



A.S.No.820 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2026

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CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

**A.S.No.820 of 2015
and
M.P.No.1 of 2015**

Dr.D.Murugan

... Appellant

Vs.

1.G.Vijayan

2.M.Devika

... Respondents

[2nd respondent/defendant was given up by the plaintiff in the lower Court]

Prayer : Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree passed by the learned Principal District Judge, Krishnagiri, in O.S.No.39 of 2012, dated 06.01.2015.

For Appellant : Mr.S.Vijayaraghavan

For R1 : Ms.K.M.Valsala Kumari

For R2 : Mr.Babu Rangasamy



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JUDGMENT

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(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Challenging the decree and judgment passed by the learned Principal District Judge, Krishnagiri, in O.S.No.39 of 2012, dated 06.01.2015, granting specific performance, the present appeal has been filed by the 1st defendant in the suit.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. Brief facts of the case are as follows :

A sale agreement, dated 25.07.2010, came to be entered between the plaintiff and the 1st defendant for sale of the suit property at the rate of Rs.14,50,000/- per Acre. The total area agreed to be sold is 5.15 Acres. Further, it is also agreed between the parties that a sum of Rs.14,50,000/- per Acre will be paid as per the actual measurement. On the date of agreement, an advance of Rs.1,00,000/- has been paid by the plaintiff. It is also the case of the plaintiff that, at the time of agreement, the 2nd defendant, who is the



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only daughter of the 1st defendant, was staying in USA and the 1st defendant gave assurance to make arrangement to get back her at the time of registration of sale deed. Despite the request made by the plaintiff, the 1st defendant postponed the survey. However, he has received a further sum of Rs.4,00,000/- on 15.08.2010; Rs.5,00,000/- on 18.09.2010; and Rs.10,00,000/- on 27.10.2010. Having received a total sum of Rs.20,00,000/- towards sale consideration, the 1st defendant was postponing the sale under the pretext that he will execute the sale deed after his daughter returns from USA. According to the plaintiff, though time of three months was fixed in the agreement, time was never intended to be the essence of the contract. The plaintiff was always ready and willing to perform his part of the contract. It is the further contention of the plaintiff that, though the sale agreement was entered for 5.15 Acres, on the contrary, only 3.31 ½ Acres was actually available on ground. The plaintiff was also approaching the 1st defendant through mediators. However, the defendant was postponing the sale. Hence, the plaintiff issued a legal notice, dated 01.11.2011, and the same was replied by the 1st defendant with false allegations. Immediately, the 2nd defendant also issued a legal notice to the plaintiff on 12.04.2011, stating that she has also got right over the sale agreement properties and that

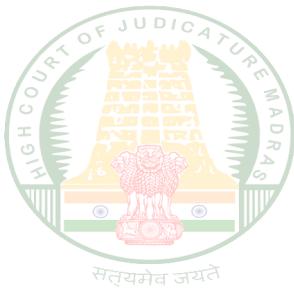


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the sale agreement will not bind her. Hence, the plaintiff filed the present suit for specific performance to enforce the sale agreement dated 25.07.2010.

4. Admitting that there is a sale agreement, it is the contention of the 1st defendant that the 2nd defendant has also got a share in the property. It is his contention that it was agreed to sell only S.No.460/1, whereas, in the plaint, the plaintiff has sought for enforcement of contract in respect of S.Nos.458/2 and 472. Further, it is his contention that, though he has entered into an agreement, it was agreed that sale can be executed only when his daughter/2nd defendant consents for such sale, since she was residing at Chicago, USA. After she returned from USA, she has not agreed for sale of the property and requested the 1st defendant to rescind the suit agreement. Accordingly, the suit agreement was rescinded by notice. It is also his contention that the plaintiff was never ready and willing to perform his part of the contract. Hence, he opposed the suit.

5. Based on the above pleadings, the trial Court framed the following issues :



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- (1) *Whether the 2nd defendant was an unnecessary party to the suit ?*
- (2) *Whether there is no connection between the properties mentioned in the agreement and the suit schedule properties ?*
- (3) *Whether time is not the essence of the contract ?*
- (4) *Whether the suit agreement is binding on the 2nd defendant ?*
- (5) *Whether the plaintiff is always ready and willing to perform his part of the contract ?*
- (6) *Whether the plaintiff is entitled to the relief of specific performance after payment of the remaining sale consideration?*
- (7) *In the event of the 1st defendant refusing to receive the amount, whether the plaintiff is entitled to deposit the amount and get the sale deed executed through Court ?*
- (8) *To what other reliefs ?*

6. The trial Court has also framed the following additional issues :

- (1) *Whether the 2nd defendant is entitled to half share in the property ?*
- (2) *Whether the plaintiff is entitled to alternative relief of refund of Rs.20,00,000/- with interest @ 24% p.a. ?*



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7.On the side of the plaintiff, P.W.1 was examined and Exs.A1 to A9 were marked. On the side of the defendants, D.W.1 was examined and Exs.D1 and D2 were marked.

8.Based on the evidence and materials on record, the trial Court has granted the relief of specific performance in favour of the plaintiff. As against the same, the present appeal has been filed by the 1st defendant.

9.The main contention of the learned counsel for the appellant/1st defendant is that, admittedly, the property is a joint family property. The plaintiff is also aware of the said fact. The very recitals in the agreement clearly indicate that the sale should be executed by the legal heirs also. The 2nd defendant has a half share in the property. The plaintiff, having made the 2nd defendant as a party to the suit, has given up the relief as against the 2nd defendant and she has been omitted from the array of parties. Hence, it is his contention that, when half share of the property belongs to the 2nd defendant, the 1st defendant has no title to the entire property, and therefore, the contract cannot be enforced. It is his further contention that the very



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agreement clearly indicates that time is the essence of the contract. The very recitals with regard to forfeiture of the advance amount, makes time as essence of the contract. It is the further submission of the learned counsel for the appellant that the terms agreed between the parties clearly stipulate that, in the event of the 1st defendant not measuring the property or executing the sale deed, the remaining sale consideration shall be deposited in the Court by the plaintiff, which has also not been done. It is his further contention that the plaintiff was never ready and willing to perform his part of the contract at any point of time. No evidence, whatsoever, available on record to prove the readiness and willingness of the plaintiff from the very inception of the contract. Therefore, the learned counsel prays for setting aside the decree of specific performance.

10. Whereas, the learned counsel for the 1st respondent/plaintiff would submit that, having received Rs.20,00,000/- as advance and agreed to execute the sale deed within a period of three months, the 1st defendant did not come forward to measure the property. Further, only after the plaintiff issued the legal notice (Ex.A2) dated 10.01.2011, a reply has been sent by the 1st defendant on 18.02.2011 disputing the contract, followed by the legal



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notice issued by the 2nd defendant, dated 12.04.2011 (Ex.A4). It is her contention that the plaintiff, having paid the substantial amount, had the capacity to pay the remaining amount and payment of such huge amount of Rs.20,00,000/- itself clearly proves his readiness and willingness. It is her further contention that, though the plaintiff has also made the 2nd defendant, who is the daughter of the 1st defendant, a party to the suit, she has been given up since the 2nd defendant had withdrawn her suit for partition filed against her father, stating that she is not claiming any right over the property. Only in that context, the 2nd defendant was removed from the array of parties. Therefore, that cannot be taken advantage of by the 1st defendant. Hence, the learned counsel prayed for dismissal of the appeal.

11. In the light of the above submissions, now the points that arise for consideration in this appeal are as follows :

- (1) *Whether the plaintiff, namely, the 1st respondent, was always ready and willing to perform his part of the contract from the very inception of the agreement ?*
- (2) *Whether a part of the contract can be enforced without relinquishment expressed by the plaintiff ?*
- (3) *If the 2nd defendant had half share in the property, without making her party to the suit, whether the contract could*



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be enforced in respect of her share, particularly when she is not a party to the contract ?

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Point No.(1) :

12. With regard to Point No.(1), it is not in dispute that the agreement, dated 25.07.2010, was entered into between the plaintiff and the 1st defendant. The recitals in the agreement itself clearly show that the property was originally allotted to the 1st defendant and it is a joint family property. Further, the recitals also mandate that the 1st defendant should execute the sale deed along with his legal heir. This fact also clearly shows that the plaintiff is also aware that the property is a joint family property at the relevant point of time. The agreement has been originally entered for various Survey Numbers, comprising an extent of 4.50 Acres. That apart, another 65 Cents is also agreed to be sold. On the date of agreement, a sum of Rs.1,00,000/- has been received by the 1st defendant. It is agreed between the parties that the sale shall be completed within a period of three months from the date of agreement, provided the property is properly measured. It is also agreed between the parties that the sale consideration per Acre would be Rs.14,50,000/-. After the agreement dated 25.07.2010, within three months, a further sum of Rs.4,00,000/- has been paid on 15.08.2010 and a



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further sum of Rs.5,00,000/- has been paid on 18.09.2010, which are evidenced by the endorsements made in the agreement itself. However, the fact remains that, later, neither of them adhered to the conditions in the agreement.

13. It is specifically agreed between the parties that, in the event of the 1st defendant not coming forward to execute the sale deed within a period of three months, the plaintiff has got a right to file a suit immediately and deposit the amount in the Court itself. It is relevant to note that, normally while filing a suit for specific performance, the law does not mandate actual deposit before the Court. However, when the parties themselves make such a condition to deposit the amount immediately, that condition cannot be ignored altogether.

14. It is further indicated in the agreement that, if the 1st defendant was ready and willing to execute the sale deed, but the plaintiff was not ready to pay the remaining sale consideration, the advance amount shall be forfeited. Making forfeiture clause in the agreement indicates that the parties, in fact, intended to make the time as an essence of the contract. Though, as far as



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15. Be that as it may. The relief of specific performance, being an equitable relief, a person who seeks equity before the Court, has to show that he was always ready and willing to perform his part of the contract from the very inception of the contract. Readiness and willingness is a continuous process. Readiness virtually means the capacity to raise funds and willingness is the mental attitude. Unless these twin conditions are satisfied and established and the plaintiff exhibits both the conditions throughout, i.e., from the date of agreement till the agreement culminates into sale, the Court will not normally enforce such contract. Mere plea that the plaintiff is always ready and willing, will not actually prove his readiness or willingness. The plaintiff, in fact, has to establish his capacity to pay the remaining sale consideration from the very inception till the sale deed is executed. Similarly, the mental attitude to perform his part of the contract also has to be exhibited by the plaintiff from the very beginning. However, in the present case, to show that the plaintiff was always ready and willing,



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no material, whatsoever, placed on record. No evidence is placed by the plaintiff to show that he had ready cash in his hands to pay the remaining sale consideration, nor any bank passbook or documents, whatsoever, filed to show that he always had the capacity to raise the remaining funds.

16. Further, it is relevant to note that, initially, the plaintiff has issued legal notice on 10.01.2011. Even assuming that the property has not been measured as agreed in the agreement, the immediate reaction of the plaintiff would be to issue legal notice then and there, which has not been done. In the reply notice dated 18.12.2011 (Ex.B1), issued by the 1st defendant, he has clearly exhibited his mind that he is not going to execute the sale deed, followed by the another legal notice issued by the 2nd defendant (Ex.A4) dated 12.04.2011. The reply notices clearly show that the defendants have made up their mind not to execute the sale document. In such case, the plaintiff atleast should have been vigilant and ought to have filed a suit immediately and made deposit before the Court as per the terms of the agreement. But, the present suit has been filed only on 23.04.2012, even after the contract was rescinded by the defendants 1 and 2. This fact clearly indicates that the plaintiff was not ready and willing to perform his part of



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the contract from the very inception. Even though deposit of the remaining consideration is not mandatory as per Section 16 of the Specific Relief Act, 1963, the conduct of the plaintiff cannot be ignored altogether, particularly when the contract itself has been rescinded by the defendants and the terms of the contract also stipulate for immediate deposit of the remaining sale consideration before the Court. Despite such terms, merely filing a suit with a delay of more than a year, clearly exhibits the fact that the plaintiff was never ready and willing to purchase the property. It is relevant to note that, even in the entire evidence, the plaintiff has never stated that he had ready money or capacity to mobilise the money. Therefore, this Court finds that the plaintiff has not established his readiness and willingness to perform his part of the contract. ***Point No.(1) is answered accordingly.***

Point Nos.(2) and (3) :

17. It is relevant to note that, though the sale agreement has been entered into in respect of 5.51 Acres, the suit has been filed only in respect of 3.31 ½ Acres. Though it is stated in the plaint that the suit has been filed only on the basis of actual extent available, as far as enforcement of the contract is concerned, when there is a difference between the extent shown



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in the agreement and the schedule of the plaint, a person seeking enforcement of a part of the contract, has to relinquish his claim in respect of

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the remaining part of the contract which has not been claimed in the suit. In this regard, it is useful to refer to Section 12 of the Specific Relief Act, 1963, which reads as follows :

“12. Specific performance of part of contract.—(1)

Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

- (a) forms a considerable part of the whole, though admitting of compensation in money; or*
- (b) does not admit of compensation in money;*



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he is not entitled to obtain a decree for specific performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party—

*(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b) 2 [pays or has paid] the consideration for the whole of the contract without any abatement; and
(ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.*

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

Explanation.—For the purposes of this section, a party to a contract shall be deemed to be unable to perform the whole of his part of it if a portion of its subject-matter existing at the date of the contract has ceased to exist at the time of its performance.”

18. Even to enforce a part of the contract, the plaintiff has to relinquish all his claims to the performance of the remaining part of the contract and all



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right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant. In the entire plaint, absolutely, there is no pleading, whatsoever, with regard to the relinquishment in respect of the remaining part of the contract. It is further to be noted that, admittedly, the plaintiff is also aware of the fact that the 2nd defendant is also having equal share in the property. The agreement itself indicates that the execution of sale has to be done not only by the 1st defendant, but also his legal heir. The plaint averments clearly show that the 2nd defendant is also having half share in the property and since she was in America at the relevant point of time, the 1st defendant assured the plaintiff that the 2nd defendant will also join in execution. Having pleaded so and made the 2nd defendant as a party to the suit, later, the 2nd defendant has been removed from the array of the parties mainly on the ground that the suit for partition filed by the 2nd defendant as against her father, not only with regard to the suit properties but also the other properties, was subsequently withdrawn by her. To substantiate the said fact, Exs.A7, A8 and A9 are also placed. On a perusal of Ex.A8 (memo), it is clear that the 2nd defendant, in fact, has given up her right only in respect of the properties already sold by her father, whereas in respect of the suit property, she is not insisting for



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partition for the present. Therefore, merely because she has not insisted for partition for the present, it cannot be said that she has lost her right in the entire property. Therefore, once it is admitted that the 2nd defendant also has a half share in the entire property, the 1st defendant has no title to the entire properties. Hence, the relief of specific performance cannot be granted in respect of the share of the 2nd defendant. Even assuming that the 1st defendant has agreed to sell the immovable property in respect of the 2nd defendant's share, for which he has no right or title, when a person intends to enforce such contract, he should have made the 2nd defendant also a party to the suit in order to compel the 1st defendant to procure the concurrence of the 2nd defendant as per Section 13 of the Specific Relief Act, 1963. Having made the 2nd defendant as a party initially and having removed her later from the array of parties, now, the plaintiff cannot seek specific performance of the agreement, particularly when the 2nd defendant is not a party to the agreement. *Accordingly, Point Nos.(2) and (3) are answered against the plaintiff.*

19. In view of the above discussion, the trial Court granting specific performance to enforce the contract in respect of the lesser extent of the



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land, in our view, is not proper.

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20. It is an admitted fact that the 1st defendant has already received a sum of Rs.20,00,000/- from the plaintiff. It is relevant to note that, when this appeal came up for admission before this Court, this Court has passed the following order on 26.10.2015.

“On 05.10.2015, we have passed the following orders :

“Caveator is on record.

2. Mr.D. Vivekanandan, learned counsel for the appellant/Petitioner/1st defendant fairly submitted that as per decree in O.S.No.39 of 2010 on the file of the learned Principal District Judge, Krishnagiri, dated 06.01.2015, a sum of Rs.20,00,000/- has already been received from the respondents/plaintiffs/decree holder. He further submitted that if two weeks time is given from today, he would produce a Demand Draft for Rs.20,00,000/- received as advance towards the alleged performance of contract dated 25.07.2010 with interest @ 7.5% per annum, from the date of 15.08.2010, the first date on which he received the part of the advance amount. Post on 26.10.2015.”

2. Mr.S. Vijayaragavan, learned counsel for the appellant submitted that as assured on 05.10.2015, a Demand Draft No.040925 dated 31.02.2015 has been taken from Indian Bank, Bargur Branch, for Rs.27,82,676/- in favour of Mr.G. Vijayan, the 1st respondent, being the advance amount of Rs.20,00,000/-



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with interest @ 7.5% per annum from 15.08.2010, the first date on which the appellant has received the amount and that the same is produced before this Court.

3. Mr.SNJ.Hariharan, Junior counsel attached to the office of Mr.V.Nicholas, the learned counsel for the 1st respondent, has acknowledged the Demand Draft dated 31.02.2015 drawn in the name of Mr.G.Vijayan, the respondent herein. He has also made an endorsement in the Memorandum of Grounds of first appeal.

Having regard to the compliance of the order dated 05.10.2015, there shall be a Stay of execution of decree in O.S.No.39 of 2010 on the file of the learned Principal District Judge, Krishnagiri, till the disposal of the appeal.”

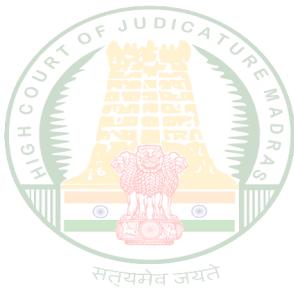
21. The above order makes it clear that the plaintiff/1st respondent herein has received back the entire amount of Rs.20,00,000/- along with interest at the rate of 7.5% per annum without any demur or protest. This conduct of the plaintiff also indicates that he is not intended to purchase the property. This is also one of the reasons why we are not inclined to hold that the plaintiff is entitled to specific performance.



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22. However, taking note of the fact that only an interest @ 7.5% p.a. has been paid till 2015 for a huge amount of Rs.20,00,000/-, we are of the view that, to advance substantial justice to the parties, atleast interest @ 12% p.a. has to be calculated from the date of payment of advance amount of Rs.20,00,000/- in the year 2010 till the entire amount is repaid to the plaintiff. To balance both sides, we are of the view that the appellant/1st defendant can be directed to pay a further sum of Rs.10,00,000/- to give a quietus to the entire issue, for which, the learned counsel for the appellant submitted that, if the Court directs so, the appellant/1st defendant will pay the amount and he sought eight weeks' time to pay the said amount of Rs.10,00,000/-. Acceding to the request of the learned counsel for the appellant, we direct the appellant/1st defendant to pay a further sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the 1st respondent/plaintiff in addition to the amount already paid, within a period of eight weeks from today. It is made clear that, till the amount as ordered by us is paid, there shall be a charge over the property for that amount. The moment the entire amount is paid within time, the charge shall stand released automatically.



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23. With the above directions, this Appeal is allowed and the decree and judgment of the trial Court granting specific performance, is set aside. However, considering the nature of litigation, no cost is ordered. Consequently, connected miscellaneous petition is closed.

24. At this juncture, the learned counsel for the 1st respondent/plaintiff would submit that, pursuant to the decree and judgment of the trial Court granting specific performance, the plaintiff has deposited a sum of Rs.28,06,750/- towards the remaining sale consideration before the trial Court. In such view of the matter, as the decree of specific performance is set aside, the 1st respondent/plaintiff is entitled to receive back his deposit made before the trial Court. Therefore, the trial Court shall refund the amount deposited by the 1st respondent/plaintiff in O.S.No.39 of 2012 towards balance sale consideration, on making proper application, along with accrued interest, if any thereon, without any further delay.

(N.S.K., J.) (R.S.V., J.)
05.01.2026

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Speaking Order / Nonspeaking order
Neutral Citation : Yes

To

1. The Principal District Judge,
Krishnagiri.
2. The Section Officer,
VR Section,
High Court, Madras.



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