

(2013) 01 MAD CK 0098

In the Madras High Court

Case No : A.S. No's. 1030 and 1115 of 2007

Dr. A. Ahmed Ali

APPELLANT

Vs

A. Venkatesh
A. Venkatesh Vs Dr. A. Ahmed Ali

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Specific Relief Act, 1963 — Section 16, 16(c), 20

Citation : (2013) 01 MAD CK 0098

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : V. Lakshminarayanan for E. Prabhu in A.S. No. 1030 of 2007 and Mr. R. Thiagarajan in A.S. No. 1115 in 2007, for the Appellant; R. Thiagarajan in A.S. No. 1030/2007, Mr. V. Lakshminarayanan for Mr. E. Prabhu in A.S. No. 1115 in 2007, for the Respondent

Judgement

S. Palanivelu, J.—Since both appeals have been filed by both parties from the Judgment in O.S. No. 4700 of 2004 and also the questions

to be answered are the same, this Common Judgment is rendered. The following are the averments contained in the plaint filed in O.S. No. 4700

of 2004:

1. (a) The plaintiff is residing at New No. 9, Old No. 7, "A" Block, M.M.D.A. Colony, Arumbakkam, Chennai-106 for the past 17 years. He

initially came to the premises as tenant under one J. Mariadoss, Power of Attorney of one L. Joseph, for a monthly rent of Rs. 500/-. During the

year 1992 J. Mariadoss refused to receive the rent from him, so he was constrained to file petition before the Rent Controller u/s 8(5) of the

TNB(L&R) Act in RCOP No. 2595 of 1992 and the same was allowed and the plaintiff was committed to deposit the rent into the Court.

1. (b) when the owner of the house L. Joseph made his attempts to dispose of the property to some third party, the plaintiff expressed his willingness to purchase the same in the end of 1994, but before the dealing was over, the defendant purchased the property from L. Joseph through J. Mariadoss in 1995. The defendant issued legal notice to the plaintiff on 5.7.2002 calling upon the plaintiff to complete the sale of the suit property by paying the balance of sale consideration and to register the sale deed and that the legal notice dated 5.7.2002 clearly goes to prove that the time is not essence of the contract.

1. (c) Though the defendant had purchased the property in the year 1995, he did not inform the same to the plaintiff i.e., the tenancy was not attorned to and in favour of the defendant. The defendant expressed his willingness to dispose of the property to and in favour of the plaintiff for Rs. 8.5 Lakhs and the same was reduced into writing on 23.9.1998 and after the sale agreement, the possession was handed over by the defendant to the plaintiff and the plaintiff paid a sum of Rs. 2 lakhs as advance by cash. As per the sale agreement the sale consideration would be Rs. 8,50,000/- and the plaintiff further paid a sum of Rs. 2,00,000/- by way of demand draft to the defendant through his son. The plaintiff is always ready and willing to pay the balance amount of Rs. 4,50,000/- to the defendant, but he refused to execute and register the sale deed to and in favour of him. More than 100 times, the plaintiff made his attempts with the defendant for execution and registration, since the defendant is a doctor by profession was capable of paying the amount at any time and he is ready and willing to pay the amount, even today he is ready and willing to pay the amount to the defendant or to deposit before the Court.

1. (d) After the offer and acceptance were over between the plaintiff and the defendant, the defendant himself prepared the Sale Agreement on his own style, so, the plaintiff declined to sign in the Agreement. At that juncture the defendant himself told the plaintiff that he is a professional doctor and a man of means and having a status in the society, the agreement and other things are only for formalities so he has signed in the Sale Agreement. When the plaintiff insisting the defendant for a copy of the sale agreement, he did not furnish the same in time and promised to give the same afterwards. But, now it appears that the defendant has handed over the

xerox copy of the sale agreement with his counter signature, to his mother. The sale agreement is being produced as Original before this Court and the plaintiff had no opportunity to go through the sale agreement till her mother's life time. When the plaintiff states that he was not having copy of the sale agreement, the defendant has started to taking the same as an advantage and started to say the sale amount would be Rs. 20 lakhs and standing on the same footing till now, but he has not produced the alleged sale agreement for a sum of Rs. 20 lakhs.

1. (e) Instead of executing and registering the sale deed, the defendant had filed an Eviction Petition against him on the ground of wilful default but the learned Rent Controller declined to accept the plea of wilful default because of the existing sale agreement and the payment of Rs. 4 lakhs, and ordered the plaintiff to pay a sum of Rs. 24,500/- to the defendant on or before 27.11.2003. Accordingly, the plaintiff has paid the said amount to the defendant on 21.11.2003 itself. However, he has preferred a Rent Control Appeal against the decree in RCOP No. 2045 of 2002 in RCA No. 161/2004 before the small Causes Court at Chennai and the same is pending. Adding insult to the plaintiff, the defendant filed a petition for fixing fair rent before the x Judge, Small Causes Court, Chennai in RCOP No. 560 of 2004 claiming exorbitant rent of Rs. 35,000/- per month.

1. (f) The defendant had not given the sale agreement to the plaintiff as already stated but to his mother, who kept the same in her trunk box, out of absent mind who did not give the same to the plaintiff, so he has no knowledge about the possession of the sale agreement when he had made casual search on her mother's trunk box during last week of July 2004, after her death, he was surprised to see the sale agreement and immediately he issued legal notice on 30.7.2004 requesting the defendant to execute and register the sale deed for which he had given false reply. Hence the plaintiff has no other option except to approach the Court under Specific Performance Act. Unless and until this Court order the defendant to execute the sale deed and register the same to and in favour of the plaintiff after receiving the balance amount of Rs. 4.5 lakhs, the plaintiff will have to meet irreparable loss and much mental agony.

1. (g) The amount of Rs. 4 lakhs lying with the defendant for the past 6 years who has no right to claim exorbitant rent from him in the name of fair

rent. Hence, the Court has to stay the proceedings in RCOP. No. 560/2004 pending on the file of the Learned x Judge, Small Causes Court,

Chennai, pending disposal of this suit for specific performance.

2. In the written statement filed by the defendant it is averred as under:

2. (a) The defendant denies all the allegations and averments contained in the plaint and put the plaintiff to strict proof of each and every allegation.

The suit is barred by limitation. The prayer for specific performance of agreement and permanent injunction are not sustainable. It is incorrect to

state that the Vendor refused to receive rent from the plaintiff and it is also incorrect to state that the plaintiff expressed his willingness to purchase

the suit property from the vendor of the defendant. The defendant purchased the property in the year 1995 and subsequent to the purchase of the

property, he requested the plaintiff to quit and deliver vacant possession but the plaintiff did not vacate the property and compelled him to sell the

property to the plaintiff. The plaintiff agreed to purchase the suit property for a sum of Rs. 20 lakhs and prepared an agreement to sell dated

23.9.1998 and paid a sum of Rs. 2 lakhs in 1999 towards part payment of the sale consideration. The agreement of sale was out of coercion and

threat. The defendant denies that the plaintiff entered into a sale agreement on 23.9.1998 for purchasing the suit property for a sum of Rs. 8.5

lakhs and paid a sum of Rs. 4 lakhs towards sale consideration. The suit property is valued at Rs. 42 lakhs as on today and the allegations of the

plaintiff that the defendant agreed to sell the property for Rs. 8,50,000/- is false and unbelievable.

2. (b) The xerox copy of the agreement to sell filed along with the suit has no connection with the suit property or the defendant, that it is a

manipulated, forged and false document, that if the original sale agreement is produced, the terms and conditions will be different, that the plaintiff is

willfully withholding the original agreement to sell with ulterior motive, that the plaintiff is in occupation of the suit property as tenant and not in the

capacity of an Agreement holder, that the plaintiff paid only Rs. 2 lakhs by Demand Draft on 14.7.1999 that too very long after the agreement, that

the intention of the plaintiff was not to buy the property but only to delay and drag on the sale and thereby squat on the property without paying

rent for the property.

2. (c) It is incorrect to state that the plaintiff was ready and willing to register and execute the Sale Deed. If such an allegation is true, the plaintiff

has not explained as to what prevented him from approaching the court for Specific Performance within the period of limitation and immediately

after the refusal by the Defendant to sell the property, that on a perusal of the plaint will show that only on 30.7.2004, i.e., after 8 years from the

date of agreement, a notice was sent by the plaintiff expressing his willingness to complete the sale, that the plaintiff is not entitled to seek specific

performance of a non-est and imaginary agreement, that since the plaintiff neither completed the sale nor paid the rental arrears, the defendant filed

RCOP. No. 2045/2002 on the ground of wilful default and got an order of eviction.

2. (d) In the chief examination of the plaintiff who was examined as RW1 in RCOP No. 2045/2002 stated that an agreement was written on

23.9.1998 but the copy of the agreement was not given to the plaintiff, that the defendant took the agreement to his house and the copy was not

given to him, but in the proof affidavit filed in the above suit, the plaintiff had alleged that since the sale agreement was not in format he declined to

sign, while so, the allegation of the plaintiff that the defendant put his signature in the xerox copy of the agreement and handed over the same to the

mother of the plaintiff is a blatant lie invented for the purpose of creating a false case, that the plaintiff came to know about the agreement only in

the last week of July 2004 is not correct, that the signatures found in the copy of the agreement filed along with the suit are not that of the

defendant, that the defendant does not possess the original of the Agreement to sell, which is in the custody of the plaintiff, that without production

of the original agreement with the original signatures, the plaintiff cannot seek for sale of the suit property for Rs. 8,50,000/-, that the defendant is

not bound and liable to execute a sale deed to the defendant as there is no valid agreement between them and that the defendant is not interested in

selling the suit property.

2. (e) There is no sale agreement between the plaintiff and the defendant in existence and hence there is no question of violating the terms of the

agreement, that the plaintiff is admittedly a tenant has no right to prevent the landlord from alienating the property according to law, that there is no

reason given for the delay in filing the suit beyond the period of limitation, that

the prayers are not sustainable on the basis of allegations and on the basis of the documents filed along with the plaint, that the suit is a vexatious suit and that the same may be dismissed.

3. In the Additional Written Statement filed by the defendant it is stated as follows:

3. (a) The contents of the notice dated 5.7.2002 were not explained in the proper perspective, that there was a demand to pay the balance sum of

Rs. 18 lakhs, that it was also pointed out in the notice that the plaintiff failed to carry out his obligation of payment of balance sale price and

complete the sale, that in reply notice dated 10.7.2002 the plaintiff stated that the defendant prepared a sale agreement dated 23.3.1998, that the

plaintiff did not read the contents of the agreement and did not sign the agreement. The defendant issued a rejoinder denying the allegations made in

the reply and confirming that the sale consideration was fixed at Rs. 20 lakhs But in the replies and correspondences sent by the plaintiff there was

no allegation as now made in the plaint. The plaintiff is withholding the original agreement with him with a view to reduce the sale consideration, that

the contents and the appearance of the xerox copy alleged to be the copy of sale agreement did not contain necessary particulars so as to deem it

as a copy of the agreement of sale and that the plaintiff cannot sustain his prayer on the basis of a xerox copy and hence the suit itself is liable to be

dismissed.

4. After analysing the pleadings, evidence and exhibits the learned II Additional Judge, City Civil Court, Chennai, has decreed the suit in following

terms:

1. That the plaintiff be and is hereby not entitled to the relief of specific performance.

2. That the plaintiff be and is hereby not entitled to the relief of permanent injunction.

3. That the defendant do pay plaintiff the refund of advance amount of Rs. 4 lakhs together with interest on Rs. 2 lakhs at 12% p.a. from

23.9.1998 till the date of realisation and on Rs. 2 lakhs at 12% p.a. From 14.7.1999 till the date of realisation.

4. That the defendants do also pay plaintiffs another sum of Rs. 38,302/- towards the proportionate costs.

5. Aggrieved against the order of trial Court, the defendant petitioner herein has preferred appeal in A.S. No. 1030 of 2007 and the plaintiff has preferred A.S. No. 1115 of 2007.

6. Originally, the plaintiff was tenant in the suit property from the year 1989 under one G. Joseph paying monthly rent of Rs. 500/-. Since the said

Joseph refused to receive the rent at the rate of Rs. 500/- the plaintiff filed RCOP No. 2595/1992 on the file of the 16th Court of Small Causes,

Chennai, to deposit the rent into Court and the same was ordered on 18.8.2003 and the petitioner was depositing the same without any default,

while so, the said G. Joseph sold the subject property in favour of defendant by way of sale deed dated 1.6.1994. Subsequently, the defendant

offered to sell the said property to the plaintiff for which a written sale agreement was entered into between them on 23.9.1998 for a sale

consideration of Rs. 8,50,000/- and the plaintiff paid advance of Rs. 4.00 lacs on two occasions towards sale consideration, as per plaintiff's case.

7. During the year 2002, suppressing the actual sale consideration payable under Agreement and advance paid by the plaintiff, the defendant had

falsely claimed that the plaintiff agreed to pay a sum of Rs. 20 lakhs as sale consideration and demanded further sum of Rs. 18 lakhs towards

balance sale consideration. Since the plaintiff refused to pay the same and sent reply, the defendant filed R.C.O.P. No. 2045 of 2002 against the

plaintiff for eviction from the said property on the ground of wilful default in payment of rent. In the meantime the plaintiff filed a suit for Specific

Performance of the said Agreement of Sale in O.S. No. 4700 of 2004 before the II Addl. District Judge, City Civil Court, Chennai and got an

order of interim injunction on 29.11.2004 restraining the vendor/defendant from alienating and encumbering the said property pending disposal of

the above suit. The suit for Specific Performance in O.S. No. 4700 of 2004 was dismissed. Aggrieved at the judgment of the trial Court, declining

the relief of Specific Performance on the strength of copy of sale agreement dated 23.9.1998, the plaintiff filed A.S. No. 1115 of 2007. The

direction of the trial court for payment of advance of Rs. 4 lakhs by the defendant to the plaintiff alongwith interest for a sum of Rs. 2 lakhs is being

questioned by the defendant, by filing A.S. No. 1030 of 2007. Under these circumstances, the following points have arisen for consideration.

1. Whether the sale agreement Ex. A.1 dated 23.9.1998 produced by the plaintiff is true, genuine, valid and enforceable?
2. Whether the plaintiff was ready and willing to perform his part of contract as required by law?
3. Whether the suit is barred by limitation?
4. Whether the plaintiff is entitled to get the relief of Specific Performance of Contract?
5. To what relief are the parties entitled to?

Point No. 1

8. The house ground and premises wherein Door No. 7, Block "A", M.M.D.A. Colony, Chennai, measuring 1838 Sq.ft., is suit property. It

originally belonged to one Joseph. His Power of Attorney one J. Mariadoss let the premises for rent to the plaintiff as tenant for a monthly rent of

Rs. 500/-. The said Joseph sold the property to the defendant. It is pleaded in the plaint that the purchase by the defendant in 1995 was not

intimated to the plaintiff and lease was not attorned in favour of the defendant, However, he expressed his willingness to sell the property to plaintiff

for Rs. 8.5 lakhs and an agreement of sale was also reduced to writing on 23.9.1998 and since then the plaintiff is in occupation of the property as

agreement holder, as per his case.

9. On the date of the sale agreement as per the plaint pleadings, the plaintiff paid a sum of Rs. 2 lakhs as advance and also on 14.7.99, further

amount of Rs. 2 lakhs was paid by way of Demand Draft to the defendant through his son, totalling an advance amount of Rs. 4 lakhs and the

plaintiff was always ready and willing to pay Rs. 4.5 lakhs to the defendant. But he had been refusing to execute the registered sale deed. Ex. A.1

is stated to be xerox copy of the sale agreement which came to existence between the parties on 23.9.1998 in which it is stated that the defendant

agreed to sell the property for Rs. 8.5 lakhs. On the date of agreement he received a sum of Rs. 2 lakhs as advance and he would receive the

balance of Rs. 6.5 lakhs on the date of registration of sale deed and that the sale deed should be executed within three months.

10. A xerox copy of the sale agreement bears the signatures of both parties. Another signature put by the defendant also appears below his

signature in the agreement. To put it otherwise, two signatures of defendant are

seen in Ex. A.1. One is xerox copy of the signature of defendant along with the signature of plaintiff and other contents of document. Under the xeroxed signature, the defendant's signature is available in blue ink. It is the further case of the plaintiff that the defendant prepared the sale agreement on his own style and hence he declined to sign in the agreement. However, when he insisted the defendant for a copy of sale agreement he did not furnish the same and promised to give the same; but he gave a xerox copy of the sale agreement with his counter signature to his mother and the same is being produced along with plaint. After the death of his mother the plaintiff happened to search her trunk box and see the documents. The above said explanations are given in the plaint for non-production of original sale agreement.

11. Adverting to the oral evidence of the plaintiff on record, it is deposed by PW1, the plaintiff, in his cross examination that Ex. A.1 was prepared by the defendant, that he did not refuse to sign, he signed on the same day, i.e. on 23.09.1998, that he did not put his signature in the sale agreement for Rs. 20 lakhs, as stated by the defendant, that in his reply notice Exs. A.3 & A.7, even though he has stated that the sale agreement was executed, he has not stated that he has signed it. When he was asked about his statement in the proof of affidavit to the effect that he did not sign in the sale agreement prepared by the defendant, he says since it was not acceptable. Also he replies that he did not put his signature in the sale agreement which was prepared for Rs. 20 lakhs. In the next line of cross examination, he would state that on 23.09.1998, only one sale agreement was executed, i.e. Ex. A.1. DW1 in his cross examination states that he did not enter into any agreement with the plaintiff on 23.09.1998 but the plaintiff orally asked him to sell the property for Rs. 20 lakhs for which he agreed, that the signature found in Ex. A.1 does not belong to him. When the allegations in the notices of the parties, their pleadings and their oral evidences are subjected to a close scrutiny, it appears that another sale agreement as stated by the defendant for Rs. 20 lakhs was also executed but this allegation is totally denied by the plaintiff.

12. It has to be borne in mind that only the defendant set the ball in motion and thereafter the plaintiff sent reply. Even if there were any written

agreement for Rs. 20 lakhs, it should have been with the purchaser namely the plaintiff, whether it is a written or oral agreement, the definite version

of the defendant remains that he received advance not on the strength of Ex. A.1 but towards the sale agreement for Rs. 20 lakhs. Even the plaintiff

did not produce the original of the Ex. A.1 and his explanation for non-production is not believable. With the available materials, this Court has to

be take venture to find out truth in the matter. The plaintiff's mother died on 14.07.2003.

13. It is the case of the plaintiff that till the life time of his mother he did not have occasion to see the sale agreement and again on seeing Ex. A.1,

he immediately sent notice to the defendant. A suggestion was put to him that the signature found in the xerox copy of Ex. A.1 and the signature

said to have been his counter signature do not belong to the defendant, was denied by him. At the behest of the plaintiff Ex. A.1 was referred to

the hand writing expert for comparison. The plaintiff filed an application to send the document for examination of hand writing expert to establish

that both signatures contained in Ex. A.1 belong to the defendant. Ex. c.1 is the opinion of the expert. Ex. c.2 is the reasons for coming to the

conclusions. The expert is of the opinion that the questioned signatures have been imitated, exhibit inherent signs of forgery like hesitation slow

drawn movement, careful joining of letters, defective line quality and they differ significantly from the standard in the handwriting characteristics.

Following are the characteristic features found in the report of the expert.

1. The skill of writing
2. The line quality
3. The alignment of the strokes of the letters in the signatures.
4. The manner of connecting the strokes of the letters in the signatures.
5. The manner of terminating the signatures.
6. In the detailed designs such as the beginning and subsequent execution of strokes of the letters in the signatures.

14. C.W.1, the expert who has undertaken the job of comparing the signatures has deposed on the strength of Ex. C.2. He was subjected to a

lengthy cross examination and a careful perusal of the same would show that the evidence rendered by him in the chief examination was not

shattered. Ex. C.1 and Ex. C.2 and the oral testimony of C.W.1 would lend striking support to the view to be taken by the Court. This court

accedes to the opinion of the hand writing expert.

15. Insofar as the oral evidence of the defendant, D.W.1 is concerned, he would say in his cross examination that Ex. A.1 does not contain his

signature and that on 23.9.1998 he did not enter into the sale agreement with the plaintiff. It is the defence of the defendant that he entered into

only one sale agreement with the plaintiff to sell his property to him for Rs. 20 lakhs for which he received a sum of Rs. 2 lakhs as advance, that in

his notice Ex. A.2 dated 5.7.2002 he has specifically mentioned that the price agreed for the purchase of the property is Rs. 20 lakhs and that the

plaintiff agreed to complete sale within three (3) months. He refers to the Engineers Report Ex. B.4 which was marked in R.C.O. P. No. 560 of

2004 before x Small Causes Court, Chennai. After inspection of the property by Engineer, it was valued at Rs. 34,51,722/-.

16. When this Court deeply probes into the evidence of parties and the relevant documents, the necessary observations to be recorded are that,

no prudent man would be keeping silent for about 5 years from the date of sale agreement in his favour, without initiating any steps to get the

execution of sale deed. It is the version of the plaintiff that only after the demise of his mother, he saw Ex. A.1 and thereafter he issued notice. In

this context, it is comprehensible that the person in whose favour a sale agreement is existing, would not have been keeping quiet for a long period

of 5 years, when he was very well aware about the stipulation in the agreement for execution of sale deed. In this case, three months have been

agreed upon for the execution of sale deed. Citing some reasons, it is contended by the plaintiff that as far as Ex. A.1 is concerned, time is not

essence of contract. But the parties have consciously agreed to secure execution of sale deed within three months. When the conduct of the parties

are looked into, by no stretch of imagination it can be stated that the time is not essence of the contract.

17. Preponderance of probabilities available in the case would candidly indicate that the story woven by the plaintiff that he could only see the sale

agreement after the death of his mother is untrue. It is not adverted to in his reply notice Ex. A.3 dated 10.7.2002. Further, the ground adduced by

the plaintiff for non-production of original with the plaint could not be accepted by the Court. No decree for Specific performance could be

comprehended on the strength of production of xerox copy of sale agreement. when Ex. A.1 received critical attack from the side of the defendant

and in the absence of persuading reasons for non-production of originals. Ex. A.1 is crucified by the evidence of hand writing expert that the

signatures stated to be of defendant are not alike. In these circumstances, the Court has much hesitation to uphold the genuineness of Ex. A.1. On

scrutiny of the pleadings and evidence on record, it is held that the sale agreement Ex. A.1 dated 23.9.1998 is not true, valid and unenforceable.

This point is answered in the negative.

Point No. 2

18. Before entering into the discussion with regard to the merits touching this point, it is advantageous to bear in mind the well settled principles to

infer readiness and willingness on the part of the plaintiff to perform his part of contract. The learned counsel for the defendant placed much

reliance on the decisions of the Honourable Supreme Court on this subject.

19. In His Holiness Acharya Swami Ganesh Dassji Vs. Shri Sita Ram Thapar, the Apex Court has formulated principles to find out the factum of

readiness and willingness to perform plaintiff's part of contract. It is held therein that there is a distinction between readiness to perform a contract

and willingness to perform the contract, that by readiness may be meant the capacity of the plaintiff to perform the contract which includes his

financial position to pay the purchase price for determining his willingness to perform his part of contract and that conduct has to be properly

scrutinised.

20. Their Lordships in H.P. Pyarejan Vs. Dasappa (Dead) by LRs. and Others, have observed that finding on the question of readiness and

willingness to perform contract is mixed question of law and fact and it is statutorily provided by Section 16(c) of the Act that to succeed in a suit

for specific performance of a contract, the plaintiff shall aver and prove that he has performed his part of contract and has always been ready and

willing to perform the essential terms of the contract which were to be performed by him other than the terms the performance of which has been

prevented or waived by the defendant.

21. In N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others, the Apex Court has gone deep into the concept of readiness and

willingness to perform his part of contract by the plaintiff and observed the following:

5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be

exercised according to settled principles of law and not arbitrarily as adumbrated u/s 20 of the Specific Relief Act, 1963 (for short "the Act"). u/s

20, the court is not bound to grant the relief just because there was a valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must

plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be

performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and

willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant

and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he

must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct

of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to

pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he

is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of

the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and

circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.

22. Applying the above said principles to the facts of the present case, the plaintiff is found to have been sluggish till he gets the notice, Ex. A.2

from the defendant.

In this context, it cannot be held that right from the date of execution till the date of notice, he was ready and willing to perform his part of contract

and that there is no continuous readiness and willingness on the part of the plaintiff.

23. In Pukhraj D. Jain and Others Vs. G. Gopalakrishna,] the Hon"ble Supreme Court has dealt with Section 16 of the Specific Relief Act as to

the readiness and willingness as under:

6. ... It is well settled that equitable remedy of specific performance cannot be had on the basis of pleadings which do not contain averments of

readiness and willingness of the plaintiff to perform his contract in terms of Forms 47 and 48 CPC. Here Respondent 1 himself sent a legal notice

rescinding the contract and thereafter filed OS No. 801 of 1977 on 7-11-1977 claiming refund of the advance paid by him. In fact the suit for

recovery of the amount was decreed by the trial court on 24-7-1985 but he himself preferred a revision against the decree wherein an order of

rejection of the plaint was passed by the High Court. In such circumstances, it is absolutely apparent that Respondent 1 was not ready and willing

to perform his part of the contract and in view of the mandate of Section 16 of the Specific Relief Act, no decree for specific performance could

be passed in his favour. The trial court, therefore, rightly held that the suit filed by Respondent 1 was not maintainable.

24. The Apex Court in H.P. Pyarejan Vs. Dasappa (Dead) by LRs. and Others, has held that Section 16(c) of the Specific Relief Act mandates

plaintiff to aver in plaint and establish as fact by evidence that he has always been ready and willing to perform his part of contract.

25. The learned counsel for the plaintiff also cites an authority of the Apex court reported in Nirmala Anand Vs. Advent Corporation (P) Ltd. and

Others, wherein their Lordships have observed that in case of phenomenal increase in price of land during pendency of litigation held, plaintiff

should not be denied relief of specific performance only for that reason and that while balancing equities, court must bear in mind who is the

defaulting party as far as the increase of price of land pending litigation has not been given much stress by both parties. In the case on hand, on the

basis of "escalation in price" is not the criteria for denying the relief of specific performance to the plaintiff. In so far as the limb is concerned, the

court is able to find out that the plaintiff is a defaulting party. In this regard, he cannot get the relief of specific performance.

26. In K. Manoharan Vs. T. Janaki Ammal, T. Gunasekaran, T. Natarajan and Sub-Registrar, O/o. Sub-Registrar No. II, Kallakurichi, a Division

Bench of this Court has observed as follows -

Out of the total sale consideration of Rs. 42,66,000/-, plaintiff paid Rs. 1,00,000/- plus Rs. 24,00,000/- totalling Rs. 25,00,000/-, i.e. Plaintiff has

paid more than 56A of the total sale consideration. The balance sale consideration of Rs. 17,66,000/- was deposited into the Court even on the

date of filing of the suit, i.e. On 21.8.2009. As per the written terms in Ex. A.1, agreement of sale, plaintiffs only obligation was to pay the balance

sale consideration. In the plaint, plaintiff has categorically averred his readiness and willingness to pay the balance sale consideration and to get the

sale deed executed. In his evidence, PW1-Manoharan has reiterated the same. His readiness and willingness is substantiated by deposit of balance

sale consideration of Rs. 17,66,000/- into the Court at the time of filing of the suit. In such circumstances, trial court was not right in saying that

plaintiff was not ready and willing to perform his part of the contract.

27. But in the case on hand, there is no such instance that either after 1999 or at the time of filing of the suit, there was payment or deposit by the

plaintiff into the Court. On this score, the contention of the plaintiff that he was ready and willing could not be countenanced. Most disturbing

circumstance available in this case is lethargy on the part of plaintiff in taking initiatives to send the notice to the defendant at once after receipt of

Ex. A.2 notice from him. Ex. A.3 let out that the plaintiff had the knowledge of existence of Ex. A.1 Sale Agreement between him and defendant.

Even though he has called upon the defendant to receive balance of Rs. 4.5 lakhs within 30 days and to execute .