



A.S.(MD)No.176 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S.(MD)No.176 of 2017
and
C.M.P.(MD)No.10266 of 2017**

P.Sivakumar ... Appellant / Defendant

Vs.

A.Baskar ... Respondent / Plaintiff

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code, to set aside the judgment and decree dated 05.09.2017 made in O.S.No.86 of 2015 on the file of the Additional District Court (Fast Track Court), Palani.

For Appellant : Mr.S.Rajasekar

For Respondents : Mr.T.Lenin Kumar

JUDGMENT

Heard both sides.



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2.This appeal arises out of judgment and decree for specific performance. The appellant and the respondent entered into sale agreement on 04.10.2013. To enforce this sale agreement, the respondent filed O.S.No.86 of 2015 on the file of the Additional District Court (Fast Track Court), Palani.

3.The case of the plaintiff is as follows:

The defendant purchased the suit schedule property vide registered sale deed dated 07.10.2010. The plaintiff approached the defendant and thereafter the defendant agreed to sell the property to the respondent for a sum of Rs.39,60,000/-. The time period for completion was fixed as 3 months. A sum of Rs. 2,00,000/- was received by the appellant towards advance on 04.10.2013. An agreement to sell was duly entered into between them. On 23.10.2013, a sum of Rs. 10,00,000 was received by the defendant and a receipt was also obtained from him in the presence of witnesses. The plaintiff was always ready and willing to perform the terms of the contract. Though plaintiff made attempts to get the sale deed executed as per the agreement by paying the balance consideration, the



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defendant refused to cooperate. Plaintiff sent notice dated 08.06.2015 to which he received a reply dated 29.09.2015 from the defendant. Since the defendant refused to execute the sale deed, the plaintiff was constrained to file the suit.

4. The defendant filed written statement controverting the plaintiff allegations. He admits that the suit schedule property belongs to him. He also admits the execution of the sale agreement and receipt of Rs 2,00,0000 at the time of execution of the agreement and Rs 10,00,000 on 23.10.2013. The value of the property was Rs. 1 crore and fifty lakh. The defendant was in dire need of money and had to repay debts. It is in this background that the agreement came to be executed. The plaintiff failed to pay the balance consideration of 27,60,000 rupees within the agreed term. The notice itself was sent only after the expiry of 3 months i.e., 03.01.2014. The conduct of the plaintiff shows that he was unwilling to honour the terms of the agreement. He prayed for dismissal of the suit.

The court below framed necessary issues. The plaintiff / respondent examined himself as P.W.1. One of the attestors was examined as P.W.2.



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Exs.A1 to A5 were marked on the side of the plaintiff. The appellant / defendant examined himself as D.W.1 and Exs.B1 to B4 were marked on his side.

5.After considering the evidence on record, the trial Court vide judgment and decree dated 05.09.2017 decreed the suit and granted the relief of specific performance. Aggrieved by the same, the defendant filed this appeal.

6. The learned counsel for the appellant/defendant contended that the court below erred in exercising the discretionary relief of specific performance in favour of the plaintiff as the plaintiff miserable failed to fulfil his obligation within the time fixed in the agreement. He submitted that the defendant was put to great financial hardship on account of the failure of the plaintiff to pay the balance consideration within 3 months. He seriously challenged the readiness and willingness of the plaintiff and called upon us to set aside the decree and judgement of the court below and allow this first appeal.



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7.Per contra, the learned counsel for the respondent/plaintiff contended that the decree and judgement of the court below was well reasoned and does not warrant interference.

8. We carefully considered the rival contentions and went through the evidence on record. The point that arises for determination is whether the plaintiff was entitled to the relief of specific performance when he failed to pay the balance consideration within the stipulated time.

9. It is well settled that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. The Hon'ble Supreme Court in the decision reported in **(1997) 3 SCC 1 (K.S. Vidyanadam v. Vairavan)** held that even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property.



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10.The Constitution Bench of the Hon'ble Supreme Court in

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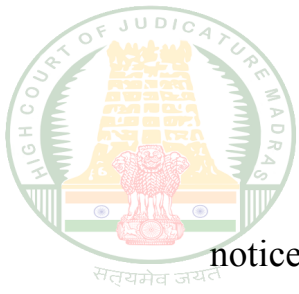
Chand Rani v. Kamal Rani [(1993) 1 SCC 519] held as follows:

“... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example, the object of making the contract.”

It is seen that the Ex A1 sale agreement was entered into on 04.10.2013.

The time for completion of the transaction was fixed as three months. In other words, according to the agreement, the appellant should have come forward to pay the balance amount of 27,60,000 and take the sale deed on or before 03.01.2014. The agreement also stipulates that in the event of the failure of the second party (plaintiff) to pay the balance consideration within the agreed term of 3 months, the advance amount of Rs 2,00,000 will be forfeited and the agreement will stand terminated.

11.After considering the evidence on either side, we are of the view that the plaintiff did not come forward to conclude the transaction within a reasonable period. In this case, the plaintiff issued the legal



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notice only on 08.06.2015 (Ex.A3) whereas the time fixed in the agreement expired on 03.01.2014. The suit itself was filed only on 05.10.2015. It is seen that the institution of the suit was two years after the sale agreement was executed. Technically, the suit might be within a period of limitation. But then, the relief of specific performance is always a discretionary relief. The appellant states that he entered into the transaction only to meet some urgent expenses. He has marked exhibits B1 to B4. On account of the delay on the part of the plaintiff, he was put to considerable hardship. Moreover, when the defendant has disputed the readiness and willingness of the plaintiff to pay the money in terms of the contract, the plaintiff has not furnished any evidence to show availability of funds to make payment in terms of the contract in time. Section 16(c) of The Specific Relief Act, 1963 casts a duty on the plaintiff to aver and prove readiness and willingness all along which duty has not been discharged by the plaintiff. In view of these circumstances, we are of the view that the Court below ought not to have granted the relief of specific performance. The impugned judgment and decree is set aside.



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12. But then even before commencing his arguments, the appellant through his counsel undertook that he would pay a sum of Rs.33,00,000/- to the plaintiff / respondent herein. A memo dated 22.02.2025 signed by the appellant as well as his counsel has also been filed before us.

13. This appeal is allowed on the following terms:-

“(a) The impugned judgment and decree dated 05.09.2017 made in O.S.No.86 of 2015 on the file of the Additional District Court (Fast Track Court), Palani is set aside.

(b) The appellant is directed to pay a sum of Rs.33,00,000/- to the respondent herein on or before 31.07.2025.

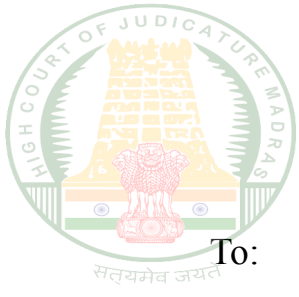
(c) The plaintiff is permitted to withdraw the balance sale consideration deposited by him to the credit of suit together with accrued interest.

No costs. Consequently, connected miscellaneous petition is closed.

**(G.R.S. J.) & (M.J.R. J.)
24.02.2025**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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Issue order copy on 14.07.2025.



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The Additional District Court,
Fast Track Court, Palani.



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