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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

CMP No. 5814 of 2023

and

C.M.P.No.9098 of 2016

in

S.A.No.1149 of 2009

1. Ganesan

Petitioner(s)

Vs.

1. Guna @ Gunasundari

2.Mahendran

3.Mohan

4.Sinnadurai

5.Sathai Ammal

6.Chandrabalan

7.Rajendran

8.Jagajeevanram

9.Natarajan

10.Krishnaraj

11.Balasubramani

12.Andal

13.M.Sumalatha

14.Podjavady

15.Veerapattiran

16.Kathavarayan

17.Danalakshmi

18.Dayalan

Respondent(s)



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For Petitioner (s): Mr.N.Manoharan
For R.Marudhachalamurthy

For Respondent(s): Ms.G.Sudha
For R1, R2, R4 to R10

ORDER

One of the legal heirs of the defendant in O.S.No.20 of 1990 on the file of the Principal Sub Court, Puducherry, has urged that this Court should favourably consider the petition filed to restore the Second Appeal which had been dismissed for non-prosecution after condoning the delay in filing such petition.

2.An agreement of sale had been entered into on 27.04.1987 between Kamatchi Ammal who was the defendant in the suit and S.Guna @ Gunasundari who was the 1st plaintiff in the suit. Seeking specific performance of the said agreement dated 27.04.1987 the suit in O.S.No.20 of 1990 had been filed. In the plaint, it had been averred that the suit property belonged to the defendant and that she had offered to convey the same to the 1st plaintiff or to any other person as may be nominated or specified by the 1st plaintiff for a



consideration of Rs.77,500/-. At the time of entering into an agreement an advance of Rs.20,000/- had been paid. The property was quite extensive and it was divisible in plots. The agreement further envisaged that on identifying purchasers, further advance amounts would be paid. There was also an issue of obtaining permission from the Collector relating to land ceiling.

3.The plaintiffs contended that if purchasers were not identified on division of the plots, the 1st plaintiff would deposit the balance sale consideration of Rs.57,500/- into Court. A notice had been issued prior to the institution of the suit which was received by the defendant but not replied.

4.A perusal of the plaint further shows that the competent authority under the Urban Land (Ceiling and Regulation) Act, 1978 had actually granted permission to sell the property in favour of the 2nd to 4th plaintiffs.

5.A perusal of the judgment of the trial Court shows that the plaintiffs had specifically averred that the plaintiffs had called upon the



defendant to go over to the Office of the said authority to collect the said order

but the defendant failed to do so.

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6.Owing to that particular recalcitrant attitude of the defendant, the 1st plaintiff had issued notice on 28.03.1989 calling upon the defendant to receive the communication and to comply with the terms of the agreement. It is contended that the defendant had received the notice but did not respond.

7.Thereafter, quite apart from the 1st plaintiff who had entered into the agreement, the other plaintiffs had also joined her in instituting the suit since specific permission had been granted by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1978, granting permission to the defendant to sell the property to those plaintiffs. It is under those circumstances that the suit had been filed seeking specific performance of the agreement and for a direction against the defendant to execute the sale deeds in favour of the plaintiffs 2 to 4 and then in favour of the plaintiffs 5 to 10 after receiving the sale consideration in proportion to the extent of property to which the said plaintiffs were entitled to.



8.A written statement had been filed on behalf of the defendant

wherein, the defendant claimed that she was an illiterate lady and did not understand the terms of the agreement and that therefore there was no *consensus ad idem* while entering into the agreement.

9.It must also be pointed that both the trial Court and first Appellate Court had examined this particular statement made by the defendant and had observed that the husband of the defendant had signed as a witness to the agreement and had actually been examined as DW-1 and had admitted to his signature. The defendant also claimed that she was only a benami and was not the actual owner of the property and that her husband was the owner of the property.

10.It had further been contended by the defendant in her written statement that the agreement was not valid that she had not signed the same. But that aspect again had been examined by both the trial Court and the first Appellate Court and a specific issue had been framed by the trial Court with



respect to these contentions as raised in paragraph Nos.4 and 9 of the written statement. The defendant further contended that there was no readiness and willingness on the part of the plaintiff particularly since the onus was on the 1st plaintiff to identify purchasers and thereafter the defendant should come forward to execute the sale deed and the balance sale consideration should be paid.

11. But as seen from the plaint, the 2nd - 10th plaintiffs were purchasers who had been identified and for whom permission has been granted by the appropriate authority under the Urban Land (Ceiling and Regulation) Act, 1978. The defendant was therefore called upon to execute sale deed in their favour.

12. It had also been contended by the defendant that the 1st plaintiff had not come forward to deposit the balance sale consideration at the time of institution of the suit. A perusal of the judgment of the trial Court however shows that an application had actually been filed by the 1st plaintiff seeking



permission to deposit the balance sale consideration and permission had been granted and after some delay, time was extended but the 1st plaintiff had actually deposited the balance sale consideration into Court and the fixed deposit receipt for such deposit had actually been marked during trial as Ex.A6.

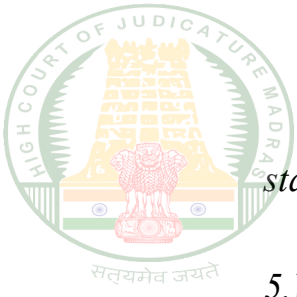
13. On the basis of the pleadings, the trial Court had framed the following issues for trial:

“1. Whether the plaint allegations regarding the contract of the agreement between the plaintiffs and defendant are true and sustainable?

2. Whether the first plaintiff / plaintiffs was / were always ready and willing to perform the contractual obligations on her / their part?

3. Whether the plaintiffs are guilty of delay, laches and negligence in action amounting to acquiescence, waiver and abandonment of the claim?

4. Whether the plea of the defendant in para.4 of her written



statement is true?

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5. Whether the plea of the defendant in para.9 of her written

statement is true?

6. Whether the plaintiffs are entitled for specific performance?

7. To what relief? ”

14. The learned counsel for the petitioner / appellant had very strongly argued that the Court should consider the fact that the plaintiffs had failed to comply with the conditions as stipulated under Section 16(c) of the Specific Relief Act by not coming forward to express readiness and willingness at all points of time. As a principle in law, the statement made by the learned counsel is correct. In a suit for specific performance the plaintiff must show readiness and willingness not only at the time of the agreement, but right from the agreement till the execution of the sale. Readiness significance preparedness with the amount which is required to perform the agreement and willingness is to part with that particular amount for the purpose of execution of the agreement. The plaintiff could have the resources to purchase but must also be



willing to part with that amount and that would be fatal to the case of the plaintiff.

15. But however, both the Courts below had found that the 1st plaintiff had deposited the amount before the trial Court and Ex.A6 was reflective of such willingness by the 1st plaintiff to have deposited the amount into Court, the balance sale consideration. The trial Court on consideration of all the issues on facts had granted a decree of specific performance.

16.I am today informed that subsequently, the sale deed had also been executed as directed and there had been further transactions to the property. The property is no longer available for the defendant to claim any right or title over the property.

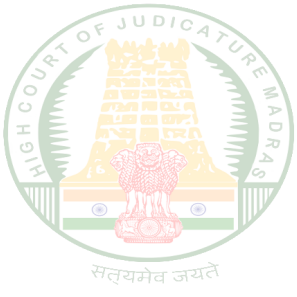
17.Be that as it may, since the suit had been decreed by judgment dated 21.11.1995, the defendant had filed A.S.No.96 of 2006 which came up for consideration before the II Additional District Court / Puducherry. By judgment dated 26.06.2009 the first Appellate Court had framed points for consideration



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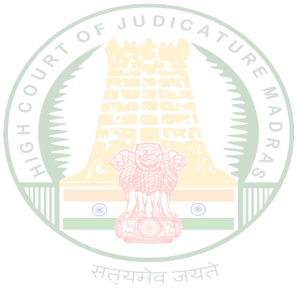
and thereafter examined the issues raised again by the appellant therein / defendant and confirmed the findings of the trial Court and dismissed the first appeal. The agreement in Ex.A2 had been translated in English and the learned first Appellate Court had once again examined whether the plaintiffs had established readiness and willingness to actually perform the agreement.

18.It must also be stated that subsequent to Ex.A2 a further agreement had been entered into in Ex.A3 on 27.04.1987 which again placed an obligation of the defendant to obtain permission from the Office of the District Collector for sale of the second set of plots. It was the specific case of the plaintiffs who were the respondents in the first Appellate Court that such permission had been obtained and it is for that purpose that the 2nd - 10th plaintiffs had also joined along with the first plaintiff who was the agreement holder in instituting the suit against the defendant. The first Appellate Court had dismissed the First Appeal by judgment dated 26.06.2009.This had necessitated the defendants to file the present Second Appeal.



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19. Pending the Appeal the defendant had died and her legal representatives had been brought on record. One of the respondents had also died and his legal representatives had also been brought on record. Not all the legal representatives of the defendant have filed this appeal. The appeal is now urged only by the 11th respondent one of the legal heirs, who claimed that the Court should revisit and re-examine the reasonings of both the trial Court and the first Appellate Court. He had filed C.M.P.No.9089 of 2016 to transpose himself as the 7th appellant to prosecute the appeal further. However, a learned Single Judge of this Court had dismissed the Second Appeal by order dated 09.07.2010 for non appearance since the appellant had died and steps had not been taken to bring on record the legal representatives. Thereafter, the Second Appeal had been restored, but again the appellants did not show any inclination to appear before the Court and therefore, once again the Second Appeal was dismissed by judgment dated 21.03.2022. It had been noted that steps had not been taken to implead the legal representatives of the 8th respondent. The Appeal was dismissed on the ground of abatement.



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20. Thereafter, a petition has been filed which is now pending to condone the delay of 247 days in filing petition to restore the Second Appeal. Notice had been directed in the said petition and counsel for the plaintiffs had entered appearance.

21. This Court had called upon the learned counsel for the petitioner / appellant to argue on merits making out grounds warranting admission of the Appeal. The only ground raised was again a restatement of the grounds raised before the trial Court, namely that the plaintiffs had not exhibited readiness and willingness and that there was no compliance of the stipulations under Section 16(c) of the Specific Relief Act, 1963 and more importantly that it was the 1st plaintiff who had not come forward to deposit the balance sale consideration at the time of institution of the suit.

22. A perusal of the agreement shows that the balance sale consideration was to be deposited in Court. An examination of the judgment of



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the trial Court shows that an application was made to deposit the balance sale consideration and the application was allowed and subsequently the balance sale consideration was also actually deposited in Court and evidence thereof is Ex.A6. The agreement required identification of purchasers and selling the property by dividing into plots to the identified purchasers. The plaintiffs 2 to 4 were one set of purchasers who had been identified and the plaintiffs 5 to 10 were another set of purchasers who had been identified. Permission had also been granted by the appropriate authority under the Urban Land (Ceiling and Regulation) Act, 1978 to the defendant to execute sale deed in favour of the identified purchasers.

23.A notice had been issued by the 1st plaintiff calling upon the defendant to collect the said order and execute the sale deeds as agreed by the defendant. The defendant had received notice but had not come forward to even receive the copy of the order. It was only thereafter that the plaintiffs were driven to file the suit seeking specific performance.



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24..The learned counsel who argued for the petitioner / appellant placed reliance on the judgment of the Hon'ble Supreme Court reported in

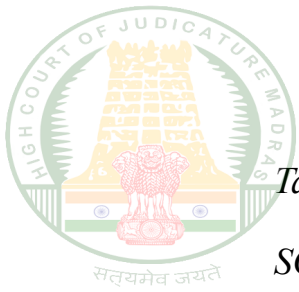
(2023) 11 SCC 775, U.N.Krishnamurthy through Legal Representatives V.

A.M.Krishnamurthy placed specific reliance on paragraph Nos.33 and 34

wherein the Hon'ble Supreme Court had held as follows:

“33. 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 [Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526] 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 [Kalawati v. Rakesh Kumar, (2018) 3 SCC 658 : (2018) 2 SCC (Civ) 609] .

34. Even in a 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



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Taneja v. Sunil Madan [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] and H.P. Pyarejan v. Dasappa [H.P. Pyarejan v. Dasappa, (2006) 2 SCC 496] where this Court approved the views taken by the Privy Council in Ardeshir Mama v. Flora Sassoon [Ardeshir Mama v. Flora Sassoon, 1928 SCC OnLine PC 43 : (1927-28) 55 IA 360 at p. 372 : AIR 1928 PC 208] .”

25.The Hon'ble Supreme Court had examined the issue of readiness and willingness and had stated that readiness means the capacity to perform the contract which would include the financial position and willingness relates to the conduct of the plaintiff, in effect, to part with the amount involved and hand it over to the defendant without any delay.

26.In the instant case, the conditions in the agreement stipulated that the purchasers would be identified in the first instance. The purchasers had been identified. They had joined with the 1st plaintiff as plaintiffs 2 to 10 in instituting the suit. Permission will have to be obtained from the appropriate authorities under the Urban Land (Ceiling and Regulation) Act, 1978.



Thereafter the defendant will have to sell the property by dividing into plots to the purchasers who had been identified. Permission had actually been obtained but the defendant had not gone forward to the office of the said appropriate authority to receive the said order and execute the sale deed.

27.I hold that was the defendant who had not performed her part of the agreement. The plaintiff had therefore issued a notice calling upon the defendant to collect the order. The defendant had received the notice but had not even sent a reply to the notice. On institution of the suit, the 1st plaintiff had filed a petition seeking to deposit the balance sale consideration. Permission was granted. The amount was deposited, which is reflected in Ex.A6.

28.These are facts which have been confirmed and established by both the trial Court and first Appellate Court. The issues raised in the written statement have been specifically framed as issues by the learned trial Judge and answered during the course of his judgment. The findings had been upheld by the first Appellate Court. No point of law arises for consideration, much less



substantial question of law. Condoning the delay in filing petition to restore the
Second Appeal would not be to the advantage of the petitioner.

29.In view of the above reasonings, C.M.P.No.5814 of 2023
stands dismissed and the consequent petition in C.M.No.9089 of 2016 also
stands dismissed.

17-07-2025

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No



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C.V.KARTHIKEYAN J.

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CMP Nos. 5814 of 2023 & 9089 of 2016
in
S.A.No.1149 of 2009

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