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A.S.No.636 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2025
PRONOUNCED ON : 02.01.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No.636 of 2019

Kesavaraman
S/o.Ramaiya
No.23, Second Cross Street,
Kuriunji Nagar,
Pondicherry 605 008.

... Appellant

Vs.

Narayanan (died)
1. Patchaiammal
W/o.Narayanan
2. Subramani
S/o.Narayanan
3. Govindaraj
S/o.Narayanan
4. Santhi
D/o.Narayanan
5. Devika
D/o.Narayanan
6. Venniammal
D/o.Narayanan
Respondents 1 to 6 are residing at
No.11, Pavendar Street,
Pethuchettipet,
Lawspet,
Puducherry 605 008.

... Respondents

PRAYER in A.S.: Appeal Suit filed under Section 96 of CPC to set aside the decree and judgment dated 29.03.2019 in O.S.No.73 of 2007 on the file of
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the Principal District Judge, Puducherry.

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For Appellant : Mr.R.Rajarajan

For Respondents : M/s.V.Srimathi

J U D G M E N T

This appeal is directed against the judgment and decree dated 29.03.2019 passed by the learned Principal District Judge, Puducherry, in O.S. No. 73 of 2007.

2. The plaintiff instituted the suit for specific performance of the contract of sale dated 18.08.2004. The trial Court declined to grant the relief. Aggrieved thereby, the plaintiff has preferred the present appeal. For convenience, the parties are referred to according to their rank before the trial Court.

3. Brief facts of the plaintiff's case: The first defendant (since deceased) was the owner of the suit property. On 18.08.2004, the plaintiff entered into a registered agreement of sale with the first defendant, in which the re-survey number and extent were described as 110/3 and 2240 sq. ft. respectively. On the same date, the earlier agreement of sale dated 19.11.2001 executed by the first defendant in favour of one S. Ravi was



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plaintiff requested the defendant to rectify the said defect. Although the defendant allegedly promised to do so, he neither rectified the error nor came forward to execute the sale deed upon receipt of the balance sale consideration. Consequently, the plaintiff issued a legal notice dated 10.07.2007 calling upon the defendant to rectify the re-survey number and execute the sale deed. In reply, according to the plaintiff, false allegations were made. The plaintiff claims that he was at all times ready and willing to perform his part of the contract and that, owing to the defendant's failure to comply, the suit came to be instituted.

6. Brief facts of the defendants' case: The defendants contend that from the date of the agreement the plaintiff never evinced any intention to complete the sale by paying the balance sale consideration and, consequently, forfeited not only his right to seek specific performance but also the advance amount. They assert that the re-survey number mentioned in the agreement is correct and is duly reflected in the encumbrance certificate, and that the plea of an incorrect survey number was raised only to create confusion. According to the defendants, the plaintiff has miserably failed to perform his part of the contract and is therefore not entitled to the equitable relief of specific performance.



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7. The trial Court, upon consideration of the issues and evidence, declined the relief of specific performance and, suo motu, granted refund of the advance amount, despite there being no such relief sought in the plaint.

8. Aggrieved thereby, the plaintiff has preferred the present appeal, contending in the grounds that the trial Court erred in dismissing the suit merely on the ground that the building standing on the property was not mentioned in the agreement. It is further urged that, when both parties were ad idem that the house was also included in the sale, the Court ought to have granted the relief. The plaintiff also contends that, once the suit was within the period of limitation, dismissal was unjustified. It is further asserted that the trial Court failed to properly consider the dispute relating to identification of the property and erroneously dismissed the suit.

9. Learned counsel for the appellant contended that under Ex.A1 agreement dated 18.08.2004, the total sale consideration was fixed at Rs.5,30,000/-, of which Rs.2,00,000/- was paid as advance, and the balance was always available with the plaintiff. It was argued that the trial Court itself found the agreement to be valid and the suit to be within limitation, and that there was no pleading by the defendants disputing the



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plaintiff's financial capacity. According to the appellant, his obligation to tender the balance consideration would arise only after the vendor discharged his obligation to satisfy title and furnish correct particulars. Reliance was placed on the legal notice and reply, the Advocate Commissioner's report, and the deposition of DW1 to contend that despite discrepancies in survey numbers, the boundaries were clear and there was consensus ad idem regarding the identity of the property, including the building. It was submitted that omission to mention the building was not pleaded by the defendants as destroying consensus, nor put to the plaintiff in evidence, and therefore could not be used against him. The plaintiff's silence was explained as attributable to the defendants' failure to furnish correct particulars and original documents, and it was argued that the trial Court failed to properly appreciate the conduct of the defendants, their pleadings, and the alleged repudiation, all of which, according to the appellant, entitled him to the relief of specific performance. In the alternative, reliance was placed on paragraph 18 of *Nagarathinam v. S. Jaya* to submit that omission regarding the building would not defeat the suit.

10. Per contra, learned counsel for the respondents submitted that the agreement dated 18.08.2004 clearly stipulated a period of three
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months for completion, and the plaintiff, having inspected the property and agreed to the terms, failed to pay the balance consideration within the stipulated time. It was argued that the plaintiff remained completely inactive for nearly three years and issued the first legal notice only on 10.07.2007, long after the contractual period, thereby demonstrating lack of readiness and willingness. The plaintiff had sufficient opportunity within the agreed three months to measure the property and verify particulars, and the plea of wrong re-survey number was raised belatedly only to explain the delay. It was further contended that though the agreement was entered into by the father, it was the son who entered the witness box, and that the trial Court had correctly analysed the issue of readiness and willingness based on conduct. According to the respondents, even assuming discrepancies in survey numbers, boundaries would prevail, and there was consensus ad idem at the inception, which the plaintiff himself failed to act upon in time. Reliance was placed on precedents including *K.S.Vidhyanadam and others VS. Vairavan* to submit that long, unexplained delay and inaction disentitle a party from specific performance, and that issuance of notice nearly three years later clearly showed that the plaintiff had “missed the bus”.

11. Upon consideration of the pleadings and the grounds of appeal,

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the following points arise for determination:

i. Whether the plaintiff was ready and willing to perform his part of the contract?

ii. Whether the plaintiff is entitled to the relief of specific performance?

iii. Whether the trial Court was right in granting refund of advance amount, when there was no such prayer in the plaint?

Points No. (i) & (ii)

12. The execution of the agreement of sale dated 18.08.2004, payment of the advance amount, and the ownership of the suit property are admitted facts. The period stipulated for completion of the sale was three months. According to the plaintiff, the defendant delayed in handing over the parent title deeds. Though the agreement is silent regarding production of title deeds, it is contended that it is natural that the vendor should furnish the parent title documents to establish and satisfy title.

13. However, the plaintiff himself states that the parent documents were handed over only in June 2006, nearly 22 months after execution of the agreement. The alleged delay is denied by the defendants.



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Significantly, there is no material on record to show any earlier demand by the plaintiff for production of the parent documents. No prudent purchaser, genuinely desirous of completing the transaction, would remain silent for nearly two years without insisting upon the parent title deeds.

14. The plaintiff next contends that upon receipt of the parent documents he noticed an error in the re-survey number and requested the defendant to rectify the same. However, there is no evidence of any such request. The plea of an incorrect re-survey number was raised for the first time only in the legal notice dated 10.07.2007. Thereafter, the plaintiff again remained silent and instituted the suit only close to the expiry of the period of limitation.

15. These facts clearly demonstrate that the plaintiff was negligent, inactive, and lacked continuous readiness and willingness to perform the contract within the agreed period.

16. The suit property admittedly contains a building. The agreement, however, refers only to land measuring 2240 sq. ft. comprised in re-survey No.110/3. The Advocate Commissioner's report reveals that



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the property actually lies in two survey numbers, namely 1959 sq. ft. in re-survey No.110/10B/1 pt and 517 sq. ft. in re-survey No.110/10A pt , aggregating to 2476 sq. ft. Notwithstanding this, the plaint schedule claims only 2240 sq. ft. These circumstances indicate that the plea of an incorrect re-survey number was raised merely to explain the delay, and not on account of any genuine mistake.

17. It is a settled principle that a plaintiff seeking specific performance must establish continuous readiness and willingness not merely at the time of institution of the suit but throughout the relevant period. Mere institution of the suit within the period of limitation is insufficient. The unexplained and inordinate delay between Ex.A1 agreement and Ex.A4 legal notice clearly militates against the plea of readiness and willingness.

18. The appellant placed reliance on the decisions reported in (1) **Coromandel Indag Products Pvt. Ltd. v. Garuda Chit and Trading Co. Pvt. Ltd., (2011) 8 SCC 601, (2) Zarina Siddiqui v. A. Ramalingam, (2015) 1 SCC 705, and (3) Nagarathinam v. S. Jaya, A.S. No. 400 of 2007 (Madras High Court, order dated 20.12.2016).**

Upon careful analysis, this Court finds that none of these authorities

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advance the appellant's case, as the factual matrix and legal foundation underlying those decisions are materially distinguishable from the case on hand.

(i) Coromandel Indag Products Pvt. Ltd.

This decision arose in the context of a commercial transaction and examined the exercise of discretionary jurisdiction under Section 20 of the Specific Relief Act. The Supreme Court held that the purchaser, by raising unwarranted demands beyond the contractual terms, had failed to establish continuous readiness and willingness, and was therefore not entitled to the equitable relief of specific performance. In the present case, the plaintiff has likewise failed to demonstrate uninterrupted readiness and willingness, having remained silent for nearly two years without demanding the parent documents or taking steps to complete the sale. The ratio of the said decision, far from assisting the plaintiff, does not advance his case.

(ii) Zarina Siddiqui v. Ramalingam

While the Supreme Court reiterated that time is ordinarily not of the essence in contracts relating to immovable property, it simultaneously

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emphasised that, even in the absence of a time-essence clause, the plaintiff must establish genuine, prompt, and continuous readiness and willingness. In the present case, the plaintiff's conduct—marked by unexplained silence, a belated legal notice, and absence of any effort to perform within the stipulated period—falls foul of the requirement underscored in the said judgment. The reliance placed on this decision is, therefore, misconceived.

(iii) Nagarathinam v. S. Jaya

The appellant placed reliance on paragraph 18 of the said decision to contend that omission to mention the building in the sale agreement would not defeat a claim for specific performance. The contention is untenable. In that case, the omission was held to be immaterial only because the identity of the property was clearly established, the extent and boundaries were undisputed, and the plaintiff had continuously demonstrated readiness and willingness. In the present case, the factual matrix is materially different, rendering the said decision inapplicable.

19. In the present case, the agreement describes the suit property only as land measuring 2240 sq. ft. in re-survey No.110/3, without any reference to the building, whereas the Advocate Commissioner's report

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discloses two distinct re-survey numbers and two different extents aggregating 2476 sq. ft. Significantly, the plaintiff has omitted the second re-survey number altogether in the plaint schedule, demonstrating that the dispute is not a mere omission regarding the building but goes to the very identity and description of the property. Unlike the plaintiff in *Nagarathinam*, the present plaintiff has not produced any material to show that the building was intended to form part of the bargain or that the boundaries and identity of the property were never in dispute. In any event, such omission cannot cure the fatal infirmities of inordinate and unexplained delay and absence of continuous readiness and willingness. Consequently, the principle extracted from paragraph 18 of *Nagarathinam* has no application to the case on hand.

20. On the defendants' side, reliance was placed on the judgment of the Supreme Court in **K.S. Vidyanadam & Others v. Vairavan, AIR 1997 SC 1751**. The Supreme Court held that where there is abnormal delay, escalation in value, and lack of diligence on the part of the plaintiff, the relief of specific performance may be refused. In the present case, the unexplained delay between Ex.A1 agreement and Ex.A4 notice, coupled with the absence of any contemporaneous act evidencing readiness and willingness, supports the refusal of the relief.

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21. In the circumstances, Point No.(i) is answered against the plaintiff. Consequently, the plaintiff is not entitled to the relief of specific performance, and Point No.(ii) is also answered against him.

Point No(iii)

22. In the reply notice, Ex.A5, the defendant stated that, owing to failure to complete the transaction within the agreed time, the advance amount stood forfeited. The same plea was reiterated in the written statement. In the absence of any forfeiture clause in the agreement, the defendant is not entitled to forfeit the entire advance amount. Under Section 74 of the Contract Act, the defendant can claim only such compensation as represents actual loss or damage suffered.

23. The trial Court granted refund of the advance amount *suo motu*. Such an exercise is not in conformity with law. Section 22(2) of the Specific Relief Act expressly bars the grant of refund of earnest money unless such relief is specifically claimed. Though the proviso enables the Court to permit amendment of the plaint at any stage, the use of the expression “shall” makes it mandatory that refund can be granted only

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when it is sought and, if not so claimed, only after amendment. The trial Court, contrary to the statutory mandate, granted the relief in the absence of any such claim.

24. The Hon'ble Supreme Court, in Civil Appeal No. 5822 of 2025 (arising out of SLP No. 5630 of 2023), by order dated 02.05.2025 in **K.R. Suresh v. R. Poornima and others**, after surveying several precedents, held as follows:

61. Applying these principles to the facts of the case at hand, we find ourselves unable to accept the submissions of the appellant that, in the absence of a specific prayer for the refund of advance money paid by them, Prayer (c) of the plaint which specifies the grant of “such other relief(s) as the Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice”, can be construed to include a prayer for such an alternative relief.

62. The reasoning set forth in the case of Manickam (supra) as regards the relief of possession under Section 22(1)(a) of the 1963 Act, can be appropriately imported in the present case to say that the relief of refund of earnest money under



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Section 2 2(1)(b) is not a relief that automatically flows from a decree for specific performance of a sale agreement and must, therefore, be explicitly sought.

63. In our considered opinion, the law contained under Section 22(2) of the 1963 Act is adequately broad and flexible to allow the appellant to seek an amendment of the plaint for the said relief, even at the appellate stage. However, no such application for an amendment of the plaint was moved either before the trial court or during the course of the first appeal before the High Court. That is to say, the appellant never prayed for the refund of the advance money. Here, it would be redundant to state that the law aids the vigilant, not those who sleep over their rights.

25. The Apex Court has made it clear that refund of earnest or advance money cannot be granted unless it is specifically prayed for, and that a general prayer for “other reliefs” cannot be construed as a prayer for refund. The appropriate course is to seek amendment of the plaint, which is permissible even at the appellate stage; however, the plaintiff has never sought such amendment. In light of the binding precedent of the 16/18



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Supreme Court, the plaintiff is not entitled to refund of the advance amount. Accordingly, Point No.(iii) is answered.

26. For the foregoing reasons, the finding of the trial Court refusing the relief of specific performance is affirmed. However, the direction granting refund of the advance amount is set aside, notwithstanding the absence of any cross-appeal by the defendants, by invoking the power under Order XLI Rule 33 CPC and in conformity with the binding precedent of the Supreme Court.

27. In the result, the appeal fails and is dismissed with costs. Consequently, in view of this judgment, O.S. No. 73 of 2007 on the file of the Principal District Judge, Puducherry stands dismissed in toto.

02.01.2026

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation: Yes / No



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DR. A.D. MARIA CLETE, J

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To

1. The Principal District Judge,
Puducherry

PRE-DELIVERY JUDGMENT MADE IN
A.S. No. 636 of 2019

02.01.2026