



A.S.(MD)No.165 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
03.11.2025	25.11.2025

CORAM:

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

A.S.(MD)No.165 of 2018
and
C.M.P.(MD)No.9791 of 2018

T.Perumal Nadar (Died)
T.Rathinamani Nadar (Died)
T.Natarajan (Died)

- 1.T.Hariramakrishnan
- 2.Chithiraimani
- 3.R.Muthuvel
- 4.R.Anantharaja
- 5.S.Chenthurkani
- 6.Janaki
- 7.Suresh
- 8.Thirumurugan
- 9.Muthuselvi
- 10.Senbaga Sureka
- 11.Amithakani
- 12.Sudha
- 13.Subhadar
- 14.Thangamalai
- 15.Ilakkia

... Appellants / Defendants 4 to 14, 16 to 18 & 20

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vs.

1.P.Rajendra Chorida ... 1st Respondent / Plaintiff
2.Manikandan
3.Manoselvam ... Respondents 2 and 3 / Defendants 15 & 19

PRAYER : Appeal Suit filed under Section 96 read with Order XLI Rule 1 and 1A of Civil Procedure Code, against the judgment and decree dated 17.01.2018, passed in O.S.No.20 of 2007, by the learned I Additional District Judge, Tirunelveli.

For 1 st Appellant	: Mr.Shangar Murali
For Appellants 2 to 15	: Mr.B.Kumar Senior Counsel for Mr.T.Sudhan Raj
For R1	: Mrs.AL.Gandhimathi Senior Counsel for Mr.C.Mahadevan
For R2 and R3	: Mr.N.Ganesh

JUDGMENT

C.V.KARTHIKEYAN, J.

The defendants 4 to 14, 16 to 18, and 20 in O.S.No.20 of 2007 on the file of the I Additional District Court, Tirunelveli, are the appellants herein. They



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filed the present appeal being aggrieved by the judgment dated 17.01.2018 passed in O.S.No.20 of 2007 by the I Additional District Court, Tirunelveli. The 15th and 19th defendants have been impleaded as the 2nd and 3rd respondents in the appeal; however, it is contended that they have no adverse interest against the appellants.

2. O.S.No.20 of 2007 had been filed by the 1st respondent seeking specific performance of an agreement of sale dated 03.02.2007 entered into between him and the defendants or, in the alternative, for a direction to refund the advance amount paid under the said agreement along with interest. The learned I Additional District Judge, Tirunelveli, decreed the suit, directing specific performance of the agreement.

3. It must also be mentioned that O.S.No.20 of 2007 had originally been filed against four defendants, all of whom were brothers. During the pendency of the suit, the 1st, 2nd, and 3rd defendants died, and their legal representatives were brought on record. The 4th defendant is the 1st appellant herein.



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4. During the pendency of the appeal, a Memo dated 15.10.2025 was filed on behalf of the 1st appellant stating that he had entered into a compromise with the 1st respondent and had executed a registered sale deed dated 11.09.2025 in favour of the 1st respondent in respect of his undivided 1/5th share in the suit schedule properties. He had also executed a registered sale deed dated 26.09.2025 in favour of the 1st respondent regarding his individual properties. By the said Memo, the learned Senior Counsel for the appellants sought to withdraw the appeal insofar as the 1st appellant is concerned.

5. This Court recorded the Memo on 15.10.2025. In view of the categorical statement made therein, which had also been signed by the 1st appellant, the appeal is dismissed as withdrawn insofar as the 1st appellant alone is concerned. The remaining appellants, however, continued to prosecute the appeal.

O.S.No.20 of 2007 [I Additional District Court, Tirunelveli]:-

6. In the plaint, the plaintiff, P.Rajendra Chorida, contended that the suit schedule properties, being a vast extent of vacant land situated at Valliyoor in Tirunelveli District, were jointly owned by the defendants, namely T.Perumal



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WEB COPY Nadar, T.Rathinamani Nadar, T.Natarajan, and T.Hariramakrishnan. It was further stated that the plaintiff had entered into an agreement with the defendants on 03.02.2007 to purchase the said lands for a total sale consideration of Rs.49,75,000/-, and that he had paid a sum of Rs.4,10,000/- as advance. In the plaint, it had been stated that the parties had agreed to complete the sale on or before 02.04.2007.

6.1. The plaintiff pleaded that he had asked for production of the original title deeds, which the defendants had agreed to hand over. He also asserted that the defendants had agreed to measure the property and fix the four boundaries prior to execution of the sale deed. According to the plaintiff, he was always ready and willing to perform his part of the agreement and had repeatedly contacted the defendants over the phone seeking delivery of the title documents. He further stated that he had engaged the services of one P.Raja Manickam of the same village to act as Mediator and Agent on behalf of the defendants.

6.2. However, the plaintiff contended that the defendants failed to come forward to execute the sale deed. Instead, they sent a Telegram on 03.04.2007



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stating that they were ready and willing to execute the sale deed and had waited at the Sub-Registrar's Office on 02.04.2007. The Telegram further stated that, since the plaintiff failed to appear, the agreement stood cancelled. The plaintiff issued a reply Telegram on 03.04.2007 asserting that the title documents had not been handed over to him and therefore, the question of cancellation did not arise. He also made a paper publication on 05.04.2007 and issued an Advocate's notice reiterating his readiness and willingness to conclude the sale.

6.3. A reply notice was sent by the defendants claiming that they had measured the property and fixed the boundaries on 10.03.2007, which the plaintiff denied. Alleging that the defendants were evading execution of the sale deed, the plaintiff filed the suit seeking specific performance, and in the alternative, refund of the advance amount.

7. The defendants filed a written statement disputing the contentions raised by the plaintiff. They admitted the execution of the agreement dated 03.02.2007 and also the terms thereof. However, they emphasized that the time stipulated for completion of the agreement was 02.04.2007, and that the parties had mutually agreed that the sale should be concluded within that period.



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7.1. The defendants categorically asserted that the plaintiff was never ready and willing to pay the balance sale consideration or to proceed with registration of the sale deed. They further contended that they had waited at the Sub-Registrar's Office on 02.04.2007, but the plaintiff failed to appear. Consequently, they cancelled the agreement and communicated the cancellation to the plaintiff. They also claimed that the property had been measured and the boundaries fixed in the presence of the plaintiff on 10.03.2007.

7.2. On these grounds, the defendants contended that the plaintiff was not entitled to the relief of specific performance.

7.3. The plaint came to be amended owing to the death of the 1st, 2nd and 3rd defendants, and an amended plaint was accordingly filed. The defendants thereafter filed an additional written statement, wherein they contended that the agreement specifically provided that, if the defendants failed to come forward to execute the sale deed, the plaintiff was required to deposit the balance sale consideration and seek specific performance. They stated that the plaintiff had not



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deposited the said amount even up to the date of filing the additional written statement in September 2014. It was therefore reiterated that the plaintiff was never ready and willing to perform his part of the agreement by paying the balance sale consideration.

The issues:-

8. On the basis of the above pleadings, the following issues were framed:

"(i) Whether time was an essential term of the suit agreement?

(ii) Whether the defendants were entitled to forfeit the advance amount?

(iii) Whether the plaintiff was entitled to specific performance of the suit agreement?

(iv) To what relief, if any, was the plaintiff entitled?"

The Trial:-

9. The plaintiff examined himself as P.W.1 and marked Exs.A1 to A20. Ex.A1, dated 03.02.2007, was the sale agreement. Exs.A2 to A5 were the copies of the Telegrams and notices exchanged between the parties. Exs.A13 to A19 were copies of agreements of sale entered into by the defendants with third parties and the cancellation deeds relating to those agreements. The plaintiff also examined two other witnesses as P.W.2 and P.W.3.



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9.1. On the side of the defendants, the third defendant was examined as D.W.1 and he marked Exs.B1 to B13. Ex.B1 was the Telegram sent by the plaintiff to the defendants. Exs.B2 and B3 were the paper publications issued by both sides. Exs.B7 to B11 were the Encumbrance Certificates for the relevant periods, and Ex.B13 was a copy of the plaint in O.S.No.38 of 2010 on the file of the District Court, Tirunelveli.

The reasons for the judgment by the Trial Court:-

9.2. The learned Trial Judge, on appreciating the pleadings and the oral and documentary evidence, concluded that the plaintiff had produced Ex.A12, the Income Tax Return, which indicated that he had sufficient funds to pay the balance sale consideration. The learned Trial Judge therefore held that the plaintiff had established his readiness and willingness to perform his part of the agreement. It was also observed that the defendants had the habit of entering into agreements of sale and subsequently cancelling them, and the conduct of the defendants was therefore frowned upon by the learned Trial Judge. Since the agreement was admitted and the plaintiff was found to be ready and willing to pay the balance sale consideration, the learned Trial Judge held that specific



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performance ought to be granted and accordingly, decreed the suit. The learned Trial Judge rejected the case of the defendants that the agreement stood cancelled or that the plaintiff was not ready and willing to pay the balance amount.

9.3. With respect to the defendants' contention that they had waited at the Sub-Registrar's Office on 02.04.2007 and, in that connection, had marked Exs.B5 to B12, the learned Trial Judge held that the defendants had created documents to support their alleged presence at the Sub-Registrar's Office, observing that they were not innocent parties and were sufficiently shrewd to go to the Office under the pretext of being ready to execute the sale deed.

9.4. The learned Trial Judge further held that there was no obligation on the plaintiff to deposit the balance sale consideration into Court or to jingle the coins before the Court. He noted that the plaintiff was a real estate businessman and could not be expected to block his funds in Court. Therefore, the non-deposit of the balance amount could not be taken as a ground to hold that the plaintiff was not ready and willing to perform his part of the agreement. On the above reasoning, the learned Trial Judge decreed the suit directing specific performance of the agreement.

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10. Aggrieved by the judgment directing specific performance of the agreement of sale, the defendants have filed the present appeal. It must be noted that the 1st, 2nd, and 3rd defendants had died during the pendency of the trial proceedings, and their legal representatives had been brought on record before the Trial Court itself. As already noted, the 1st appellant / 4th defendant entered into a compromise with the 1st respondent, and the appeal stands dismissed as settled out of Court insofar as the 1st appellant alone is concerned.

Submissions of the learned Senior Counsel for the appellants:-

11. Mr.B.Kumar, learned Senior Counsel for the appellants took the Court through the agreement of sale entered into between the parties and highlighted the relevant clauses. He pointed out that the advance paid was only 8% of the total sale consideration, as determined by the parties. He emphasized that, it was all the more imperative that the 1st respondent should have demonstrated readiness and willingness to fulfill his part of the agreement, specifically paying the remaining 90% of the total sale consideration.



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11.1. The learned Senior Counsel further noted that the agreement itself provided that, in the event the appellants did not come forward to execute the sale deed, the 1st respondent had the option to deposit the balance sale consideration into Court and seek specific performance. He argued that the onus was therefore on the 1st respondent to actively engage in performing the agreement.

11.2. The learned Senior Counsel then addressed the reasons given by the 1st respondent for not depositing the balance sale consideration into Court and seeking specific performance. Initially, the 1st respondent claimed that the original title deeds had not been provided by the appellants. Later, the 1st respondent contended that the appellants had not come forward to measure the suit property. The appellants, however, pointed out that the property had in fact been measured in the presence of the 1st respondent (or their representative) on 10.03.2007. Thus, the learned Senior Counsel submitted that the 1st respondent's statement regarding the measurement should not be accepted by the Court.

11.3. Furthermore, the learned Senior Counsel highlighted the additional steps taken by the appellants to execute the sale deed. He pointed out that the appellants were present at the Sub-Registrar's Office the whole day on



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02.04.2007, and to demonstrate their presence, they had signed as witnesses to other documents that were presented for registration at the same office. Documents related to the same were also marked as exhibits.

11.4. The learned Senior Counsel stated that, immediately thereafter, a telegram was sent on 03.04.2007 notifying the 1st respondent that he had failed to appear at the Sub-Registrar's Office to pay the balance sale consideration, and as a result, the agreement stood cancelled. In this context, the learned Senior Counsel emphasized that time was essence of the contract. He argued that the 1st respondent's claim of being ready and willing to perform his part of the agreement should be rejected by the Court.

11.5. The learned Senior Counsel was emphatic in asserting that the 1st respondent lacked the means to pay the balance sale consideration and even if he did, he was unwilling to part with the amount. He pointed out that the 1st respondent had submitted documents, such as Income Tax Returns, to demonstrate that he possessed the balance sale consideration. The learned Senior Counsel took the Court through these documents and pointed out that the returns



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related to a Hindu Undivided Family (HUF) and other individuals. However, none of these individuals had been called as witnesses, nor affidavits had been filed to confirm that they were willing to provide their respective shares of the amount on behalf of the 1st respondent.

11.6. The learned Senior Counsel, therefore, argued that the 1st respondent was never ready and willing to perform his part of the agreement. He concluded that the reasoning of the learned Trial Judge in this regard should be set aside and that the appeal should be allowed.

Submissions of the learned Senior Counsel for the 1st respondent:-

12. Mrs.AL.Gandhimathi, learned Senior Counsel for the 1st respondent, however, disputed these contentions. According to her, the 1st respondent was always ready and willing to pay the balance sale consideration. She argued that the appellants had an obligation to measure the property, which they failed to do so. They also had an obligation to produce the title deeds, which they likewise failed to fulfil.



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12.1. The learned Senior Counsel further pointed out that it was the 1st respondent, who was present at the Sub-Registrar's Office and challenged the veracity of the appellants' claim that they had been present there on 02.04.2007. She contended that the very fact that the 1st respondent had entered into a compromise with the 1st appellant, paying sale consideration for the undivided 1/5th share in the suit schedule property as well as for other individual properties of the 1st appellant, clearly demonstrated that the 1st respondent always possessed sufficient means to purchase the suit schedule property.

12.2. The learned Senior Counsel also stated that the 1st respondent had deposited the sale consideration immediately after the decree was passed. She submitted that it was the appellants, who failed to come forward to register the sale deed and who must therefore bear the consequences of not performing their part of the agreement.

12.3. The learned Senior Counsel argued that the learned Trial Judge had duly considered all relevant aspects and properly appreciated the evidence before decreeing the suit. Accordingly, the learned Senior Counsel insisted that the appeal should be dismissed.



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Points for consideration:-

13. The following points arise for determination:

(i) Whether the learned Trial Judge arrived at the correct conclusion in holding that the 1st respondent was ready and willing to perform his part of the agreement?

(ii) Whether the learned Trial Judge correctly appreciated the evidence on record in holding that the appellants had failed to perform their part of the agreement?

Discussion and Determination:-

14. Both points are taken up for consideration together, as the discussions overlap and the analysis of evidence in respect of each issue are intertwined.

15. The 1st respondent was the plaintiff before the Trial Court and had instituted the suit seeking specific performance of an agreement dated 03.02.2007, which was marked as Ex.A1. There is no dispute regarding the execution of this agreement and both the appellants and the 1st respondent admit its execution. The agreement concerned properties owned jointly by four brothers,



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who had agreed to convey all their respective shares in the suit schedule property, a vast extent of vacant land that had not been divided into metes and bounds.

16. The total sale consideration was fixed at Rs.49,75,000/-, of which the 1st respondent paid an advance of Rs.4,10,000/-. He was obligated to pay the balance sale consideration of Rs.45,65,000/- on or before 02.04.2007. Thus, the primary obligation rested on the 1st respondent to tender the balance amount and call upon the appellants to execute the sale deed.

17. The agreement further provided that if the appellants failed to come forward to execute the sale deed, the 1st respondent was given *carte blanche* to deposit the balance sale consideration into Court and seek specific performance. These clauses clearly impose the primary responsibility on the 1st respondent to perform his part of the contract and, upon refusal by the appellants, to immediately deposit the balance consideration in Court and seek enforcement. However, till the date of the decree, the 1st respondent had not deposited the balance sale consideration. He had also not filed the suit on or before 02.04.2007.



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18. Another clause in the agreement stipulated that, if any encumbrances existed over the suit schedule property, the appellants were to clear them on or before 02.04.2007. This is a curious clause. Ordinarily, before entering into an agreement of sale, the purchaser bears the responsibility to ascertain that the property is free from encumbrances. If any encumbrances existed, they ought to have been specifically disclosed in the agreement. In this case, none were disclosed. The clause, therefore, is vague, stating merely that "if there were encumbrances," the appellants should clear them.

19. The agreement also provided that the appellants should secure the presence of their sister, Selvam Ammal, for executing the sale deed. She did not sign the agreement. This condition however makes it evident that she held some semblance of right or title over a portion of the property covered by the agreement. However, while instituting the suit for specific performance, the 1st respondent failed to implead her as a party. This omission is significant. If her participation was essential to convey complete title over the suit property and if she was required to join the appellants as a vendor, she was a necessary party to the suit for specific performance. The failure to implead her goes to the root of the maintainability of the suit.



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20. We therefore hold that the non-joinder of Selvam Ammal is fatal to the suit.

21. The agreement further provided that the appellants had an obligation to measure the suit schedule property and fix the boundaries before the stipulated date, namely 02.04.2007. This clause, however also indicates that the 1st respondent himself was not certain about the extent of the land or the precise identity of the property. In the schedule, the property had been described merely as vacant land. The appellants held only an undivided share in the property, and the extent of the share to which their sister, Selvam Ammal, was entitled was also unclear.

22. It has been the contention of the learned Senior Counsel for the 1st respondent that the appellants had not come forward to measure the land and fix the boundaries, and that for this reason, the 1st respondent did not come forward to pay the balance sale consideration or seek specific performance. This contention, however, only reinforces the fact that the 1st respondent himself entertained doubts regarding the actual area and boundaries of the land.



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23. Order VII Rule 3 C.P.C. is as follows:-

"Order VII

PLAINT

3. Where the subject-matter of the suit is immovable property.-

Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

24. Even assuming that the 1st respondent maintains that the appellants had not raised any issue regarding the identity of the land, if his explanation for not depositing the balance sale consideration is that the appellants failed to measure the property and fix the boundaries, then the only reasonable conclusion is that there was no clear consensus between the parties regarding the actual identity, extent, or boundaries of the land.

25. It is, however, the specific case of the appellants that the land had in fact been measured on 10.03.2007 itself in the presence of the 1st respondent, and this assertion was explicitly made in their written statement. The 1st respondent

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did not file any reply denying this specific contention. The learned Senior Counsel for the appellants further pointed out that during the pendency of the suit, the plaint had to be amended on two different occasions due to the death of three of the four defendants. On one such occasion, the defendants filed an additional written statement. This additional written statement was filed on 25.09.2014, nearly seven and a half years after the institution of the suit, which had been filed on 20.04.2007. In that additional written statement as well, it was reiterated that the 1st respondent had not deposited the balance sale consideration.

26. Despite the filing of this additional written statement, and up to the date of the judgment on 17.01.2018, the 1st respondent did not deposit the balance sale consideration into Court. The learned Senior Counsel for the appellants highlighted this fact with considerable emphasis to demonstrate that the 1st respondent was never ready and willing to perform his part of the agreement.

27. In **N.P.Thirugnanam (Dead) by LRs. vs. Dr.R.Jagan Mohan Rao and others** reported in (1995) 5 SCC 115 : AIR 1996 SC 116, the Hon'ble Supreme Court had held as follows:-



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"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



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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."

28. In the instant case, the agreement provided that if the appellants did not come forward to execute the sale deed, the 1st respondent could deposit the balance sale consideration into Court and seek specific performance. The conduct of the 1st respondent, however, stands exposed by the fact that from the date of the agreement, Ex.A1 dated 03.02.2007, until the date of the decree on 17.01.2018, he did not deposit the balance sale consideration.

29. Even under the agreement, although the total sale consideration was fixed at Rs.49,75,000/-, the 1st respondent had paid only an advance of Rs.4,10,000/-, which constituted merely about 8% of the total sale consideration. This was a negligible portion, and its payment cannot be considered a factor in his favour, particularly when the remaining 92% was not paid even up to the date of decree.

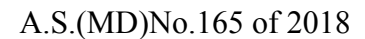


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30. The onus was on the 1st respondent to prove that he was always ready and willing to pay the balance sale consideration. The only document produced to show such readiness was Ex.A12, a series of Income Tax Returns. The documents in Ex.A12 included the Income Tax Return of the 1st respondent for the Assessment Year 2007-2008, wherein he disclosed an income of Rs.6,86,763/-. It also contained the Income Tax Saral of the 1st respondent HUF for the same year, in which an income of Rs.2,02,382/- was declared. Thus, the total income declared for the Assessment Year 2007-2008 was Rs.8,89,145/-. These were the only two documents available to show that the 1st respondent had funds to pay the balance sale consideration.

31. Ex.A12 also contained the Income Tax Returns of Prithviraj Chordia, A.P. Chordia & Sons HUF, Prithviraj Small Chordia, Sajani Kavar, Santhosh Chordia, Ketan Chordia, Dinesh Chordia, Sumitra Chordia, and Dinesh Kumar Chordia HUF. It is not known how these individuals are related to the 1st respondent, and there is no evidence to show that they were willing to contribute their funds towards the balance sale consideration. A perusal of their disclosed incomes shows that they had declared a total income of Rs.31,28,193/-, which is



32. All these documents in Ex.A12, particularly, the Income Tax Returns of strangers to the agreement, are rejected by this Court as documents created to project an impression that the 1st respondent possessed sufficient funds, whereas in fact, for the relevant Assessment Year, he had declared only Rs.6,86,763/- in his individual capacity. The 1st respondent also did not disclose whether he possessed sufficient funds in the subsequent years. It is evident that he did not, since even up to the date of decree on 17.01.2018, he did not deposit the balance sale consideration.

33. It must again be noted that the agreement was entered into on 03.02.2007, and for more than ten years, the balance sale consideration remained unpaid. Significantly, when this aspect was pointed out in the additional written statement filed by the appellants on 25.09.2014, the 1st respondent still did not come forward to deposit the balance sale consideration.



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34. In C.S.Venkatesh vs. A.S.C.Murthy (Dead) by Legal Representatives and others reported in **(2020) 3 SCC 280**, the Hon'ble Supreme Court had held as follows:-

"16. The words "ready and willing" imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. 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 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 which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract."

35. In Pushparani S.Sundaram vs. Pauline Manomani James reported in **(2002) 9 SCC 582**, the Hon'ble Supreme Court had held as follows:-

"5. ... So far these being a plea that they were ready and willing to



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perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved."

36. In Umabai vs. Nilkanth Dhondiba Chavan reported in **(2005) 6 SCC**

243, the Hon'ble Supreme Court had held as follows:-

"30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the respondent-plaintiffs were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the respondent-plaintiffs must be judged having regard to the entirety of the pleadings as also the evidence brought on record."



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37. In the instant case, as repeatedly pointed out, the 1st respondent failed to establish that he was ready with the funds or willing to part with the money required to pay the balance sale consideration. There is absolutely no evidence in this regard. The contention of the 1st respondent that the appellants ought to have measured the boundaries of the property must be rejected, particularly, in view of the specific pleading in the written statement that on 10.03.2007 the appellants had, in the presence of the 1st respondent, measured the property and fixed the boundaries. To this categorical assertion in the written statement, the 1st respondent had not filed any reply denying or disputing the same. It must therefore be construed that he had admitted the fact pleaded by the appellants.

38. The learned Senior Counsel for the 1st respondent contended that the appellants were in the habit of entering into and cancelling sale agreements, and in this connection, relied upon Exs.A13 to A18. However, the appellants, for good measure, produced Ex.B13, a copy of the plaint in O.S.No.38 of 2010 on the file of the District Court, Tirunelveli, to demonstrate the conduct of the 1st respondent himself in entering into agreements, delaying performance for years,



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waiting for the value of the property to appreciate, and thereafter, insisting upon specific performance at the rate agreed upon nearly a decade earlier.

39. It is thus clear that if the 1st respondent had genuinely intended to purchase the property, he ought, at the very least, to have deposited the balance sale consideration into Court either before the filing of the suit, or at the time of filing the suit, or at least during its pendency. He failed to do so. We therefore have no hesitation in holding that the 1st respondent was neither ready nor willing to perform his part of the agreement.

40. In view of the above discussions, we hold that the learned Trial Judge misdirected himself in concluding that the 1st respondent was ready and willing to perform his part of the agreement with respect to payment of the balance sale consideration. We further hold that, since the 1st respondent was not ready and willing to perform his part of the agreement, the finding that the appellants failed to perform their obligations is incorrect, without any basis, and is founded on extraneous considerations rather than on the evidence on record.



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41. The two points framed for consideration are answered accordingly.

42. In the result,

(i) In view of the Memo filed by the 1st appellant stating that he had entered into a compromise with the 1st respondent in respect of his 1/5th undivided share in the suit schedule property, the appeal, insofar as it relates to the 1st appellant, is dismissed with respect to the said 1/5th undivided share.

(ii) The appeal is allowed in favour of the appellants 2 to 15 in respect of the remaining 4/5th undivided share of the suit schedule property, and the decree of the Trial Court stands modified to that extent.

(iii) The suit in O.S.No.20 of 2007 on the file of the I Additional District Court, Tirunelveli, shall stand decreed only with respect to the 1/5th undivided share in the suit schedule property, and shall stand dismissed with respect to the remaining 4/5th undivided share.



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(iv) Appellants 2 to 15 are entitled to the costs of the appeal.

Index : Yes
NCC : Yes
smn2

[C.V.K., J.] & [R.V., J.]
25.11.2025

To

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



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and
R.VIJAYAKUMAR, J.

smn2

PRE-DELIVERY JUDGMENT MADE IN
A.S.(MD)No.165 of 2018

25.11.2025