



SA (MD)No.96 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.03.2026
Pronounced on : 23.03.2026

CORAM:

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

SA (MD)No.96 of 2007

T.Subramanian .. Appellant/Defendant

Vs.

1.N.K.Rajan (died) .. Respondent/Plaintiff

2.R.Maragatha Valli

3.R.Divya

4.R.Deepauk

5.K.Kamala .. Respondents

(R2 to R4 were brought on record as LR's of the sole respondent vide order dated 19.07.2023 in MP No.1 of 2014)

(R5 was brought on record as LR of the deceased respondent vide order dated 09.06.2025 in CMP NO.14505/2023)



SA (MD)No.96 of 2007

WEB COPY Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 10.04.2006 in AS No.29/2005 on the file of the Principal District Judge, Madurai, reversing the judgment and decree dated 02.11.2004 passed in OS No.298/1996 on the file of the I Additional Subordinate Judge, Madurai.

For Appellant : Mr.E.T.Rajendran
For Respondents : Mr.S.Parthasarathy for R2 to R4

JUDGMENT

The defendant is the appellant in the second appeal.

2. The second appeal has been filed against the judgment and decree passed by the learned Principal District Judge, Madurai in AS NO.29/2005 dated 10.04.2006 reversing the judgment and decree dated 02.11.2004 made in OS No.298/1996 on the file of the I Additional Sub Court, Madurai.

3. The respondent/plaintiff filed the suit on the ground that he entered into an agreement of sale dated 16.02.1993 with the appellant wherein the appellant agreed to sell the suit property for a total consideration of Rs.2



SA (MD)No.96 of 2007

WEB.COM

lakhs and that on the date of the agreement, a sum of Rs.1 lakh was paid as advance in cash and a further sum of Rs.90,000/- was also paid on various dates. Thus, only a balance sum of Rs.10,000/- was payable and the respondent was requesting the appellant to receive the balance consideration and to execute the sale deed and since the appellant was not coming forward to execute the sale deed, the respondent filed the suit seeking for the relief of specific performance.

4. The appellant as the defendant filed a written statement stating that the respondent did not pay the advance amount of Rs.1 lakh/- and what was paid was only a sum of Rs.90,000/- towards advance. Apart from that there was an order of attachment against the property under mortgage deed and therefore, the property could not have been sold in favour of the respondent till the attachment was raised and the respondent was expected to discharge the debt and in the absence of the same, the respondent is not entitled for the relief of specific performance. Accordingly, the appellant sought for dismissal of the suit.



SA (MD)No.96 of 2007

WEB COPY

5. The trial Court, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that no sale consideration passed on and therefore, the agreement itself is inoperative and that the agreement was of the year 1993, whereas, the suit was filed only in the year 1996 and there was no readiness and willingness on the part of the respondent and hence, the suit was dismissed by judgment and decree dated 02.11.2004. Aggrieved by the same, the respondent/plaintiff filed the appeal before the Principal District Court, Madurai in AS No.29/2005 and the appellate Court reversed the judgment and decree of the trial Court by judgment and decree dated 10.04.2006. Aggrieved by the same, the present second appeal has been filed before this court.

6. When the second appeal was admitted, this Court framed the following substantial questions of law :

“(1) Whether the decree and judgment of the lower appellate Court is liable to be set aside as Ex.A1, the alleged sale agreement is void, in the light of the findings of the trial Court that Ex.A1 is without passing of consideration? and

(2) Whether the decree and judgment of the lower



SA (MD)No.96 of 2007

WEB COPY

appellate Court is liable to be set aside in the absence of conveying the readiness and willingness on the part of the plaintiff to the defendant to pay the balance amount as mentioned in Ex.A1 and get the sale deed executed and registered within the stipulated time mentioned in Ex.A1?”

7. This Court considered the submissions made on either side and the materials available on record and also carefully went through the judgment passed by both the courts below.

8. The first question of law pertains to the passing of the consideration. Ex.A1, which is the sale agreement, assumes lot of significance. A careful reading of the agreement shows that as on the date of entering into an agreement, a sum of Rs.1 lakh/- was paid as advance in cash. The trial Court disregarded this specific clause in the agreement based on the evidence of PW2, who stated that the sum of Rs.1 lakh/- was not paid to the defendant. Therefore, the trial Court held that the agreement is not supported by consideration.



SA (MD)No.96 of 2007

WEB COPY

9. The appellate Court, while dealing with this issue, apart from taking note of the specific clause in the agreement of sale, also took into consideration Ex.A5, which is the plaint filed by the appellant in another suit in OS No.1576/1993, wherein, the appellant has acknowledged the fact that he has received a sum of Rs.1,90,000/- as advance. In the light of this specific admission made by the appellant in the plaint, the appellate Court came to the correct conclusion that a sum of Rs.1,90,000/- was paid by the respondent to the appellant and what remained to be paid was only the balance sum of Rs.10,000/- and therefore, the agreement is supported by valid consideration. The appellate Court disregarded the evidence of PW2 on the ground that PW2 was an interested witness, who is the friend of the appellant and his evidence cannot outweigh the specific clause in the sale agreement and the admission made by the appellant, while filing a suit in OS No.1576/1993. In view of the same, this Court does not find any illegality in the finding rendered by the lower appellate Court. Accordingly, the first substantial question of law is answered against the appellant.

10. The second issue pertains to readiness and willingness on the part



SA (MD)No.96 of 2007

of the respondent/plaintiff. The trial Court rendered a finding that the agreement was of the year 1993 and the suit was filed only in the year 1996 and the time was the essence of the contract and therefore the respondent/plaintiff did not show any readiness and willingness to pay the balance consideration of Rs.10,000/- and get the sale deed executed in his favour.

11. The lower appellate Court rendered a finding to the effect that only a balance sum of Rs.10,000/- was payable by the respondent and when the suit was filed, this amount was also deposited in the Court and the suit has been filed well within the period of limitation and therefore, the respondent was ready and willing to perform his part of the contract.

12. It is not in dispute that the respondent/plaintiff was originally a tenant in the property and he wanted to purchase the property, which resulted in entering into an agreement of sale, while he continued in possession. Out of the total sale consideration of Rs.2 lakhs, a sum of Rs. 1,90,000/- had been paid and only the balance amount of Rs.10,000/- had to



SA (MD)No.96 of 2007

WEB COPY

be paid. The specific case of the plaintiff is that he was ready and willing to pay this balance amount and the appellant was not coming forward to execute the sale deed. At this juncture, the stand taken by the appellant in the written statement assumes significance. He has stated that the defendant was not in a position to execute the sale deed since the property was already attached in another suit and the attachment was also made absolute and till the debt is discharged by the defendant, the sale of the property cannot be made in favour of the plaintiff.

13. It is also relevant to take note of Ex.A5, which is the suit filed by the appellant for bare injunction against one Karunakaran and the plaintiff in the present case. In the plaint, the appellant has stated that he is obliged to execute the sale deed within three years from the date of sale agreement and he was not able to execute the sale deed since the property had already been attached in another suit in OS NO.1365/1992. One of the relief that has been sought for in the suit is to restrain the respondent/plaintiff from in any manner compelling the appellant to execute the sale deed. Thus, the appellant/defendant was very clear in his stand that he was not in a position



SA (MD)No.96 of 2007

WEB COPY

to execute the sale deed in view of the attachment order passed against the property and the appellant/defendant himself had filed a suit to restrain the plaintiff from insisting for the execution of the sale deed. This suit was withdrawn by the appellant somewhere in the year 1994.

14. It is true that readiness and willingness is a *sine qua non* for decreeing the suit for specific performance. In the case in hand, the plaintiff was in possession of the property and out of the total sum of Rs.2 lakhs, Rs.1,90,000/- had already been paid and the plaintiff was willing to pay the balance amount of Rs.10,000/- but the appellant/defendant took a stand that he is not in a position to execute the sale deed due to an order of attachment passed in a different suit. The pleadings of the appellant/defendant in OS No.1576/1993 (Ex.A5) clearly brings out the fact that even after receiving a sum of Rs.10,000/-, the appellant will not in a position to execute the sale deed. This is the stand that was taken by the appellant consistently. In a case of this nature, there is no question of denying the relief of specific performance on the ground of readiness and willingness. Readiness generally relates to the financial position of the purchaser and willingness



SA (MD)No.96 of 2007

WEB.COM

relates to the frame of mind of the purchaser. Insofar as his readiness is concerned, the financial position of the plaintiff was not in question since out of Rs.2 lakhs, a sum of Rs.1,90,000/- had already been paid and the balance amount of Rs.10,000/- had also been deposited before the trial Court on the date of filing of the suit. Insofar as the willingness is concerned, the plaintiff was already in possession of the property in his capacity as a tenant and having paid almost the entire consideration except a sum of Rs.10,000/-, the willingness on the part of the plaintiff is not found wanting. Useful reference can be made to the judgment in ***Nagarajan v. Selvi @ Sellammal (died) and others*** reported in ***2024 (2) MLJ 709*** and the relevant portions are extracted hereunder:

“29. “Readiness and willingness” is not defined under the statute viz., Specific Relief Act. However, law is now well settled on this aspect of “readiness and willingness”. The plaintiff, who approaches the Court, seeking specific performance, should show that he has always been ready and willing to perform his part of the contract i.e., unfulfilled obligations under the agreement of sale, at all relevant points of time, In this case, admittedly, according to the plaintiff, nothing further needs to be done on his part. He has not only paid the entire sale consideration, but he has also been put in possession of the suit property. Thus, the onus is only on the defendants to execute and register the sale deed in favour of the



SA (MD)No.96 of 2007

WEB COPY

plaintiff. Therefore, viewed from this angle, the mandate of Section 16(c) of Specific Relief Act, 1963 may not strictly apply to the plaintiff.

30. In fact, I have already discussed in detail that the extension agreement is true and the suit has been filed in time and further, the plea raised by the defendants that the plaintiff forcibly took possession cannot be true and in all probabilities, the plaintiff was put in possession only by the original vendor, M.Loganathan. The admissions of D.W.1/the third defendant also does not advance the cause of the defence set up in the pre- suit notice and also continued into the written statement before the trial Court. Thus, it is not a case, where the delay of 13 years can be put against the plaintiff to deny the relief of specific performance.

31. Learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of Munishamappa vs M.Rama Reddy and Others reported in 2023 6 MLJ 553, where, the Hon'ble Supreme Court has held that when the owners have received the full consideration and have also transferred possession of the property in question, to the plaintiff, then, the other defences would not be available to them and that even the issue of readiness and willingness, on the part of the appellant, would not be relevant. This is the position because under section the Specific Relief Act, 1963, "readiness and willingness" is limited the unfulfilled obligations cast upon the plaintiff under the agreement of sale. Here, under Ex.A.2, the entire balance sale consideration has been paid and the plaintiff has been put in possession of the suit property. The admission of the third defendant, in cross



SA (MD)No.96 of 2007

WEB COPY

examination, would virtually tilt the balance of the case in favour of the plaintiff.

32. In *John Thomas and Ors vs Joseph Thomas and Ors* reported in 2000 SCC Online Ker 96, the Division Bench of the Kerala High Court followed the ratio laid down in *Erlanger vs Sombrero Phosphate Co* (1878) 3 App. Cas. 1218 that where the delay in payment has been acquiesced by the vendor of immovable property and no notice terminating the contract has been given, the court will decree specific performance, notwithstanding a stipulation to the effect that time is the essence of the contract, as long as the circumstances are in a manner or such as to excuse the failure of the plaintiff to complete the transaction. In *Erlanger's* case, 'delay' was discussed by the Hon'ble Court and it was held that the delay has two aspects and the acquiescence is also a factor that has to be considered by the Court. Though the learned counsel for the respondents Mr.S.Chandrasekaran, would submit that the plaintiff had admitted inability to pay the balance sale consideration, while entering into Ex.A.2 supplementary agreement and therefore, 'readiness and willingness' on the part of the plaintiff has to be negated, however, applying the ratio laid down by the Hon'ble Division Bench of Kerala High Court, mere fact that the deceased M.Loganathan entered into a supplementary agreement, extending time for payment after receiving the entire balance sale consideration, would clearly amount to acquiescence on his part. In fact, I find that there is no delay on the part of the plaintiff in payment of the balance consideration also, for the simple reason that under Ex.A.1 agreement, one year time was fixed, which ended only on 03.12.1998. However, as early as on 10.11.1998, the balance sale



SA (MD)No.96 of 2007

WEB COPY

consideration of Rs.50,000/- has been paid and the plaintiff was also put in physical possession of his property, which is evidenced from the terms of the supplementary agreement. Thus, even in the present case, there is absolutely no delay on the part of the plaintiff and even otherwise, by extending time by executing Ex.A.2 supplementary agreement, time has been extended sine-die and in such circumstances, I am unable to countenance the argument of the learned counsel for the respondents that the conduct of the plaintiff should be viewed from Ex.A.2 covenants.

33. The learned counsel for the appellant, Mr.Sharath Chandran would also place reliance on the decision of this Court in Chokkammal and 3 others vs K.Balaj reported in 2008 5 CTC 690, where, this Court falling back on Section 10 of the Specific Relief Act, dealing with entry into possession of the property, when claimed to be unlawful and whether the relief of Specific Performance could be denied, held, when the entire sale consideration had also been paid, it was not possible to attribute grave misconduct on the part of the plaintiff to deny him the relief of specific performance and in fact, further held that it would be inequitable to deny the relief of specific performance in view of Section 10 of Specific Relief Act.

34. The facts of the present case are almost identical to the facts of the case before this Court in Chokkammal's case. Further, in the present case, as I have already discussed, though the defendants have claimed that the forcibly entered into the property even as early as on 11.05.2011, their reply notice in Ex.A.5, the defendants have chosen to remain in deep slumber and took absolutely no step whatsoever towards



SA (MD)No.96 of 2007

WEB COPY

recovering the property that has been forcibly occupied by the plaintiff. Therefore, the ratio laid down by this Court in Chokkammal's case would squarely apply to the facts of the present case.

35. Learned counsel for the appellant, Mr.Sharath Chandran would also place reliance on the decision of the Hon'ble Supreme Court in the case of K.Prakash vs B.R.Sampath Kumar reported in (2015) 1 SCC 597, where the Hon'ble Supreme Court held that escalation and value of the property is not a ground to deny the relief of specific performance.

36. Per contra, Mr.S.Chandrasekaran, learned counsel for the respondents would place reliance on the decision of the Hon'ble Supreme Court in the case of Nazir Mohamed vs J. Kamala and Others reported (2020) 19 SCC 57 and in the case of Desh Raj and Others vs Rohtash Singh reported in (2023) 3 SCC 714, seeking to dismiss the Second Appeal, warranting no interference in the concurrent findings.

37. In Nazir Mohammed's case, [(2020) 19 SCC 57], the Hon'ble Supreme Court, in fact, summarised the principles regarding interference by the High Court under Section 100 of Code of Civil Procedure and held that though the general rule is that the High Court would not interfere with concurrent findings, however, the said Rule is not an absolute Rule. The exceptions that have been set out by the Hon'ble Supreme Court are (i) where the courts below have ignored material evidence or acted on no evidence (ii) the courts had drawn wrong



SA (MD)No.96 of 2007

WEB COPY

inferences from proved facts by applying law erroneously; and (iii) courts have wrongly cast the burden of proof.”

15. In the light of the above discussions, this Court finds that the issue of readiness and willingness becomes insignificant in the light of the fact that the plaintiff continued to be in possession of the property, the plaintiff had paid the sum of Rs.1,90,000/- out of the total sale consideration of Rs.2 lakhs, the defendant was expressing his inability to execute the sale deed due to an order of attachment of the property and the balance sum of Rs.10,000/- was also deposited at the time of filing the suit. Therefore, the relief sought for by the plaintiff cannot be negated on the issue of readiness and willingness. The second substantial question of law is answered accordingly.

16. In the light of answering the substantial questions of law framed by this Court, this Court does not find any ground to interfere with the judgment and decree passed by the Principal District Judge, Madurai, in AS No.29 of 2005 dated 10.04.2006.



SA (MD)No.96 of 2007

WEB COPY

17. In the result, the judgment and decree of the lower appellate Court stands confirmed and the second appeal stands dismissed. No costs.

23.03.2026

NCC : Yes/No

Index : Yes/No

RR

To

1.The Principal District Judge,
Madurai.

2.The I Additional Subordinate Judge, Madurai.

3.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



SA (MD)No.96 of 2007

N.ANAND VENKATESH, J

RR

Judgment made in
S A. (MD)No.96 of 2007

23.03.2026