



SA No. 557 of 2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-02-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

SA No. 557 of 2013

S.Rangaswami
S/o R.Sriraman,
1, Rangi St, Gugai,
Salem.

..Appellant(s)

Vs

U.Paruvaraj
S/o Veeramalai,
Technical Trade Asst,
O/o Divisional Engineer Maintenance
Keeraboyan St,
Four Rds, Salem
Now At Swarnapuri Salem

..Respondent(s)

Prayer: This Second appeal is filed against the judgment and decree passed in A.S.No.14 of 2011 dated 22.11.2011 by the Additional District Judge, Fast Track No.II, Salem, confirming the judgment and decree passed in O.S.No.197 of 2009 dated 30.10.2010 by the Subordinate Judge, Salem.

For Appellant(s):

Mr.P.Jagadeesan

For Respondent

:Not ready in notice



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JUDGMENT

Heard.

2. This Second Appeal is filed against the judgment and decree dated 22.11.2011 in A.S. No. 14 of 2011 before the Additional District Judge (FTC–II), Salem, which confirmed the judgment and decree dated 30.10.2010 in O.S. No. 197 of 2009 before the Principal Subordinate Judge, Salem. In those judgments, the suit for specific performance based on an unregistered sale agreement dated 14.07.2006 was dismissed as to the main relief on the ground that the plaintiff had not proved continuous readiness and willingness. However, the Court granted the alternative relief of refund of the advance amount of Rs.10,000/- with interest.

3. For convenience, the parties are referred to in this appeal according to their positions in the Trial Court.

4. The plaintiff's case is that the defendant agreed to sell the suit property at Rs.75 per sq.ft., executed a sale agreement dated 14.07.2006, and received an advance of Rs.10,000. Under the agreement, the defendant was to



execute the sale deed within three months. The plaintiff further states that after measurement he noticed some deviation and that there was no proper access road, which the defendant promised to rectify. Even so, the plaintiff claims he was willing to buy the property “as is”. Since the defendant allegedly avoided executing the sale deed, the plaintiff issued a legal notice on 03.07.2009 and then filed the suit for specific performance or, alternatively, for refund of the advance amount with interest.

5. The defendant completely denied the agreement. He alleged that the document was forged and fabricated, that there was no intention to sell the property, and that the plaintiff had misused papers signed by him. He also denied receiving any advance amount. On these grounds, the defendant sought dismissal of the suit.

6. The Trial Court framed issues on whether the agreement was genuine, whether the plaintiff was ready and willing to perform his part, and whether he was entitled to relief. On execution of the agreement, the Trial Court accepted Ex.A1 as proved, mainly on the evidence of the attesting witness (P.W.2). His evidence was not shaken in cross-examination, and the Court rejected the plea of forgery.



7. On readiness and willingness, the Trial Court gave a clear factual finding. It noted that Ex.A1 fixed three months for completion, the plaintiff paid only a small advance, and he took no steps at all within the agreed time. The plaintiff then remained silent for nearly three years and issued a notice only on 03.07.2009. The Court also found that the plaintiff's explanation about pathway or deviation was not convincing on the evidence. Based on this conduct, the Court held that the plaintiff had not proved continuous readiness and willingness as required under Section 16(c) of the Specific Relief Act.

8. Therefore, the Court refused the relief of specific performance. However, since the agreement was not found to be forged and repayment was not proved, the Court directed refund of Rs.10,000/- with interest.

9. The First Appellate Court independently reconsidered the entire record and agreed with the Trial Court on all material aspects. It held that readiness and willingness must be shown continuously and cannot be proved by mere statements. It gave importance to the plaintiff's three-year silence after the contractual time expired. It rejected the argument that lack of cross-examination on some points amounted to an admission, and noted that readiness and willingness must be judged from the overall conduct, not from isolated



pleadings. It also reiterated that specific performance is a discretionary remedy and that the Trial Court had exercised its discretion on proper principles. Therefore, the appeal was dismissed.

10. The memorandum of second appeal raises several grounds. In substance, it argues that since Ex.A1 was held to be genuine, the relief of specific performance should have been granted. It also claims that the plaintiff proved readiness and willingness by explaining the delay, and that the absence of proper denial or cross-examination amounts to an admission under Order VIII Rule 5 CPC. It further contends that the courts were wrong in treating the transaction as a security or loan, and that refusing specific performance even after finding the agreement genuine is perverse.

11. Learned counsel for the appellant argued that the plaintiff had properly explained the three-year delay in issuing the pre-suit notice. Counsel also submitted that the written statement did not specifically deny the plaintiff's readiness and willingness to perform the contract. According to counsel, the defendant's main defence was only that the agreement was not genuine. Since the Trial Court held that the agreement was true and valid, counsel contended that the plaintiff should have been granted specific performance.



12. A reading of the Trial Court's judgment shows a clear finding that Ex.A1 fixed three months for completing the sale and that the period ended on 14.10.2006. The Court noted that the plaintiff did not take any steps within that time and remained inactive until he issued Ex.A2 notice on 03.07.2009, nearly three years later, without a satisfactory explanation. Based on these admitted dates and the plaintiff's conduct, the Court held that his claim of being always ready and willing was not believable.

13. The Court also pointed out contradictions in the plaintiff's explanation. In his evidence, he blamed the defendant for not measuring the land and not providing a pathway. But in the plaint, he stated that the land had already been measured in the defendant's presence and only then he noticed a deviation and the absence of a road. The Court further noted that Ex.A1 does not make completion of the sale dependent on the defendant first rectifying these issues. The Court also found that Ex.A2 notice did not show that the plaintiff had taken effective steps to complete the sale. These are clear reasons based on the evidence, and the finding on readiness and willingness cannot be called irrational or perverse.



14. In a suit for specific performance, the plaintiff is bound to plead in the plaint and also prove in evidence that he has always been ready and willing to do his part of the contract, as mandated by Section 16(c) of the Specific Relief Act. This readiness and willingness must continue from the date of the agreement up to the date of the decree. It is not a mere formality; it is a substantiative statutory requirement.

15. In this case, the sale agreement fixed three months for completing the sale. The plaintiff admittedly did not take any effective steps to complete the transaction within that time. Instead, he remained silent for almost three years and issued a legal notice only on 03.07.2009. Such long inaction is not consistent with the conduct of a person who is truly ready and willing to perform his part of the contract.

16. The delay of almost three years has not been properly explained, especially when the agreement required completion within three months. This clearly shows that the plaintiff did not act promptly, as one would expect in such a transaction. Readiness and willingness are proved not only by what is pleaded, but also by the plaintiff's conduct. The plaintiff's long silence and failure to take steps to complete the sale within a reasonable time therefore disqualify him from getting the equitable relief of specific performance.



17. In these circumstances, Order VIII Rule 5 CPC does not help the appellant. Even if some pleadings were not specifically denied, the plaintiff still has to prove readiness and willingness. A lack of specific denial cannot remove the legal requirement of proving continuous readiness and willingness.

18. The courts below, after considering the evidence and the surrounding circumstances, have rightly refused relief to the plaintiff. Since specific performance is a discretionary and equitable remedy, the plaintiff's conduct assumes significance. The findings of the courts below are consistent with settled legal principles and do not show any perversity or illegality that calls for interference.

19. The grounds raised in the second appeal mainly ask for a fresh reappreciation of the facts and do not point out any perversity. No substantial question of law arises for consideration. Therefore, the Second Appeal is dismissed at the admission stage. No costs. Any connected miscellaneous applications, if any, are closed.

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Index: Yes/No
Speaking/Non-speaking order
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To

1. Additional District Judge (FTC–II), Salem,
2. Principal Subordinate Judge, Salem.



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DR.A.D.MARIA CLETE, J.

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