to pay the balance sale consideration within the stipulated period of three months from the date of agreement, the advance money stands forfeited and the sale agreement is cancelled and not binding on the defendants. The first appellate court has rightly held that the plaintiff has not come to the court with clean hands. The contention of the plaintiff that as per Ex.A1 sale agreement, a clause has been incorporated that the defendants should obtain No Objection Certificate after clearing the property charges for the plot and since the defendants failed to procure No Objection Certificate within the period of three months, the plaintiff could not pay the balance sale consideration and perform his part of the contract, which is incorrect. It is not the case of the plaintiff that he was unable to perform his part of contract because the defendants did not obtain No Objection Certificate from panchayat but to execute the sale deed. From



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the inception, it is the case of the plaintiff that the 1st defendant had fallen ill and admitted in hospital thus kept postponing the execution of sale deed. More particularly, nowhere in the plaint it was pleaded about No Objection Certificate or that the defendants refused to obtain No objection Certificate or that the plaintiff faced any hindrance due to the same. Moreover the alleged health condition of the 1st defendant was also not proved by the plaintiff. Therefore, in the absence of pleadings, the court cannot rely on the evidence produced by the parties, even if admitted by the parties in oral evidence. Therefore, even assuming the defendants have committed breach, if the plaintiff fails to prove that he was ready and willing to perform the essential terms of the contract which are required to be performed by him, there is a bar to specific performance in his favour. Therefore, the assumption that readiness and willingness of plaintiff is something which need not be proved if the plaintiff is able to establish that the defendants refused to execute the sale deed and thereby committed the breach, is not correct. Moreover the judgment relied upon by the appellant/plaintiff is not similar to the facts and circumstances of the case on hand and therefore, the same was not



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applicable to the facts and circumstances of the present case. In support of her contentions, the learned counsel for the respondents has relied on the following judgments.

- i. ***Saradamani Kandappan vs. S. Rajalakshmi and others*** reported in ***(2011) 12 SCC 18.01.2005.***
- ii. ***U.N. Krishnamurthy (since deceased) through legal representatives vs. A.M. Krishnamurthy*** reported in ***(2023) 11 SCC 775.***
- iii. ***Mohammed Abdul Wahid vs. Nilofer and another*** reported in ***(2024) 2 SCC 144.***
- iv. ***P. Ravindranath and another vs. Sasikala and others*** reported in ***2024 SCC Online SC 1749.***

11. Heard on both sides. Records perused.

12. As per the pleading in the plaint, the defendants agreed to sell the suit property to the plaintiff for a consideration of Rs.73,600/- and out of the same, a sum of Rs.10,000/- was paid by the plaintiff to the



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defendants in advance. It was agreed between the parties that the plaintiff would get the sale deed registered within a period of three months upon payment of full sale consideration. According to the plaintiff, he approached the defendants with the balance sale consideration several times and requested the defendants to execute the sale deed in his favour. But the defendants kept on postponing the execution of the sale deed on one pretext or the other. Hence, the plaintiff issued a legal notice to the defendants stating that he is always ready and willing to perform his part of the contract and called upon the defendants to execute the sale deed in favour of the plaintiff by receiving the balance sale consideration. However, the defendants replied that since the plaintiff failed to perform his part of contract within the stipulated time, the advance amount is forfeited and the sale agreement is cancelled. Hence, the plaintiff filed the above suit for specific relief. On the side of the defendants it is submitted that since time was essence of contract and the plaintiff failed to establish his financial capacity and readiness and willingness to perform his part of contract, the plaintiff is not entitled for the specific relief.



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13. It is 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 and mere statement or averment in plaint of readiness and willingness would not suffice. As rightly pointed out by the learned counsel for the respondent, the plaintiff has to stand on his own legs to establish that he had made out case for grant of relief of specific performance of contract. On perusal of the plaint it is seen that nowhere it is pleaded about the execution of the sale deed only after the procurement of No Objection Certificate by the defendants. It is only stated that, the defendants took time to execute the sale deed by stating about the ill health of the 1st defendant and his admission in the hospital, which according to the defendants is false. Only for the first time in the evidence, the plaintiff has deposed about the No Objection Certificate. It is well settled that in the absence of



pleadings, the court cannot rely on the evidence produced by the parties.

No amount of evidence is admissible beyond the pleadings. Even in Ex.A1 agreement it is only stated as follows:

"ஊடி கிரையப் பத்திரம் பதிவு செய்ய உண்டாகும் முத்திரைத் தீர்வையும்
பதிவு கட்டணகளும், நம்மளில் 5 லக்கமிட்டவரைச் சார்ந்தது. மேலும்
கீழ்காணும் சொத்துக்கு தேவைப்பட்டால் பஞ்சாயத்து தடையின்மை சான்று
மற்றும் அபிவிருத்திக் கட்டணகள் ஆகியவைகளையும் 1 - 4 லக்கமிட்டவர்
செலவில் செய்து கொடுக்க வேண்டியது."

Therefore, the clause in Ex.A1 sale agreement show that it is not an obligation on the part of the defendants to obtain the NOC and clear development charges in order to perform their part of the contract. Even assuming that the defendants have committed breach, the plaintiff must prove that he was always ready and willing to perform his part of contract. Failing to do so, the plaintiff is not entitled for the specific relief of performance. Therefore, when the readiness and willingness of the plaintiff to perform his part of contract is not proved, within the three months period stipulated under the contract, particularly when time was



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the essence of contract which could be derived from the express terms of the contract, along with forfeiture clause, I am of the view that the decree of specific performance was not warranted in the present case. However, in order to adjust equities between the parties, the first appellate court has granted the alternate relief of refund of advance money. No perversity or infirmity found in the judgment and decree passed by the first appellate. Moreover, there was no question of law, let alone any substantial question of law, involved in the Second Appeal.

14. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the decree and judgment dated 11.09.2018 passed in A.S. No.66 of 2013 (Old No. A.S. No.36/2008), on the file of the I Additional Sub Court, Coimbatore, is upheld.

19.09.2025



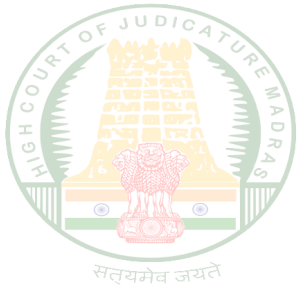
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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The I Additional Sub Judge, Coimbatore
2. The District Munsif cum Judicial Magistrate, Palladam, Coimbatore District.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
bga

Pre delivery Judgment in
S.A.No.500 of 2019

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