



A.S.No.83 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.83 of 2025
and CMP.No.1688 of 2025

G.Kasturi Ammal (Died)
C.Anandan

... Appellant

Versus

K.Balaji

... Respondent

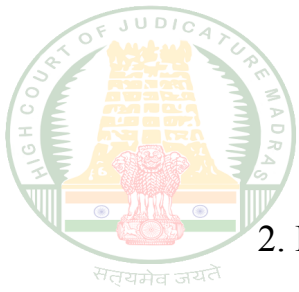
Prayer: Appeal filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 30.10.2023 made in O.S.No.112 of 2007 on the file of the IV Additional District and Sessions Judge at Tiruvallur.

For Appellant : Mr.A.E.Ravichandran

For respondent : No appearance

JUDGMENT

Challenging the decree and judgment of the Trial Court decreeing the suit for specific performance, the present appeal came to be filed by the second defendant.



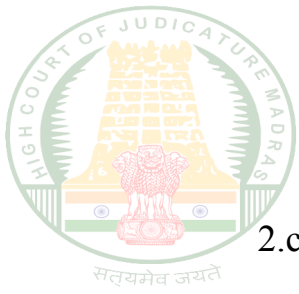
A.S.No.83 of 2025

2. Brief facts leading to filing of the case is as follows:

WEB COPY

2.a. The defendants have executed an agreement of sale of suit property on 23.11.2006 for a total sale consideration of Rs.6,00,000/- and received a sum of Rs.2 lakhs as advance and agreed to complete the sale on or before 23.03.2007. Therefore, the plaintiff has to pay remaining sale consideration of Rs.4 lakhs, however, the defendants have not come forward to execute the sale deed. Hence, the plaintiff issued a legal notice on 08.03.2007 to the deceased first defendant, in the meanwhile, the first defendant tried to alienate the suit property, hence, plaintiff had filed a suit in O.S.No.123 of 2007 for permanent injunction not to alienate the suit property. Thereafter, the present suit has been filed.

2.b. In the written statement, it is the contention of the first defendant that the agreement was not intended for sale of property and alleged legal notice has not been sent to her. It is the stand of the first defendant that as the remaining balance sale consideration is not paid to her, the plaintiff is not entitled to relief of specific performance. According to the second defendant the legal notice is issued for the name sake without showing readiness and willingness in performing the part of the contract by the plaintiff. Hence, opposed the suit.



A.S.No.83 of 2025

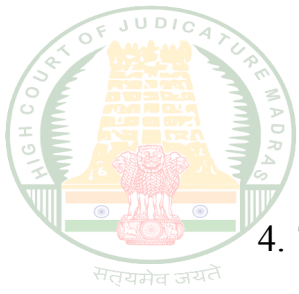
2.c. Based on the above pleadings, the Trial Court has framed the following

points:

- i) Whether the plaintiff has performed his part of the Contract?
- ii) Whether the plaintiff has been ready and willing to perform his part of the contract?
- iii) Whether the plaintiff is entitled to the relief of specific performance of the contract?
- iv) To what reliefs if any the plaintiff's entitled to?

2.d. On the side of plaintiff, PW1 to PW3 were examined and marked Exs.A1 to A5. On the side of the defendants, DW1 and DW2 were examined and marked Exs.B1 to B7.

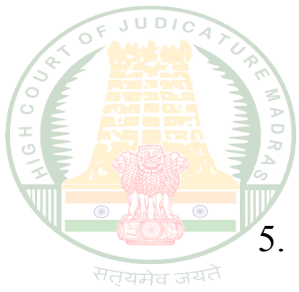
3. Based on the oral and documentary evidences, the Trial Court decreed the suit for specific performance. Challenging the said decree and judgment, the second defendant has come up with this appeal.



A.S.No.83 of 2025

4. The learned counsel for the appellant mainly would submit that the Trial

Court has not even gone into the issue of readiness and willingness. When the parties agreed to complete the sale within certain period, the plaintiff has to show his readiness and willingness, whereas, the plaintiff only for the name sake had issued a legal notice without exhibiting the readiness and willingness in performing his part of contract. Further, all along, the first defendant used to sign only in Tamil language, however, the acknowledgment card has been received by the first defendant signed in English, this itself creates serious doubt. The plaintiff has already filed a suit for bare injunction in O.S.No.123 of 2007, wherein, the plaintiff has specifically pleaded that he has no wherewithal to seek specific performance. Further, the plaintiff has filed an application under Order II Rule 2 of CPC, wherein, it is averred that due to lack of financial condition, he is unable to file a suit for specific performance at present. Hence, the present suit has been filed at a later stage. The very admission in the earlier pleadings would indicate that plaintiff was not ready to complete the sale. This aspect has never discussed by the Trial Court. Hence, it is the contention that readiness and willingness is not established. Hence, prayed for allowing of this appeal.



5. Despite several opportunities given to the respondents and name being printed in the cause list, none appeared for the respondents. Hence, this Court has proceeded to dispose of the appeal on merits.

6. Based on the above pleadings and submissions, now the issue arising for consideration in this appeal is as follows:

i) Whether the plaintiff has proved the readiness and willingness from the inception of the agreement to seek relief of specific performance?

Issue No.i

7. On a careful perusal of the Ex.A1/registered sale agreement entered into between the parties, it would indicate that the sale agreement agreement was entered for a total sale consideration of Rs.6 lakhs and an advance of Rs.2 lakhs was paid on the date of the agreement itself. It is agreed between the parties that the sale shall be completed on or before 23.03.2007. The case of the plaintiff is that as the defendant has failed to honour his obligation, he has sent a legal notice dated 08.03.2007 under Ex.A3. According to the plaintiff, the said notice has been received by the plaintiff on 14.03.2007, despite the same, she has not come



A.S.No.83 of 2025

forward to execute the sale deed.

WEB COPY

8. It is relevant to note that in a suit particularly in which party seek equitable relief of specific performance he has to show the readiness and willingness from the inception of the agreement till the agreement culminates into a sale. One cannot contend that merely because he has sent a legal notice, he has proved the readiness and willingness.

9. It is well settled that readiness and willingness are distinct act. Readiness is capacity to mobilise fund and willingness is mental attitude in purchasing the property. When both the conditions are proved in the manner known to law, then, the plaintiff is certainly entitled to specific performance being an equitable relief. Similarly, when the conditions as to readiness and willingness to perform the contract are not proved as mandated under law, the plaintiff is barred from seeking relief of specific performance as per Section 16 (c) of Specific Relief Act, 1963.

10. Section 16 of Specific Relief Act before amendment reads as follows:

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



WEB COPY

*(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.

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."

11. It is relevant to note that though it is contended that he has promptly sent a legal notice on 08.03.2007 under Ex.A3, the fact remains that he has not filed a suit immediately on the other hand, instead, he had filed a suit for bare injunction in O.S.No.123 of 2007 seeking a relief not to alienate the suit property. Copy of the plaint in the above suit filed as Ex.B1 same clearly indicate that the plaintiff in paragraph 11 has clearly admitted that at present he is not in a position to meet out



the court expenses, therefore, he has filed a bare injunction suit against the defendants. In the application filed under Order II Rule 2 of CPC seeking leave to file specific performance later, it is clearly pleaded by the plaintiff that he lacks financial capacity, i.e., due to financial condition, he is not in a position to file the suit for specific performance at the relevant time. When the very admission of the party in the earlier pleadings clearly indicate that he has no wherewithal to pay the remaining sale consideration, it cannot be said that by mere sending a legal notice, readiness and willingness has been proved. Thus, it must be held that the plaintiff has failed to comply with the requirements of Section 16(c) of the Specific Relief Act and the plaintiff is not entitled to a decree for specific performance.

12. Section 16(c) of Specific Relief Act lays down that specific performance of a contract cannot be enforced in favour of a person 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.

13. In *N.P.Thirugnanam vs. Dr.R.Jagan Mohan Roa* reported in 1995 (5) SCC 115, the Hon'ble Supreme Court has held as follows:



WEB COPY

" 5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963 (for short "the Act"). Under Section 20, the court is not bound to grant the relief just because there was a valid agreement of sale. Section 16(c) of the 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. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."

14. The above judgment would make it clear that plaintiff must plead and prove his readiness and willingness in performing his part of contract.



WEB COPY

15. The Hon'ble Supreme Court in the case of *C.S.Venkatesh vs. A.S.C.Murthy* reported in (2020) 3 SCC 280 has held that the Court while adjudging whether the plaintiff is ready and willing to perform his part of contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent filing of the suit along with the other attending circumstances in a particular case.

16. Therefore, when the person himself admits that due to lack of financial capacity, he is not in a position to file a suit for specific performance and filed a injunction suit, merely, because the document is registered document, readiness and willingness cannot be inferred. It is for the plaintiff to establish the readiness and willingness from the very inception which is a continuous process. It has to be established throughout the period when the contract is in existence. Admittedly, in this case this has not been done so. The very admission made by the plaintiff in Exs.B1 and B2 makes it clear that he has no financial capacity at the relevant point of time. Therefore, the readiness and willingness is totally absent on the part of the plaintiff.



A.S.No.83 of 2025

WEB COPY

17. Such view of the matter, the Trial Court exercising discretion in granting the decree, despite the fact that the plaintiff has not shown readiness and willingness in performing his part of contract cannot be sustained in the eye of law. Accordingly, this point is answered.

18. Accordingly, this appeal is allowed and the suit is dismissed with costs. The decree and judgment of the Trial Court made in O.S.No.112 of 2007 dated 30.10.2023 passed on the file of IV Additional District and Sessions Judge, Tiruvallur is set aside. Since reception of amount is not in dispute, the appellant is directed to refund the advance sum of Rs.2 lakhs together with interests @ 7% p.a., from the date of agreement till the date of realisation. It is made clear that till such amount is paid, there shall be a charge over the property. Consequently, connected miscellaneous petition stands closed.

17.03.2025

Index : Yes / No
Speaking/non speaking order
dhk

Page 11 / 12



WEB COPY



A.S.No.83 of 2025

N. SATHISH KUMAR, J.

dhk

To,

1. The IV Additional District and Sessions Judge
IV Additional District and Sessions Court, Tiruvallur
2. The Section Officer
VR Section, Madras High Court

A.S.No.83 of 2025

17.03.2025