



A.S.(MD)No.133 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
14.10.2025	10.11.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**A.S.(MD)No.133 of 2014
and
M.P.(MD)No.1 of 2014**

N.Sampath

... Appellant / Plaintiff

vs.

1.V.Ramalingam (Died)

... 1st Respondent / Defendant

2.Vasanth, W/o.Late.V.Ramalingam

3.Jeya, D/o.Late.V.Ramalingam

4.Punitha, D/o.Late.V.Ramalingam

5.Karthikeyan, S/o.Late.V.Ramalingam ... Respondents 2 to 5

[Respondents 2 to 5 are brought on record as LR's. of the deceased sole respondent vide order dated 27.10.2022, made in C.M.P.(MD)No.9848 of 2022]



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PRAYER : Appeal Suit filed under Section 96 Civil Procedure Code against the judgment and decree dated 22.01.2014 passed in O.S.No.108 of 2010, on the file of Additional District Court, Dindigul.

For Appellant	: Mr.R.G.Shankar Ganesh
For R2 and R5	: Mr.P.Athimoolapandian
For R3 and R4	: Mr.V.Meenakshisundaram

JUDGMENT

C.V.KARTHIKEYAN, J.

The plaintiff in O.S.No.108 of 2010 on the file of the Additional District and Sessions Court, Dindigul, is the appellant herein.

2. O.S.No.108 of 2010 had been filed by the plaintiff seeking specific performance of an agreement of sale by the defendant, after receiving the balance sale consideration of Rs.1,01,15,000/-, failing which the plaintiff prayed that the Court should execute a sale deed in his favour in respect of the suit schedule properties.



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3. While the appeal was pending before this Court, the appellant filed C.M.P.(MD)No.6174 of 2025 seeking to amend the relief to include an alternative prayer to direct refund of advance sale consideration of Rs.31,75,000/- with interest at 12% per annum from the date of the agreement till the date of realisation. This Civil Miscellaneous Petition was allowed by this Court on 22.04.2025.

4. There were two items of suit schedule properties, which were adjacent to each other and contiguous. The first item was vacant land in S.No.60/1B at Sivagiripatti Village, abutting the Palani National Highway in Dindigul District, measuring a total extent of 1 Acre and 3 Cents, out of which, an extent of land in the north-western corner, measuring 3,533½ sq. ft., had already been sold. The second item of the suit property was adjacent land in S.No.60/1A, measuring a total extent of 4 Acres and 68 Cents.

5. The suit came up for consideration before the Additional District Court, Dindigul, and by judgment dated 22.01.2014, the learned Additional District



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Judge dismissed the suit with costs, necessitating the plaintiff to file the present appeal.

6. Since the plaintiff had not sought the alternative relief of repayment of the advance amount paid, C.M.P.(MD)No.6174 of 2025 was filed before this Court seeking inclusion of such an alternative relief, and as stated above, the same was allowed by this Court on 22.04.2025.

O.S.No.108 of 2010 [Additional District Court, Dindigul]:-

7. It is the contention of the plaintiff that the plaintiff and the defendant had initially entered into an understanding to convey the suit properties for a total consideration of Rs.1,24,00,000/-. Pursuant thereto, they executed a written agreement of sale on 18.09.2006, under which the sale consideration was fixed at Rs.95,00,000/-. The defendant had received an advance of Rs.5,00,000/-, and for the balance sale consideration of Rs.29,00,000/-, the plaintiff had executed a promissory note in favour of the defendant. It was agreed that the sale should be completed within six months from the date of the said agreement. The defendant's son, Karthikeyan, signed the agreement as one of the attesting witnesses.



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7.1. Subsequently, the period of the agreement was extended up to 30.04.2007. It was further stated that the defendant had received a total sum of Rs.21,75,000/- in various instalments before the said date. The plaintiff claimed that he was always ready and willing to perform his part of the contract and to purchase the property, but that certain encumbrances existed which the defendant had to clear before execution of the sale deed.

7.2. The plaintiff caused a publication to be made in the Daily Thanthi newspaper on 15.07.2007, and again in Dinamalar on 16.07.2007, asserting his rights over the suit properties. Thereafter, he came to know that one Ammaiappan, a creditor, had earlier caused a publication on 15.10.2006 claiming a sum of Rs.4,00,000/- against the defendant. Subsequently, the daughters and son of the defendant issued a notice to the plaintiff on 21.07.2007, claiming rights over the properties, to which the plaintiff issued a reply on 12.08.2007.

7.3. Thereafter, the plaintiff approached the local Panchayat, and consequently, the defendant executed a fresh agreement of sale on 27.12.2007,



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extending the earlier arrangement dated 18.09.2006. The subsequent agreement was registered. Under the said agreement, the plaintiff was required to pay an additional sum of Rs.8,90,000/-, thereby revising the total sale consideration to Rs.1,32,90,000/-. The defendant acknowledged receipt of Rs.21,75,000/- as advance and, on the date of the new agreement, received a further sum of Rs.10,00,000/- by way of Demand Draft drawn on Canara Bank, Pondicherry. The time for completion was fixed as three months.

7.4. The defendant also undertook to vacate the tenants occupying the suit properties and to cancel the earlier agreement entered into with one Ponram within the said period. The plaintiff reiterated that he was always ready and willing to pay the balance sale consideration, but the defendant failed to vacate the tenants or cancel the earlier agreement with Ponram. The plaintiff, therefore, issued a legal notice dated 24.03.2008 expressing his readiness and willingness to complete the sale, to which the defendant sent a reply dated 27.03.2008 raising various allegations.

7.5. In the reply, the defendant contended that capital gains tax of Rs.61,00,000/- had to be paid immediately, and that possession had to be taken



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from the tenants, and further demanded an additional sum of Rs.20,00,000/- towards interest. It was in these circumstances, the plaintiff filed the present suit seeking specific performance of the agreement of sale. After dismissal of the suit and during the pendency of the appeal before this Court, the plaintiff sought to include the alternative relief of refund of the advance amount paid, which was subsequently allowed.

8. In the written statement filed by the defendant, it was contended that when the first agreement of sale was entered into on 18.09.2006 for a total consideration of Rs.1,24,00,000/-, and when an advance of Rs.5,00,000/- had been paid by the plaintiff, it was specifically agreed that the balance sale consideration would be paid on or before 17.03.2007. The defendant stated that he was then in financial distress and had entered into the agreement in order to discharge his debts. However, according to the defendant, the plaintiff did not possess sufficient funds and was not in a position to pay the balance sale consideration.

8.1. It was further contended that though the total sale consideration was agreed at Rs.1,24,00,000/-, the amount was shown as Rs.95,00,000/- in the



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written agreement, and for the remaining sum of Rs.29,00,000/-, the plaintiff executed a promissory note in favour of the defendant. The defendant further stated that capital gains tax was required to be paid based on the value reflected in the records of the Sub-Registrar's Office, and not on the amount declared by the parties in the agreement. On the date of the agreement, the guideline value of the property was Rs.2,83,00,000/-.

8.2. It was also averred that the plaintiff had represented that he would use his influence to have the guideline value reduced, and had even given a written letter dated 18.09.2006 to that effect, relying upon which the defendant had executed the agreement. The defendant admitted receipt of Rs.21,75,000/- in total, leaving a balance of Rs.1,02,25,000/- to be paid by the plaintiff.

8.3. It was stated that at that stage, the plaintiff had caused a paper publication on 14.07.2007, which necessitated the defendant to issue a refutation through a publication dated 18.07.2007. Thereafter, in December 2007, the plaintiff once again approached the defendant and, based on his renewed assurances, a second agreement was entered into on 27.12.2007.



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8.4. The defendant categorically denied the plaintiff's contention that there were encumbrances over the suit properties. It was further alleged that the plaintiff had fabricated and removed the fourth sheet of the first agreement. On that basis, it was contended that the plaintiff was not entitled to the relief of specific performance.

8.5. With specific reference to the creditor, Ammaiyappan, the defendant stated that the issue with him had already been settled to the knowledge of the plaintiff. As regards the allegations concerning the tenants, the defendant contended that they could only be evicted in accordance with due process of law. The contention of the plaintiff regarding Panchayat mediation was also specifically denied.

8.6. It was further stated that under the second agreement, the plaintiff had undertaken to pay the capital gains tax, which he failed to do. The defendant asserted that the plaintiff was never ready and willing to perform his part of the contract by paying the balance sale consideration and obtaining the sale deed.



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Due to the plaintiff's delay between the exchange of notices and the filing of the suit, the market value and the guideline value of the properties had substantially increased. It was alleged that the plaintiff had neither taken steps to ascertain the prevailing guideline value nor offered to pay the capital gains tax.

8.7. The defendant also pointed out that the notice issued by the plaintiff prior to institution of the suit was made just three days before the expiry of the agreed period for completion of the sale. It was further emphasised that in the second agreement, it had been expressly stipulated that time was the essence of the contract, and a period of three months had been mutually agreed upon for completion.

8.8. It was therefore contended that the plaintiff had not approached the Court with clean hands and was not entitled to the discretionary relief of specific performance. Accordingly, the defendant prayed for dismissal of the suit.

9. The plaintiff filed a reply statement denying the averments made in the written statement. It was contended that the plaintiff had always been ready and



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will be willing to pay the balance sale consideration and to purchase the property. The allegation that the market value of the properties had increased was also specifically denied.

10. On the basis of the above pleadings, the following issues were framed for consideration:

"(i) Whether the plaintiff is entitled to the relief of specific performance?

(ii) Whether the plaintiff is entitled to obtain possession of the suit schedule properties?

(iii) To what other reliefs, if any, is the plaintiff entitled?"

11. During the course of trial, the plaintiff examined himself as P.W.1 and another witness as P.W.2. The defendant examined himself as D.W.1.

11.1 The plaintiff marked Exs.A1 to A42. The agreement dated 18.09.2006 was marked as Ex.A1. The notice issued by the daughters and son of the defendant was marked as Ex.A4, and the reply thereto was marked as Ex.A5. The extension agreement dated 27.12.2007 was marked as Ex.A6. The exchange of



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notices between the parties was marked as Exs.A7 and A8. The plaintiff further produced documents to establish that he was ready and willing to pay the balance sale consideration, which were marked as Exs.A14 to A40.

11.2. The defendant marked Exs.B1 to B10. The agreement dated 18.09.2006 was marked as Ex.B1, and the remaining exhibits consisted of photographs of the land and building forming part of the suit properties.

12. Upon appreciation of the pleadings and the oral and documentary evidence adduced by both sides, the learned Additional District and Sessions Judge, Dindigul, held that the plaintiff was not ready and willing to pay the balance sale consideration and accordingly dismissed the suit with costs.

12.1. The learned Trial Judge observed that the plaintiff and the defendant had entered into an agreement on 18.09.2006, wherein the sale consideration was stated as Rs.95,00,000/-, and an advance of Rs.5,00,000/- had been paid. However, the parties had actually agreed that the real sale consideration would be Rs.1,24,00,000/-. It was contended that the plaintiff had executed a promissory



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note for Rs.29,00,000/-. The time for completion was fixed as six months, but the plaintiff failed to pay the balance amount within that period and had paid only a total sum of Rs.21,75,000/-.

12.2. Consequently, the parties entered into another agreement on 27.12.2007, wherein the total sale consideration was fixed at Rs.1,32,90,000/-. The plaintiff paid a further advance of Rs.10,00,000/-, and the time for completion was extended till 27.03.2008. Thereafter, the plaintiff did not take any further steps to pay the balance sale consideration.

12.3. The learned Trial Judge further noted that, according to the plaintiff, the defendant had undertaken to vacate the tenants and also to cancel a prior sale agreement executed with another individual. There was also an issue regarding capital gains tax, which the plaintiff was required to pay to the defendant for remittance to the Government.

12.4. It was found that the plaintiff had failed to pay the balance sale consideration. Although the plaintiff produced documents purporting to show

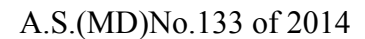


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availability of funds, the learned Trial Judge held that the plaintiff was never willing to part with those funds and pay the balance sale consideration to the defendant. It was also found that the suit had been filed after considerable delay, and that the plaintiff had not deposited the balance sale consideration in Court even up to the date of the decree.

12.5. Further, the plaintiff had filed I.A.No.302 of 2013 seeking permission to deposit the balance sale consideration in Court, however, that application was dismissed by order dated 30.08.2013 on the ground that the plaintiff had not acted *bona fide*. The challenge to that order before the High Court was also dismissed.

12.6. Accordingly, the learned Trial Judge concluded that the plaintiff was not ready and willing to perform his part of the obligations under the agreement. It was also observed that the plaintiff had not sought any specific relief for refund of the advance amount. In view of the above circumstances, the suit was dismissed with costs.



13. Challenging the said judgment, the appellant/plaintiff filed the present appeal suit.

14. Even in the appellate proceedings, the appellant was extremely recalcitrant in prosecuting the matter. The appeal was initially dismissed for non-prosecution on 15.02.2024. Thereafter, it was restored to file. Once again, the learned counsel for the appellant failed to appear and advance arguments, and consequently, the appeal was dismissed for non-prosecution for the second time on 26.07.2024. The appeal was thereafter restored once again.

15. Subsequently, the appellant filed C.M.P.(MD)No.6174 of 2025 seeking amendment of the plaint to include an alternate relief for refund of the advance amount of Rs.31,75,000/- together with interest at 12% per annum from the dates of the agreements, *i.e.*, 18.09.2006 and 27.12.2007, till the date of realisation. This petition was allowed by order dated 22.04.2025.



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16. However, even thereafter, the appellant showed no inclination to argue the appeal. The matter was also referred to mediation by order dated 24.09.2025, but the mediation efforts failed.

17. Heard arguments advanced by Mr.R.G.Shankar Ganesh, learned counsel for the appellant, Mr.P.Athimoolapandian, learned counsel for the second and fifth respondents and Mr.V.Meenakshisundaram, learned counsel for the third and the fourth respondents and perused the material records.

18. It must be mentioned that the respondents are the legal representatives of the first respondent, who passed away pending the appeal.

19. Mr.R.G.Shankar Ganesh, learned counsel for the appellant took the Court through the facts of the case and submitted that the appellant was a person of substantial means. In this connection, he referred to the evidence produced before the Trial Court under Exs.A15 to A39. He pointed out that these documents included the order of credit facility extended by Axis Bank, Pondicherry, to the Company owned by the appellant, namely, Petro Products



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[Ex.A15]; the statement of accounts of the said Company for the period from 01.03.2008 to 30.11.2010 [Ex.A16]; and the statement of accounts of another concern of the appellant, N.T.S. Wines at Pondicherry, for the period from 02.01.2008 to 30.11.2010 [Ex.A17].

19.1. The appellant had also produced his income tax returns [Exs.A18 to A20], certificates relating to his other business concerns, N.T.S. Hotels Private Limited [Ex.A21], Relyon Marketing India Private Limited [Ex.A22], Sri Vedapureeswarar Estates and Agro Farming India Private Limited [Ex.A23], and N.T.S. Estates Private Limited [Ex.A24]. In addition, sale deeds standing in his name, in the names of his group Companies, and in the names of his family members were marked as Exs.A25 to A32.

19.2. The appellant further produced the statements of his savings bank accounts in Canara Bank and Axis Bank, Pondicherry [Exs.A33 to A35], and Pattas relating to land holdings in his name and in the names of his group Companies [Exs.A36 to A38]. By referring to all these documents, the learned counsel contended that the appellant possessed sufficient funds to pay the balance



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sale consideration and that no inference could be drawn that he was unwilling to part with such funds.

19.3. The learned counsel therefore submitted that, in view of the appellant's readiness and willingness to perform his part of the contract, the judgment of the Trial Court ought to be reversed and a decree for specific performance ought to be granted.

20. Mr.P.Athimoolapandian, learned counsel for the second and fifth respondents, however, strongly disputed the said contentions. He submitted that the appellant was never ready or willing to pay the balance sale consideration. He referred to the findings of the learned Trial Judge, who had observed that the appellant had not even whispered about payment of the balance sale consideration, despite time being the essence of the agreement.

20.1. The learned counsel further submitted that, at the time of execution of the agreement, the first respondent/defendant was in need of financial assistance, yet the appellant did not come forward to pay the entire sale consideration or



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perform his part of the contractual obligations. He pointed out that under the agreement dated 18.09.2006, there was a clause providing for forfeiture of the advance amount paid, and a specific time was fixed for performance.

20.2. Since the appellant was unable to perform his part of the agreement, a further registered agreement was entered into on 27.12.2007, granting an additional period of three months for completion. The said period expired on 27.03.2008. Just about three days before the expiry, the appellant issued a notice dated 24.03.2008, to which a reply was sent on 27.03.2008. However, the suit came to be filed only in December 2010.

20.3. The learned counsel emphasized that even up to the date of the decree, the appellant had not deposited the balance sale consideration before the Court, which clearly indicated that he was not ready and willing to perform his part of the contract. He also submitted that the fifth respondent had filed an affidavit before this Court undertaking to refund the entire advance amount received, together with interest at 6% per annum from the date of the plaint.



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20.4. In view of these facts, the learned counsel contended that the appellant had failed to establish his readiness and willingness to perform his obligations under the agreement, and therefore, the learned Trial Judge had rightly dismissed the suit.

21. Mr.V.Meenakshisundaram, learned counsel for the third and fourth respondents also contended that the appellant was never ready or willing to pay the balance sale consideration. He pointed out that under the first agreement, the total sale consideration was actually fixed at Rs.1,24,00,000/-, though only Rs.95,00,000/- was mentioned in the document, and that an advance of Rs.5,00,000/- alone had been paid. The agreement contained a clause for forfeiture of the advance amount in the event of non-payment of the balance sale consideration by the appellant. The time stipulated for completion was six months, but the appellant failed to pay the entire balance sale consideration within that period.

21.1. Subsequently, a further agreement was executed on 27.12.2007, wherein the time for completion was extended by three months. However, even



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within the extended period, the appellant did not pay the balance sale consideration. The learned counsel therefore submitted that the learned Trial Judge had rightly concluded that the appellant was never ready and willing to perform his part of the agreement.

21.2. He further pointed out that the fourth respondent had filed an affidavit before this Court stating that she and the third respondent were ready to deposit the advance amount received, together with reasonable interest. Accordingly, the learned counsel submitted that the appeal deserves to be dismissed.

22. We have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

23. The following points arise for determination in this appeal:-

(i) Whether the learned Trial Judge was correct in concluding that the appellant was not ready and willing to perform his part of the agreement?



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(ii) Whether the alternate relief sought by the appellant during the pendency of the appeal deserves to be granted?

24. The appellant had filed O.S.No.108 of 2010 seeking the relief of specific performance against the defendant in respect of an agreement of sale dated 18.09.2006 [Ex.A1] and a subsequent extension agreement dated 27.12.2007 [Ex.A6]. The appellant and the first respondent had entered into the two agreements for the sale of a large extent of land belonging to the first respondent, situated at Sivagiripatti Village, abutting the Palani National Highway in Dindigul District.

25. Under the first agreement, the total sale consideration was stated as Rs.95,00,000/-, though the actual agreed amount between the parties was Rs.1,24,00,000/-. An advance of Rs.5,00,000/- was paid by the appellant. The agreement also contained a forfeiture clause, enabling the first respondent to retain the advance amount in the event of the appellant's failure to pay the balance sale consideration.



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26. It was further agreed that the appellant would execute a promissory note for Rs.29,00,000/-, representing the difference between the actual sale consideration of Rs.1,24,00,000/- and the amount mentioned in Ex.A1 as Rs.95,00,000/-. The time stipulated for payment of the balance sale consideration was six months.

27. It is the contention of the appellant that there were tenants in the property and that the first respondent had also entered into an earlier agreement of sale with another individual. However, the facts clearly show that the appellant entered into the present agreement with full knowledge of the existence of the tenants. The total advance paid by the appellant, in instalments, amounted to Rs.21,75,000/-. The six-month period stipulated under the agreement expired on 17.03.2007. Nearly four months thereafter, the appellant caused publication of notices in newspapers dated 15.07.2007 and 16.07.2007, asserting his rights under the agreement. These publications were marked as Exs.A2 and A3.



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28. Subsequently, the appellant and the first respondent executed a further extension agreement on 27.12.2007. Under this agreement, the time for performance was extended by a further period of three months, up to 27.03.2008. One significant aspect stressed by the learned Trial Judge, and evident from the record is that, Ex.A1, the registered agreement consisting of seven sheets, contains a fourth sheet that is a Xerox copy. No explanation was offered by the appellant as to how this Xerox sheet came to be inserted in Ex.A1. The original of the agreement was not produced, instead, a tampered document, incorporating the said Xerox sheet, was placed before the Court. The said discrepancy is apparent even upon a cursory perusal of Ex.A1. The reason for such interpolation could have been explained only by the appellant. In the absence of any explanation, the document as a whole must be held inadmissible in law.

29. Be that as it may, even though the time for performance was extended, according to the appellant, on the insistence of the Panchayatdars, the appellant once again failed to pay the balance sale consideration, except for a further sum of Rs.10,00,000/- paid on the date of execution of the extension agreement [Ex.A6]. The appellant has not deposited the balance sale consideration in Court



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till date. Such conduct clearly exposes the hollowness of the appellant's claim that he possessed sufficient funds to discharge the balance sale consideration. The documents produced and relied upon by the appellant, and referred to during arguments by the learned counsel, can never be called to establish that he was always ready and willing to pay the balance sale consideration.

30. In Arunachala Mudaliar vs. Jayalakshmi Ammal and another reported in **2003 (1) CTC 355 : 2003 (1) LW 673 : 2003 (1) MLJ 626**, a Division Bench of this Court had occasion to consider a claim for specific performance in a suit of a similar nature. The facts of that case have been summarised in paragraph 2 of the judgment, which reads as follows:-

"2. According to the plaint, on 3.8.1981, an agreement was entered into between the first defendant and the husband of the plaintiff for conveying the suit property for a price of Rs. 24,410. A notice dated 1.1.1982 was issued by the plaintiff's husband and a suit was filed. Other suits for injunction and other reliefs were filed by the parties herein against each other. To purchase peace, a Panchayat was convened and the well-wishers of the village persuaded the plaintiff and the first defendant to cancel the agreement dated 3.8.1981 and to enter into a fresh agreement, to purchase the property for a higher consideration. So



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the suit agreement, Ex-A7 dated 6.2.1982 was entered into. The sale consideration was fixed at Rs.37,500 and a sum of Rs.5,000 is alleged to have been received as advance."

31. The Division Bench, in the aforesaid decision, had observed that since the plaintiff therein had not deposited the balance sale consideration before filing the suit for specific performance, he was not entitled to the relief of specific performance, owing to the absence of readiness and willingness on his part.

32. It must also be noted that the appellant in the present case has approached this Court with a document that had been tampered with by the insertion of a Xerox sheet in Ex.A1. The Hon'ble Supreme Court in **Lourdu Mari David and others vs. Louis Chinnaya Arogiaswamy and others** reported in **(1996) 5 SCC 589**, held as follows:-

"2. In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief."

33. Even in the present case, the appellant has not approached the Court with clean hands, in view of the obvious production of Ex.A1 with the insertion of a Xerox copy of a page.



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34. It must also be noted that the appellant did not seek the alternate relief during the course of the trial. However, such relief was sought only by way of an amendment petition filed during the pendency of the appeal. The respondents have not disputed the existence of the agreement, nor they have denied receipt of the advance amount. In fact, the fourth and fifth respondents have filed independent affidavits undertaking to repay the advance amount.

35. In **R.Shama Naik vs. G.Srinivasiah** reported in **2024 SCC OnLine 3586 : 2024 INSC 927**, the Hon'ble Supreme Court held as follows:-

"3. The total sale consideration fixed in the Agreement of sale is Rs. 30,00,000/- (Rupees Thirty lakh only). Rs. 12,50,000/- (Rupees Twelve lakh fifty thousand only) came to be paid by the petitioner herein towards earnest money at the time of execution of the agreement of sale.

4. It is the case of the petitioner that he was always ready and willing to perform his part of the contract but it is the respondent herein original-defendant who was not inclined to execute the sale deed despite accepting the amount of Rs. 12,50,000/- (Rupees Twelve lakh fifty thousand only) towards earnest money.

.....

8. Section 16(C) of the Specific Relief Act, 1963 (prior to amendment w.e.f. 1.10.2018) bars the relief of the specific performance of



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a contract in favour of a person who fails to aver readiness and willingness to perform his part of the contract.

.....

10. The law is well settled. The plaintiff is obliged not only to make specific statement and averments in the plaint but is also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.

11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.

12. 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."

36. It is evident that the appellant, having taken no steps to deposit the balance sale consideration into Court, was clearly neither ready nor willing to pay the said amount.

37. In **K.Narendra vs. Riviera Apartments (P) Ltd.** reported in (1999) 5 SCC 77 : AIR 1999 SC 2309, the Hon'ble Supreme Court held as follows:-

"29. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court



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*is not bound to grant such relief merely because it is lawful to do so; the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in **Lourdu Mari David v. Louis Chinnaya Arogiaswamy [(1996) 5 SCC 589 : AIR 1996 SC 2814]** by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court."*

38. In the instant case, the appellant, having entered into the agreement, had not taken any steps to pay the entire balance sale consideration. The mere filing of documents reflecting that the appellant was in possession of sufficient



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funds would not establish that he was willing to part with those funds to pay the balance sale consideration. Even during the pendency of the suit, the appellant had not deposited the balance sale consideration. It is no doubt true that the appellant had filed I.A.No.302 of 2013 seeking permission to deposit the balance sale consideration, but that application was dismissed by order dated 30.08.2013. The subsequent challenge to that order before this Court also failed. It is thus evident that the appellant was never ready or willing to perform his part of the agreement. In view of these circumstances, we hold that the learned Trial Judge had correctly concluded in denying the relief of specific performance to the appellant herein. The first point framed for consideration is accordingly answered.

39. The appellant had filed an amendment application in C.M.P.(MD)No. 6174 of 2025 to include the alternate relief of refund of the advance amount pending the appeal. That application had been allowed by order dated 22.04.2025. This application itself had been filed after the appellant had allowed the appeal suit to be dismissed for non-prosecution on two separate occasions. Thus, it is evident that the appellant had not exhibited bona fide intention in performing his



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obligations under the agreement. In any event, in **K.R.Suresh vs. R.Poornima and others** reported in **2025 SCC OnLine SC 1014 : 2025 INSC 617**, the Hon'ble Supreme Court has held that an amendment could be permitted for refund of the advance amount where it is found that the appellant was not ready and willing to perform his part of the agreement and specific performance is denied.

40. In view of the above pronouncement, we direct the 2nd - 5th respondents, either jointly or severally, to refund the advance amount of Rs. 31,75,000/- together with interest at 12% per annum from the date on which the said application was filed, namely, 01.04.2025, till the date of actual payment. There shall be a charge over the suit schedule properties until the realization of the advance amount. The respondents may alternatively deposit the said amount to the credit of Suit O.S.No.108 of 2010 on the file of the Additional District Court at Dindigul. The second point framed for consideration is accordingly answered.

41. In the result, the Appeal Suit is partly allowed by granting the alternate relief of refund of the advance amount of Rs.31,75,000/- by the 2nd - 5th



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respondents, jointly or severally, together with interest at 12% per annum from 01.04.2025 till the date of realization or deposit in Court. There shall be a charge on the suit schedule properties till the compliance with this direction. In view of the circumstances, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes
NCC : Yes
smn2

[C.V.K., J.] & [R.V., J.]
10.11.2025

To

- 1.The Additional District Judge,
Dindigul.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

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PRE-DELIVERY JUDGMENT MADE IN
A.S.(MD)No.133 of 2014

10.11.2025