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AS No. 403 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 07-01-2026**

CORAM

**THE HONOURABLE MR JUSTICE N. SATHISH KUMAR  
AND  
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**AS No. 403 of 2022  
and  
CMP No.14388 of 2022**

1. M.Ismail

2. I.Shajadi

Appellant(s)

Vs

K.M.Abdul Rahim Mohideen  
(Represented by General Power of Attorney)  
K.M. Kader Mohideen,  
S/o. Mohammed Sulthan, 5  
residing at No.56/20,  
Amacharkovil St, Villupuram.

Respondent(s)

**PRAYER**

This appeal has been filed under Section 96 r/w. Order XLI Rule 1 & 2 of the CPC to set aside the Judgement and Decree made in OS No.110 of 2017 dated 19.03.2022 on the file of the Principal District Judge, Villupuram.

For Appellant(s): Mr. V. Raghavachari,  
S.C.,  
for Mr.N.Umapathi

For Respondent(s): Mr. Ramaswamy Meyyappan



## **JUDGMENT**

**(Judgment of the Court was made by N.Sathish Kumar J.)**

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Challenging the judgment and decree of the Trial Court decreeing the suit for specific performance, the present appeal has been filed by the unsuccessful defendants.

2. The defendants in O.S.No.110 of 2017, on the file of the Principal District Court, Villupuram, are the appellants herein and the plaintiff in the said suit is the respondent herein.

3. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

### **4. The brief fact of the plaintiff's case is as follows :-**

The case of the plaintiff is that the defendants agreed to sell the suit property for a total sale consideration of Rs.35,00,000/- and executed a sale agreement dated 29.09.2015, receiving a sum of Rs.25,00,000/- as advance. It was agreed between the parties that the sale transaction shall be completed within a period of four months. Though a time limit of four months was



stipulated, time was not the essence of contract. The defendants also undertook to clear the mortgage debts due to Sriram City Union Finance Ltd., out of the advance amount paid by the plaintiff and thereafter, agreed to execute the sale deed in respect of the suit property, free from all encumbrances. The plaintiff was always ready and willing to perform his part of the contract by paying the remaining balance sale consideration of Rs.10,00,000/- to the defendants.

(ii) On 23.01.2016, the plaintiff issued a legal notice expressing his readiness to pay the balance sale consideration. Though the defendants received the said legal notice on 25.01.2016, they neither sent any reply nor complied with the demand. The plaintiff's power of attorney holder also insisted the defendants to clear their debts due to Sriram City Union Finance Ltd., and to execute the sale deed. However, the defendants deliberately delayed the execution of the sale deed. Hence, the suit came to be filed.

5. The defendants, in his written statement, denied the agreement of sale. It is the contention of the defendants that first defendant is running a famous bed mart in Villupuram Town and that the property is a multi-storeyed building. As their creditors insisted on payment of the borrowed amount, the defendants borrowed a sum of Rs.20,00,000/- from the plaintiff. According to the



defendants, the plaintiff insisted upon the execution of a sale agreement as security for the said loan and accordingly, the alleged agreement of sale was executed.

(ii) It is further contended by the defendants that there was no agreement for sale, and that the document was executed only in connection with the loan transaction. Even after issuance of the legal notice, the defendants met the plaintiff and the plaintiff assured them that he would not take any action based on the legal notice. Believing his words, the defendants did not send any reply to the legal notice. Hence, the defendants prayed for dismissal of the suit.

**6. Based on the pleadings, the Trial Court framed the following issues:-**

1. Whether the plaintiff is entitled to get specific performance as prayed for?
2. Whether the sale agreement executed for security for loan as alleged by the defendants ?
3. To what other relief.?



7. On the side of the plaintiff, the Power of Attorney of the plaintiff has been examined as P.W.1, and one Noormohamed, one of the attesting witness in the sale agreement was examined as P.W.2. and four documents were marked a Exz.A1 to A4. On the side of the defendants, the first defendant examined himself as D.W.1 and no documents were marked.

8. The Trial Court, vide judgment and decree dated 19.03.2022, decreed the suit. Challenging the same, the defendants are before this Court with the present appeal.

9. The main contention of Mr. V. Raghavachari, learned Senior Counsel appearing for the appellants/defendants is that the agreement in question is the result of a loan transaction. Even assuming that the agreement was executed as an agreement for sale, the plaintiff has never expressed his readiness and willingness to perform his part of the contract from the very inception. The time stipulated in the agreement to complete the sale was only four months. Though a legal notice was issued on 23.01.2016, the suit came to be filed only after a lapse of 23 months, for which there was absolutely no explanation.

10. It is his further contention that earlier, the suit was decreed exparte, even then the remaining sale consideration has been deposited only on 13.12.2019. That itself clearly establishes the fact that the plaintiff was never



ready and willing to perform his part of contract. It is also contended that the plaintiff himself did not enter the witness box and that only his father/power agent was examined on his behalf.

11. Per contra, the learned counsel appearing for the respondent/plaintiff would submit that Ex.A1 is a registered agreement of sale and, therefore, the defendants cannot take a contrary stand to the terms of the contract in view of Section 92 of the Evidence Act. Though a time limit was stipulated in the agreement, since the defendants failed to clear the mortgage, there was a delay in execution of the sale deed and therefore, time was never intended to be the essence of contract. Mere delay in depositing the balance amount cannot be a ground to deny the relief of specific performance. It is further contended that the plaintiff has already paid a substantial portion of the sale consideration and hence, no interference is warranted.

12. In the light of the submissions made on either side, the following issues arise for consideration :-

- 1) Whether the plaintiff was ready and willing to perform his part of the contract ?
- 2) Whether the plaintiff is entitled to the relief of specific performance or in the alternative, to the relief of refund of the amount paid ?

**13. Point Nos.1 and 2 :-**

WEB COPY The execution of the agreement dated 29.09.2015 (Ex.A1) is not in dispute, and it is a registered document. A perusal of the recitals in Ex.A1 makes it clear that the sale consideration was fixed at Rs.35 lakhs and that a sum of Rs.25 lakhs has been received as advance on the date of the agreement. The parties had agreed that the sale transaction shall be completed within a period of four months.

(ii) It is relevant to note that insofar as the immovable property is concerned, time is generally not the essence of the contract, however, at the same time, when a specific time frame had been agreed between the parties, the same cannot be ignored altogether while assessing the readiness and willingness of the plaintiff. Admittedly, a period of four months was stipulated to complete the sale. It is the specific contention of the plaintiff that out of the advance amount paid, the defendants were required to discharge the mortgage with the Sriram Finance. However, the entire evidence of P.W.1 does not indicate that the plaintiff had been prompt in verifying whether the mortgage has been discharged by the defendants. The plaintiff has never taken any steps even to ascertain whether the discharge of mortgage has been effected or not.



(iii) Though the legal notice marked as ExA.2 has been issued to the defendants on 23.01.2016, the suit came to be filed only on 15.12.2017, after a lapse of 23 months. There is absolutely no explanation whatsoever pleaded in the plaint for such an inordinate delay. Though the defence of the defendants that the transaction was a loan transaction appears to be vague and not proved, and such contention is also contrary to the terms of the written contract, however, same cannot absolve the plaintiff from proving his readiness and willingness, which is the essence of a suit for specific performance.

(iv) It is relevant to note that the readiness and willingness must not only be pleaded, but also proved. Proof of readiness and willingness is mandatory under Section 16 of the Specific Relief Act, and such proof is required even after amendment of pleadings. Unless both the conditions are established by the plaintiff, the relief of specific performance, being an equitable relief, cannot be granted.

(v) Readiness refers to the capacity to mobilise the necessary funds, whereas willingness refers to the mental attitude to complete the transaction. If the plaintiff had genuinely intended to purchase the property as agreed, he would have taken prompt steps, at least to verify whether the mortgage has been discharged or whether the property continued to be encumbered. No such



attempt whatsoever has been made.

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(vi) The suit has been filed after a delay of 23 months, even after refusal by the defendants. This conduct clearly indicates that the plaintiff was lethargic and not diligent in prosecuting the suit seeking an equitable relief. In the absence of continuous readiness and willingness from the date of agreement till the culmination of the transaction, the equitable relief of specific performance cannot be granted by the Court.

(vii) It is further to be noted that on an earlier occasion, the suit has been decreed *ex parte* on 19.12.2018. Even then, the remaining sale consideration has not been deposited within a reasonable time and was deposited only on 13.12.2019 before the Trial Court. This itself clearly indicates that the plaintiff was not ready and willing to purchase the property.

(viii) It is also relevant to note that after entering into the agreement, the plaintiff left the country and appointed his father as his power agent to pursue the matter. Ex.A4 Power of attorney clearly indicates that the power has been given only to follow up the agreement and that even power to cancel the agreement had been conferred. This itself clearly shows that even though an agreement existed, the plaintiff never intended to complete the sale.



(ix) If the plaintiff has truly intended to purchase the property and the agreement was genuinely meant to be acted upon, there was absolutely no reason for such prolonged inaction on his part. A clause has been included in the power of attorney even empowering the agent to cancel the agreement. Further it is also relevant to note that the agreement of sale has been entered into between the plaintiff and the defendants. The power of attorney deed clearly shows that the power agent of the plaintiff was not present throughout the transaction nor was he fully acquainted with all the facts of the case. Whereas, the terms of the power deed indicate that the authority was granted only to continue the process of registration. The Power deed is totally silent as to whether P.W.1 was aware of the contract at the relevant point of time.

(x) Therefore, when the plaintiff himself did not step into the witness box and only his power agent has been examined, whose knowledge of the transaction is admittedly limited, such evidence cannot substitute the primary evidence of the plaintiff. This is yet another reason for this Court to hold that the plaintiff is not entitled to the relief of specific performance. It is also to be noted that the Trial Court did not frame any specific issue with regard to readiness and willingness and has, in fact, swayed away the defence of the defendants by holding that such defence is contrary to the written contract.



(xi) Considering the aforesaid aspects, we are of the view that the plaintiff has certainly failed to establish his readiness and willingness to conclude the contract. Though an advance amount of Rs.25 lakhs has been paid, the fact remains that a specific time was stipulated in the agreement and the plaintiff himself has pleaded that time is not the essence of the contract. The continued silence of the plaintiff, without making any enquiry whatsoever to ascertain whether the mortgage has been discharged or whether the property continued to be encumbered, clearly indicates that beyond the agreement, there existed some other arrangement between the parties.

(xii) In such view of the matter when the plaintiff has not demonstrated continuous readiness and willingness from the very inception of the agreement, which is a mandatory and continuing requirement, he is certainly not entitled to the relief of specific performance. It is further relevant to note that the plaintiff is presently residing in abroad, and the property sought to be acquired is admittedly only a residential house of the defendants. Though hardship is not specifically pleaded, it can reasonably be inferred in the facts and circumstances of the case, especially when the plaintiff is residing outside the country.

(xiii) Considering the equitable nature of the relief, and also taking into account that the plaintiff has already paid an advance amount, this Court is of



the view that refund of the advance amount with interest at the rate of 12% per annum from the date of agreement till the date of payment would meet the ends of justice, apart from awarding cost of litigation quantified at Rs.1,50,000/- towards court fees and other incidental expenses and the point Nos.1 and 2 are answered accordingly.

14. Accordingly, this Appeal Suit is allowed and

(i) The judgment and decree of the Trial Court granting the relief of specific performance are set aside.

(ii) In the alternative, the suit is decreed for refund of the advance amount of Rs.25,00,000/- with interest at the rate of 12% per annum from the date of agreement till the date of payment, along with a further sum of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) towards Court expenses including court fees.

(iii) The said amount shall be paid by the appellants/defendants within a period of four months from the date of receipt of a copy of this judgment.

(iv) It is made clear that till the said amount is paid by the appellants, the same shall be treated as a charge over the suit property towards the amount payable.

(v) In the event of failure on the part of the appellants/defendants to pay the said amount within the stipulated time, the respondent/plaintiff shall be at



liberty to enforce the charge in accordance with law.

(vi) The appellants/defendants are entitled to refund of the sum of Rs.10,00,000/-(Rupees Ten Lakhs only) , already deposited before the Trial Court.

(vii) The Trial Court shall refund the said amount forthwith, together with accrued interest, if any, on an application being filed by the appellants/defendants in this regard.

(viii) Considering the nature of the case, no order as to costs. Consequently connected miscellaneous petition is closed.

**(N.SATHISH KUMAR J.) (R.SAKTHIVEL J.)**  
**07-01-2026**

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes

mrp

To

The Principal District Court,  
Villupuram.



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AND  
R.SAKTHIVEL J.**

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