



Appeal Suit No.150 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 12/3/2025

C O R A M

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

Appeal Suit No.150 of 2024

Vairakannnu

...

Appellant

Vs

1. Annbella Lourdes Meltilde Ignace
D/o. Late Antoine Sandaname Evariste Ignace
W/o Late Francois Lasante
No.9 Place Jean Charcot 95600 Sarcelles
France.

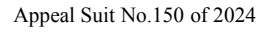
2. Fathima Anne Marie Therese Ignace
D/o (Late) Antoine Sandaname Evariste Ignace
W/o Source Marie Liguori Emile Appavou
No.111, Montorsieur Street
Puducherry 605 001.

3. Marie Josephine Francisca Iraudayamarie
D/o. Late Antoine Sandaname Evariste Ignace
W/o Antoine Marie Jean Claude
No.2 Avenue Des Sablos 91350 Grigny
France.

...

Respondents

Respondent Nos.2 and 3 are
rep. By Power Agent Andre Rene Edouard Appavou
S/o Late Joseph Savarinadin Appavou
No.111 Montsrier Street
Puducherry 605 001.



For appellant	...	Mrs.Y.Kavitha for M/s.Giridhar Associates Law Chamber
For respondents	...	No appearance.

Aggrieved over the order of dismissal dated 29/7/2022 made in O.S.No.20 of 2011, by the learned III Additional District Judge at Puducherry, appellant is before this Court.

2. Brief facts which are necessary for the disposal of this Appeal Suit are as follows:-

The subject property was originally owned by one Rajamani Appavou @ Sandanamarie, who died intestate leaving behind her three daughters namely Amala Marie, Rachel Marie and Marie Source Rozarie as her legal



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heirs. Amala Marie died intestate leaving behind the respondents/defendants as her legal heirs. Rachel Marie died leaving behind Marie Joseph Iroudayaradja Antoine Paul Divi, Gisele Antoinette Divi and Rene Antoine Michel Divi, as her legal heirs. Marie Souce Rozaire died as a spinster. The defendants have become the owners of the property by way of inheritance. Power Agent J.A.Kannabiran, agreed to sell the property for a total sale consideration of Rs.17,15,000/- and the agreement came to be executed on 22/4/2009 and received Rs.2,50,000/- as an advance. The agreement was extended on 29/7/2009. It is agreed between the parties that the sale shall be completed after receiving the balance sale consideration, but the defendants have not chosen to furnish the original title deeds before the execution of the sale deed for his verification.

3. Though the plaintiff/appellant herein has expressed his willingness to purchase the property on several occasions, the defendants have not chosen to furnish the required documents to execute the sale deed. Hence, appellant had issued a legal notice to the defendants on 15/11/2010. As the previous Power of Attorney was cancelled by the defendants, Power of Attorney was also made as a party representing the defendants. Hence, the suit for specific performance.



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4. It is the case of the defendants that the suit property was originally purchased by Emile Appavou, S/o Devarambin Appavou, on 2/5/1911. The said Emile Appavou has donated the suit property to his mother Maria Susaiammalle Appavou through a Notarial Donation Deed dated 30/12/1926 which was registered on 5/1/1927. Emile Appavou died on 9/8/1944 at Pondicherry and his death was registered before the Registrar of Births and Deaths, Pondicherry Municipality under Registration No.1312/1944. The said Maria Susaiammalle Appavou donated the suit property to her grand daughter Rajamani @ Sandanamarie Appavou by a Notarial Donation Deed, dated 10/1/1927. The said Rajamani @ Sanadanamarie Appavou died on 26/11/1936, leaving behind four daughters. The legal heirs of Emile Appavou filed the suit for declaration of legal heirs in O.S.No.347 of 1980 which was decreed on 29/4/1980. Antoinette Marie Josephine Papammallee Appavou gave birth to nine children, out of which only seven children are alive.

5. Based on the above pleadings, the following issues are framed:-

1. Whether the plaintiff has been ready to perform his part



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of the agreement?

2. Whether the plaintiff is entitled for the specific performance as claimed?

3. To what relief?

6. Based on the plaint and written statement, following issues were recasted:-

1. Whether the suit is bad for non joinder of necessary parties?

2. Is it true that the defendants have executed General Power of Attorney deed in favour of Kannabiram only to look after and maintain the suit properties and not to sell the suit property?

3. Whether the sale agreement dated 24/4/2009 and 7/6/2009 are true and genuine or sham and nominal documents as alleged by the defendants?

4. Is it true that the sale agreement was not supported by consideration?

5. Whether the plaintiff is always ready and willing to



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perform his part of contract?

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

7. To what other relief the plaintiff is entitled?

7. On the side of the appellant, P.Ws.1 to 3 were examined and Exs.A.1 to A.7 were marked. On the side of the respondents, D.W.1 was examined and Exs.B.1 to B.24 were marked.

8. The trial Court, after analysing the entire evidence, declined the relief of specific performance, however, granted an alternative relief for return of advance amount. Challenging the same, present appeal came to be filed.

9. The learned counsel appearing for the appellant would mainly contend that the respondents have taken a plea that they have never executed a Power of Attorney for sale of property in favour of P.W.2 J.A.Kannabiran, but the said plea found to be false on evidence. Therefore, once the false plea has been set up and the appellant has established his ready and



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willingness, trial Court ought to have granted specific performance, whereas the trial Court has not appreciated the evidence properly. The appellant, in fact, has not only pleaded readiness and willingness, but also established the same. The legal notice has been issued within the agreed time and the delay was only due to non-production of original documents. Therefore, when the appellant has shown readiness and willingness, mere delay for some point of time cannot be given much importance. In support of her contentions, the learned counsel has relied on the following two judgments:

- (i) (2020) 15 SCC 731 (Madhukar Nivrutti Jagtap and Others Vs Smt. Pramilabai Chandulal Parandekar and Others); and
- (ii) (2019) 8 SCC 62 (R.Lakshmikantham Vs. Devaraji)

10. Though names of respondents are printed in the cause list, none appeared on their behalf.

11. In the light of the above submission, the point that now arises for consideration is:



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“Whether the appellant has proved the readiness and willingness to perform his part of the contract?”

12. Though in the written statement, contention raised by the respondents is that Power of Attorney was originally given only to maintain the property as the respondents are residing outside the country and mostly in France, the recitals in Exs.A.1 and Ex.A.9 would indicate that it is only a General Power of Attorney. It is not disputed that the respondents 1 to 3 are residing in France. This fact is also admitted by P.W.1 in the cross-examination. Exs.A.1 and A.9, Power of Attorney has been given by the parties not only to maintain, but also to deal with the property by way of sale. It is only a General Power of Attorney and the same was cancelled by the respondents on 9/8/2012. These are all admitted facts.

13. Be that as it may. The act done by the Power Agent before cancellation will bind on the principal. Now, it has to be seen that agreement has been executed by the Power Agent on 24/4/2009. On a perusal of Ex.A.1 executed by Power Agent, who was examined as P.W.2, it



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is evident that agreement has been executed for undivided share belonging to the respondents. Agreement was entered for a total consideration of Rs.17,15,000/-. First agreement was entered on 24th April 2009 and the recitals in the agreement would indicate that though sale consideration has been agreed between the Power Agent and the appellant, there is no indication as to the nature of the advance paid and time stipulated in the agreement is four months to complete the sale and it is also averred in the document that the purchaser shall make out the marketable title. Sale shall be completed within four months. Thereafter, once again another agreement came to be executed by the Power Agent on Ex.A.2 dated 24/9/2009 reiterating the sale consideration of Rs.17,50,000/- and time has been extended for one year to pay the remaining sale consideration of Rs.15 lakhs. According to the agreement, Rs.2,50,000/- has been received as an advance. Further, it is stated in the agreement that all the documents to prove the ownership of the respondents to be produced.

14. It is relevant to note that according to the appellant, he was always ready and willing to perform the contract. However, as the original document has not been produced by the respondents, the appellant had issued legal notice on 15/11/2010 after expiry of one year period, agreed in



the second agreement Ex.A.2. Further, it is also to be noted that legal notice was issued to the Power Agent and not to the respondents. Having issued notice to the Power Agent, suit has been filed only on 24/11/2011. It is relevant to note that Power of Attorney was cancelled on 15/6/2009 itself and letter communicated to the office on 8/12/2010. Similarly, under Ex.B.4, Power of Attorney executed by the other respondent is also cancelled on 22/10/2009. Though P.Ws.1 and 2 pleaded ignorance of cancellation of Power of Attorney and publication issued in this regard in the newspaper, the fact remains that Power of Attorney executed under Exs.B.1 and B.3 were cancelled prior to Exs.B.2, B.4, B.5 and B.6 in the same year 2009.

15. The fact remains that only Ex.A.1 was a valid one which was executed by Power Agent and only four months time has been agreed to complete the transaction. However, the legal notice has been issued on 15/11/2010 under Ex.A.3, even after expiry of one year period said to have been agreed in Ex.A.2. It is the contention of the appellant that the respondents have agreed to produce the original document and satisfy the title as agreed in the contract and, therefore, there was a delay in sending the legal notice. Such contention is highly improbable for the reason that



respondents are all along residing in France and the Power Agent claims to be aware of the title deeds. The appellant need not have waited till the respondents produced all the title deeds. He could have verified the document with Power Agent and could have registered the document himself through Power Agent.

16. P.W.2 Power Agent also admitted in the cross-examination with regard to cancellation of Power of Attorney. At any event, when he proclaims that he has a power to sell the property at marketable title, the appellant could have registered the document from Power Agent. There is no need and necessity for entering into other agreement Ex.A.2 extending the time by another one year. This fact coupled with the cancellation of Power of Attorney by the owners who are residing in France give inference that Exs.A.1 and A.2 have not been executed as intended by the owners. In fact, the Power Agent has taken advantage of the Power Deed and executed the document.

17. When the appellant seeks equity relief for specific performance, he has to prove the readiness and willingness from the very beginning of the contract. Readiness is the capacity to raise the funds and willingness is the



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mental attitude. Unless both are proved by the appellant, as a matter of right specific performance cannot be granted. Having entered into an agreement the appellant ought to have made an enquiry. Except entering into an agreement with the Power of Attorney and extending one year time to save the limitation, appellant has not proved by way of any concrete evidence that he had the capacity to raise the remaining consideration of Rs.15 lakhs. Further, he has not even made an attempt to verify the title deeds, even by way of certified copy with the registering authorities. Legal notice has been issued on 15/11/2010, after the expiry of one year period indicated in second agreement and the suit has been filed with a further delay of one year on 24/11/2011. All these facts cannot be ignored altogether. These facts clearly indicate that the appellant is not ready and willing to perform his part of the contract. Merely taking advantage of the said contract entered into by the Power of Attorney, the appellant filed the suit to create an encumbrance over the property when the respondents are residing outside the country. Further, the appellant has admitted that he has not deposited the remaining sale consideration in the Court. Of course, deposit of the remaining consideration is not mandatory, but the fact remains that it should be established by the appellant that he always had the capacity to raise the fund to pay the remaining sale consideration which has



not been done. No material whatsoever is filed to establish the said plea.

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18. In (2020) 15 SCC 731 (Madhukar Nivrutti Jagtap and Others Vs Smt. Pramilabai Chandulal Parandekar and Others), the learned counsel appearing for the appellant has relied on para 13.2, wherein it has been held as follows:-

“The question as to whether the plaintiff seeking specific performance has been ready and willing to perform his part of the contract is required to be examined with reference to all the facts and the surrendering factors of the given case. The requirement is not that the plaintiff should continuously approach the defendant with payment of make incessant requests for performance. For the relief of specific performance, it is essentially a species of equity but has not statutory recognition in terms of the Specific Relief Act, 1963, the plaintiff must be found standing with the contract and the plaintiff's conduct should not be carrying any such blame worthiness so as to be considered inequitable. The requirements of readiness and willingness of the plaintiff is not theoretical in nature but is essentially a



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question of fact which needs to be determined with reference to the pleadings and evidence of parties as also to all the material circumstances having bearing on the conduct of parties, the plaintiff in particular. In view of the contentions urge, we have scanned through the record to examine if the findings of the High Court in this regard calls for any interference.”

19. In the above cited case, it has been held that requirements of readiness and willingness of the appellant is not theoretical in nature, but it is an essential question of fact which needs to be determined with the pleadings and evidence of the parties.

20. In the second judgment cited by the learned counsel appearing for the appellant, in **(2019) 8 SCC – 62 (R.Lakshmikantham Vs. Devaraji)**, at para 11, the Hon'ble Supreme Court, has held as follows:

“11. The High Court order is not correct in stating that readiness and willingness cannot be inferred because the letters dated 18.12.2002 and 19.12.2002 had not been sent to the defendant. The High Court also erred in holding that despite having the necessary funds, the plaintiff could not be said to be ready and willing. In the aforesaid



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circumstances, the High Court was also incorrect in putting a short delay in filing the Suit against the plaintiff to state that he was not ready and willing. In India, it is well settled that the rule of equity that exists in England, does not apply, and so long as a Suit for specific performance is filed within the period of limitation, delay cannot be put against the plaintiff – See Mademsetty Satyanarayana v. G. Yelloji Rao and others AIR 1965 Supreme Court 1405 (paragraph 7) which reads as under:

“(7) Mr. Lakshmaiah cited a long catena of English decisions to define the scope of a Court’s discretion. Before referring to them, it is necessary to know the fundamental difference between the two systems-English and Indian-qua the relief of specific performance. In England the relief of specific performance pertains to the domain of equity; in India, to that of statutory law. In England there is no period of limitation for instituting a suit for the said relief and, therefore, mere delay – the time lag depending upon circumstances – may itself be sufficient to refuse the relief; but, in India mere delay cannot be a ground for refusing the said relief, for the statute prescribes the period of limitation. If the suit is in time, delay is sanctioned by law; if it is beyond time, the suit will be dismissed as barred by time; in either case, no question of equity arises.”

21. In the above said judgment, it has been held that merely from



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delay in filing of suit, it cannot be inferred against the plaintiff that he is not ready and willing to perform his part of the contract. The above judgment is not applicable to the facts of the case, whereas, in this case, the very execution by the Power Agent after cancellation of the document by one of the executants also creates serious doubt. That apart, the conduct of the appellant in remaining silent and sending legal notice after one year of the expiry of the time and thereafter, filing the suit with a delay of further one year clearly exhibit that appellant was not ready and willing.

22. As discussed earlier, having entered into an agreement, Ex.A.1, appellant has not even parted with any amount. However, four months time has been fixed. Thereafter, Ex.A.2 was entered and a sum of Rs.2,50,000/- has been parted and thereafter, one year time has been extended. These facts clearly indicate that since the original owners are residing outside the country and residing in France, to have some grip over the property, Exs.A.1 and A.2 have been executed by the Power Agent and the Power Deed was also cancelled on 15/6/2009 itself by one of the parties. Therefore, the very execution of Ex.A.2 by the Power Agent extending one year time itself cannot be given much importance. Further, there is no material placed on record to show that the appellant had the wherewithal to pay the amount of



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Rs.15 lakhs. Therefore, the appellant is certainly not entitled to specific performance. Accordingly, finding of the trial Court does not warrant any interference and the appeal deserves dismissal.

23. In the result, this Appeal Suit is dismissed and the decree and judgment dated 29/7/2022 made in O.S.No.20 of 2011 by the learned III Additional District Judge, Pondicherry, is confirmed. No costs.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

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