

**(2013) 04 MAD CK 0242**  
**In the Madras High Court**  
**Case No : S.A. No. 418 of 2013**

|                                     |            |
|-------------------------------------|------------|
| Subramani Gounder (Died) and Others | APPELLANT  |
| Vs                                  |            |
| Chinnakannammal (Died) and Others   | RESPONDENT |

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**Date of Decision :** 17-04-2013

**Acts Referred:**

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

**Citation :** (2013) 6 MLJ 400

**Hon'ble Judges :** G. Rajasuria, J

**Bench :** Single Bench

**Advocate :** P. Ganapathy, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

G. Rajasuria, J.—This second appeal is focussed by the plaintiffs, animadverting upon the judgment and decree dated 15.9.2012 passed by the learned Subordinate Judge, Vellore, in A.S. No. 40 of 2009 confirming the judgment and decree dated 29.6.2009 passed by the learned Principal District Munsif, Vellore, in O.S. No. 851 of 2004, which was one for specific performance. The parties, for the sake of convenience, are referred to here under according to their litigative status and ranking before the trial Court.

2. A resume" of facts absolutely necessary for the disposal of this second appeal would run thus:

(i) The appellants herein, as plaintiffs, filed the suit for specific performance seeking the following reliefs:

a) to direct the defendants to execute the sale deed in respect of the suit property in favour of the plaintiffs in specific performance to contract of agreement dated 25.10.1990 in case to the refusal by the defendants order the execution of the sale deed to this Honourable Court in favour of the plaintiffs on behalf of the defendants.

b) to direct the defendants to deliver possession of the suit property in favour of the plaintiffs;

c) to award the cost of the suit.

(extracted as such)

on the main ground that there emerged an agreement to sell on 25.10.1990 between Sivalingam and Jayavelu on the one side and the deceased first plaintiff Subramani Gounder on the other side, whereby, the former agreed to sell in favour of the latter the suit properties found described in the schedule of the plaint for a total sale consideration of Rs.45,750.00 (rupees forty five thousand seven hundred fifty) and a sum of Rs.5,000/- (rupees five thousand) was paid as advance by the proposed purchaser in favour of the proposed sellers.

(ii) Jeyavelu died leaving behind defendants 1 to 8 as his legal heirs.

(iii) The first plaintiff issued a registered notice to Sivalingam calling upon him to execute the sale deed as per the agreement to sell dated 25.10.1990; however, a reply was sent by Sivalingam denying the execution of the agreement to sell and he has not come forward to execute the sale deed.

(iv) Sivalingam also subsequently died leaving behind his legal heirs.

(v) Since the defendants happened to be the legal heirs of those original owners of the suit properties, namely, Sivalingam and Jayavelu, they have been arrayed as defendants.

(vi) D2 filed the written statement, the warp and woof of the same would run thus:

(a) The suit agreement to sell is not a genuine one.

(b) The plaintiffs were not ready and willing to perform their part of the contract.

(c) The defendants are not bound by the agreement to sell.

(d) There was inordinate delay in filing the suit.

Accordingly, D2 would pray for the dismissal of the suit.

(vii) Whereupon issues and additional issues were framed. Up went the trail, during which, the fifth plaintiff-Karunagaran examined himself as P.W.1 along with P.Ws.2 and 3 and marked Exs. A1 to A26. The second defendant examined herself as D.W.1 along with D.W.2 and marked Exs. B1 to B13.

(viii) Ultimately, the trial Court dismissed the suit, as against which, the appeal was filed for nothing but to be dismissed by the first appellate Court confirming the judgment and decree of the trial Court.

3. Being aggrieved by and dissatisfied with the judgements and decrees of both the Courts below, the plaintiffs preferred this second appeal on various grounds

and also suggesting the following substantial questions of law:

1. The defendants having denied the execution of Ex. A5 are they entitled to raise the plea of not ready and willingness?
2. Whether the time stipulated is agreement namely 3 months is a conclusive proof for disentitling the plea of the plaintiff that he is always ready and willing to perform his part of contract.?"

(extracted as such)

4. The learned counsel for the appellants/plaintiffs, by inviting the attention of this Court to the typed set of papers and the judgements of both the Courts below, would pyramid his arguments, which could succinctly and precisely be set out thus:

(i) Both the for a below have committed concurrent mistake in holding as though there was delay on the part of the plaintiffs in getting the sale deed executed.

(ii) There was no laches on the part of the plaintiffs. They have been ready and willing to perform their part of the contract; however, it was the defendants, who resiled from their commitment.

(iii) The defendants are bound by the agreement to sell, which was signed by their propositus, namely, Jeyavelu and Sivalingam.

5. The learned counsel for the plaintiffs, also by inviting the attention of this Court to the deposition of P.W.1, would try to point out that P.W.1 explained and expounded the position to the effect that even before the expiry of the time stipulated in the agreement to sell, the remaining part of the sale consideration was paid to one Annamalai-the Panchayatdar to the knowledge of the other side and as such, there was nothing more to be performed on the part of the plaintiffs, but it was only the defendants, who dilly-dallied and shilly-shallied with the matter and that alone was projected by them as though the plaintiffs committed delay in getting the sale deed executed.

6. The learned counsel for the appellants/plaintiffs would explain that the said Annamalai died and hence, he could not be examined.

7. At this juncture, I would like to recollect the following decisions of the Honourable Apex Court emerged under Sections 16 read with Section 20 of the Specific Relief Act:

(i) Man Kaur (dead) by LRS. Vs. Hartar Singh Sangha, certain excerpts from it would run thus:

40. This contention has no merit. There are two distinct issues. The first issue is the breach by the defendant vendor which gives a cause of action to the plaintiff to file a suit for specific performance. The second issue relates to the personal bar to enforcement of a specific performance by persons enumerated in Section 16 of the Act. A person who fails to aver and prove that he has 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 the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour. Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs. 15 lakhs. In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract has to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not "ready and willing" to perform his obligations.

(ii) J.P. Builders and Another Vs. A. Ramadas Rao and Another, would run thus:

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties.

8. A plain reading of the aforesaid decisions would clearly indicate the fact that Sections 16 and 20 of the Specific Relief Act, even in an ex-parte matter, should be adhered to, irrespective of the fact whether the defendants raised any contention based on those sections.

9. It is also a trite proposition of law that pleadings and evidence should tally with each other. I recollect and call up the maxim: "*judicis est judicare secundum allegata et probata*" - It is the duty of the judge to decide according to facts alleged and proved. Applying the same, if the deposition of P.W.1 is compared with the plaint averments, it is glaringly and surpassingly clear that both do not go together. Paragraph No. 8 of the plaint is extracted hereunder for ready reference:

8. The 1st plaintiff is always ready and willing to perform his part of contract and

he is always ready with balance consideration to deposit the same into the Court on the direction of this Honourable Court.

which would connote and denote, exemplify and portray that the plaintiffs undertook to deposit the remaining sale consideration into the Court and there is no whisper at all about the alleged factum of having paid the remaining sale consideration of Rs. 40,750/- (rupees forty thousand seven hundred fifty) to one Annamalai. As such, a new case was sought to be introduced only as an afterthought in the deposition of P.W.1, a portion of which is extracted hereunder:

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9. Accordingly if viewed, it is pellucidly and palpably clear that in the deposition, P.W.1 sought to camouflage and conceal the laches and delay on the part of the plaintiffs in performing their part of the contract.

10. It is an admitted fact that three months" time was stipulated in the agreement to sell, but there is nothing to indicate either in the plaint or in the documentary evidence that within the stipulated time, the remaining sale consideration was tendered by the plaintiffs to the defendants. As such, as against the concurrent findings of both the Courts below, based on Sections 16 and 20 of the Specific Relief Act, no interference in the second appeal is required.

11. A perusal of the first appellate Court's judgment would reveal that there were some property dispute etc. However, the first appellate Court ultimately held that the plaintiffs were not ready and willing to perform their part of the contract. Such a finding is in order in view of my discussion supra also, warranting no interference in second appeal. On balance, I could see no question of law much less substantial question of law in this second appeal. Accordingly, the second appeal is dismissed. No costs.

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