2026 INSC 776

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7825-7828 OF 2013

V.N.A.S. CHANDRAN ...**APPELLANT(S)**

VERSUS

S. VENILA AND OTHERS ...**RESPONDENT(S)**

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. The instant Appeals are directed against the final judgment and order dated 11.10.2011 passed by the Division Bench of the High Court of Judicature at Madras in AS No. 443 of 2008, together with MP No.1 of 2010 and MP Nos.1 and 2 of 2008. By way of the impugned judgment, the High Court allowed the appeal and set aside the judgment and decree dated 22.11.2007 passed by the District Judge, Nilgiris, Udhagamandalam in OS No. 11 of 2006 insofar the Trial Court had refused specific performance, and thus decreed the suit for specific performance as prayed for.

Factual Background

2. The relevant facts leading to these Appeals are briefly set out below. The sole appellant herein, Shri V.N.A.S. Chandran (originally "**Defendant No. 1**") is the owner of land and building comprised in Survey Nos. 4045 and 4047, bearing Door No. 6, Church Hill Road, Udhagamandalam, Nilgiris District, admeasuring 1 acre and 33 cents[1]. Defendant No. 1 had purchased a larger parcel of land admeasuring 1 acre and 62 cents from M/s. Spencer & Company Limited *vide* a registered sale deed dated 09.06.1994, but subsequently sold a portion of 0.29 cents on 06.07.1994 to M/s. Ramasubbu and others, leaving him with the suit property.

3. Respondent no. 1, Mrs. S. Venilla ("**Plaintiff No. 1**") is a resident of Halls Road, Killpauk, Chennai and the wife of respondent no. 2, Shri V. Sowrirajan ("**Plaintiff No. 2**"), who was a contractor by occupation and held certain immovable properties at Chennai. As Plaintiff No. 2 passed away during the pendency of these Appeals before this Court, he was substituted by his legal representatives, namely Plaintiffs' daughter R. Srividha and their son S. Venkatraj, who were brought on record by an order of this Court dated 07.04.2021.

4. Respondents nos. 3, 4 and 5 are the children of Defendant No. 1, namely, C. Subashini, C. Sreedharan and C. Gajalakashmi ("**Defendants Nos. 2, 3 & 4**", respectively). Lastly, the respondent no.6 is one Shri R.P. Rajan, a resident of Chennai ("**Defendant No. 5**"), whose connection with the suit property is set out hereinafter.

5. The genesis of this case is the "**Agreement to Sell**" entered into by Plaintiff No. 1 and Defendant No. 1 on 01.04.2004. By way of the Agreement to Sell,

---

[1] Hereinafter referred to as 'the suit property'

Defendant No. 1 agreed to sell the suit property to Plaintiff No. 1 for a total sale consideration of ₹2,25,00,000/-. On this point, Defendant No. 1 asserts that the parties had agreed upon a sale consideration of ₹2,00,00,000/- (the alleged true value of the property), even though the agreement recorded the consideration as ₹2,25,00,000, as Plaintiff No. 2 had specifically requested the same to facilitate him to raise funds in order to purchase the suit property. The additional amount was also intended to represent Plaintiff No. 2's commission. The Plaintiffs dispute this and maintain that the agreement correctly reflected the agreed-upon consideration. Similarly, it is the case of Plaintiffs that the total advance ultimately paid to Defendant No. 1 was ₹85,00,000/-, while Defendant No. 1 disputes the same and claims that he received only ₹60,00,000/- in total.

6. On 01.04.2004, Defendant No. 1 also executed a General Power of Attorney in favour of Plaintiff No. 2, authorising him, *inter alia*, to sell the suit property; to execute agreements of sale and sale deeds in respect thereof; to receive sale consideration; to deliver vacant physical possession of the suit property to the purchaser; and to evict occupants, tenants and inhabitants, whether through the Court, the Police, or by way of compromise, and to pay compensation if necessary for the purpose of settling disputes with them.

7. Also on 01.04.2004, Plaintiff No. 2 issued an undertaking letter to Defendant No. 1, wherein Plaintiff No. 2 undertook to pay all sale consideration received by him, whether by way of advance or full consideration, to Defendant No. 1, until the balance sale consideration of ₹1,50,00,000/- payable by Plaintiff

No. 1 was discharged. The said undertaking letter stated that it formed part and parcel of the Agreement to Sell and the Power of Attorney, and that it was irrevocable.

8. Earlier, Defendant No. 2 had filed OS No. 403 of 2003 before the First Additional Subordinate Court, Coimbatore (later transferred and renumbered as OS No. 182 of 2005 before the District Court, Coimbatore) seeking partition and separate possession of the suit property and certain other properties against her father Defendant No. 1 and siblings Defendant Nos. 3 & 4. Defendant No. 1's position therein was that the suit property was his self-acquired property and had been vexatiously included in the partition suit.

9. In that suit, an *ex-parte* preliminary decree came to be passed on 26.06.2003. Defendant No. 1 filed IA No. 117 of 2005 in OS No. 403 of 2003 seeking to set aside the said decree under Order IX Rule 13 of the Civil Procedure Code, 1908[2]. The same was allowed on 06.04.2005. This is highly pertinent as Clause 7 of the Agreement to Sell stipulated:

> "7. The sale shall be completed within 60 days from the date of passing orders of the set aside the ex-parte order of the preliminary decree in the partition suit O.S. No. 403/03 referred above."

Further, by Clause 13, time was expressly stipulated to be the essence of the Agreement.

---

[2] Hereinafter, '**CPC**'

10. In terms of Clause 6 of the Agreement to Sell, towards part-payment of the sale consideration, Plaintiff No. 2 issued three cheques of ₹25,00,000/-, drawn on the State Bank of India, Kilpauk Branch, Chennai dated 01.04.2004, 07.04.2004 and 16.04.2004, bearing nos.715942, 715943 and 715944, respectively.

11. The first of these cheques, dated 01.04.2004, was presented and dishonoured by the bank for want of sufficient funds on 07.04.2004. Plaintiff No. 2 asserts that this is because said cheque was deposited for clearance on 06.04.2004 even though he had requested Defendant No. 1 to withhold presentation until 09.04.2004.

12. After dishonour of the cheque dated 01.04.2004, Defendant No. 1 on 10.04.2004 issued a letter acknowledging receipt of ₹25,00,000 in two instalments of ₹15,00,000 and ₹10,00,000 *in lieu* of the dishonoured cheque no. 715942, and also returned the cheque to Plaintiff No. 2. Said letter also confirmed the balance sale consideration receivable as ₹2,00,00,000. The remaining two cheques of ₹25,00,000 each, dated 07.04.2004 and 16.04.2004, were duly honoured upon presentation.

13. Plaintiff No. 1 thereafter issued two further cheques of ₹5,00,000 each towards the sale consideration. One of these, cheque No. 740501 dated 20.05.2004, was honoured, while the other, cheque No. 740502 dated 24.05.2004, was dishonoured. In respect of the latter, Plaintiff No. 2 paid ₹2,00,000 and ₹3,00,000 in cash on 12.01.2005 and 13.01.2005 respectively, which was acknowledged by Defendant No. 1 *vide* letter dated 13.01.2005. This letter recorded the balance amount receivable on account of the sale of the suit property as ₹1,40,00,000.

14. On 16.04.2004, Plaintiff No. 2, under the Power of Attorney, entered into a fresh agreement with Defendant No. 5 for sale of the suit property for consideration of ₹1,50,00,000 ("**sub-agreement**"), and received an advance of ₹10,00,000 thereunder from Defendant No. 5. Defendant No. 5 subsequently filed OS No. 75 of 2005 before the Sub-Court, Udhagamandalam, against Defendant No. 1 and Plaintiff No. 2, seeking a bare injunction in respect of his rights under the sub-agreement.

15. Allegedly, under the Power of Attorney, Plaintiff No. 2 also took steps to vacate the tenants in occupation of the suit property. Between 07.02.2005 and 09.03.2005, six occupants (B. Nanjundan, P. Rajagopal, Saravanan, A. Christopher, Amanullah and Rasheed) were vacated upon payment of compensation aggregating ₹5,00,000. However, two remaining tenants (Krishna Devi and the Provident Fund Department) continued to occupy the suit property and were never vacated in favour of either, the Plaintiff No. 2 or the Defendant No. 1.

16. By letter dated 04.05.2005 addressed to Plaintiff No. 1, Defendant No. 1 stated that the *ex-parte* preliminary decree had been set aside and that a copy of the order had been faxed to Plaintiff No. 2 on 05.04.2005. He called upon Plaintiff No. 1 to pay the balance sale consideration of ₹1,65,00,000 within sixty days from that date i.e., from 04.04.2005 and complete the sale. A similar letter was addressed to Plaintiff No. 2 on the same date.

17. On the very same date, 04.05.2005, Defendant No. 1 revoked the Power of Attorney in favour of Plaintiff No. 2 by a registered Deed of Revocation. This was done on the ground that Plaintiff No. 2 had misused the Power of Attorney by entering into the sub-agreement with Defendant No. 5.

18. Plaintiff No. 1, by reply dated 23.05.2005, disputed the figure of ₹60,00,000/- and asserted that ₹85,00,000/- had been paid, and also pointed out that the correct date of setting aside of the *ex-parte* decree was 06.04.2005, not 04.04.2005 as claimed by Defendant No. 1. Plaintiff No. 2 sent a similar reply on the same date.

19. On 24.06.2005, counsel for Defendant No. 1 issued legal notices to both Plaintiff No. 1 and Plaintiff No. 2, purporting to terminate the Agreement to Sell with effect from 06.06.2005 on the ground of breach by Plaintiff No. 1.

20. Soon thereafter, on 05.09.2005, Defendant No. 1 lodged a complaint against Plaintiff No. 2 and others before the Judicial Magistrate No. 2, Madurai. Allegedly as a counterblast to said complaint, a complaint was then preferred by Plaintiff No. 2 on 27.12.2005 before the Chief Metropolitan Magistrate, Egmore, Chennai, alleging cheating and criminal breach of trust by Defendant No. 1 in respect of the ₹85,00,000 paid. Plaintiff No. 2 requested that the Police trace Defendant No. 1 and recover the amount. FIR No. 11/2006 at PS Central Crime Branch, Chennai was subsequently registered under Sections 420, 406 & 506 of the Indian Penal Code, 1860 on 04.01.2006 on the basis of Plaintiff No. 2's complaint. Defendant No. 1 was granted anticipatory bail therein. In due course of time, both complaints were eventually closed.

21. Plaintiffs also draw our attention to the fact that before the institution of the subject suit, a Memorandum of Understanding dated 28.04.2005 was signed by Plaintiff No. 2 with one Reverend Dr. B.A. James Santhosam, Founder, President and Managing Trustee of the Prince of Pease Trust, No. 16A, Karaneeswarer Pagoda St. Myalpore, Chennai – 600004, for sale of six flats bearing Old Door No. 8/6, New Door 16/1 to 16/6, and New Door No. 99/1 to 99/6 belonging to Plaintiffs situated at Karaneeswarar Pagoda Street, Mylapore. This was for a consideration of ₹1,23,00,000, with the arrangement to subsist until 30.06.2006. This was projected by Plaintiffs as a step taken to raise the balance consideration payable to Defendant No. 1. A registered sale deed was executed in furtherance thereof on 29.05.2006.

22. The subject suit was originally instituted on the original side of the High Court of Judicature at Madras on 13.09.2005 and numbered on 19.09.2005. It was subsequently transferred to and renumbered as OS No. 11 of 2006 before the District Judge, Nilgiris at Udhagamandalam. The suit sought specific performance of the Agreement to Sell or, in the alternative, recovery of ₹2,00,00,000 with interest at 24% per annum, together with a prayer for an equitable charge over the suit property and certain injunctive reliefs, though the latter were ultimately given up by endorsement.

<u>Trial Court</u>

23. The substance of the case set up by the Plaintiffs was that Defendant No. 1 had received ₹85,00,000 as advance under the Agreement to Sell; that he had wrongfully and prematurely terminated the agreement without notifying them on 06.04.2005 that the *ex-parte* decree in the partition suit had been set-aside and before the expiry of the stipulated sixty-day period, as calculated therefrom; that Plaintiffs had always been ready and willing to perform the Agreement to Sell, having vacated six tenants at their own expense of ₹5,00,000 and engaged a well-known architect at a further expense of ₹10,00,000 and having sold their own properties at Chennai to raise the balance consideration; that they had suffered a business loss estimated at ₹1,05,00,000; and that the rights under the Agreement to Sell had not been assigned away to Defendant No. 5, as admitted by Defendant No. 1 himself.

24. Defendant No. 1, in his written statement, denied having received more than ₹60,00,000. He pleaded that Plaintiff No. 1 had committed breach by failing to pay the balance within the stipulated sixty days; that he had informed Plaintiff No. 2 of the setting aside of the *ex-parte* decree by phone on 04.04.2005 and by fax on 05.04.2005; that he had validly revoked the Power of Attorney owing to its misuse by Plaintiff No. 2 in executing the sub-agreement in favour of Defendant No. 5; that the Plaintiffs, in their counter-statement in IA No. 360 of 2005 in OS No. 75 of 2005 (the suit preferred by Defendant No. 5) had themselves taken the position that the benefits of the Agreement to Sell had been assigned to Defendant No. 5 and were thus estopped from contending otherwise in the subject suit and consequently had no *locus standi* to maintain it; that time was of the essence of the contract; and that the claims for tenant-eviction expenses, architect's fees and business loss were false and concocted.

25. Case of Defendants Nos. 2, 3, & 4 was that they were not signatories to the sale agreement and not necessary parties; hence, the suit was bad for misjoinder. Moreover, the partition suit OS No. 182 of 2005 *inter alia* in respect of the suit property was still pending and Defendant No. 1 was under an injunction restraining alienation. Therefore, Plaintiffs were not entitled to specific performance.

26. Basis the pleadings of the parties, the Trial Court framed ten (10) material issues for adjudication and after recording the evidence of the parties, the Trial Court by its judgment dated 22.11.2007 decreed the suit only to the extent of refund of ₹85,00,000 with interest at the rate of 15% per annum from the date of suit till realisation, creating a charge on the suit property under Section 55(6)(b) of the Transfer of Property Act, 1882 for the decretal amount, and dismissed the suit in all other respects without costs.

27. The Trial Court found that Defendant No.1 had received an advance of ₹85,00,000 and that there had been no valid assignment of Plaintiff No. 1's rights to Defendant No. 5, as the sub-agreement was entered into by Plaintiff No. 2 in his capacity as Power of Attorney agent of Defendant No. 1, not as assignee of Plaintiff No.1's independent rights and further that the agreement was subsequently cancelled and Defendant No. 5's advance was refunded; and his suit being OS No. 75 of 2005 came to be dismissed. The Trial Court rejected the Plaintiffs' contentions regarding all the other claims and expenses as unproven. However, the Trial Court found that in the facts of the case, time was not strictly of the essence, as performance was contingent on events outside the Plaintiffs' control, such as setting aside of the *ex-parte* decree and vacating of tenants, and that there was no express clause providing for automatic cancellation upon non-completion within sixty days.

28. However, on the question of relief, notwithstanding the above findings in favour of Plaintiffs, the Trial Court held that they were not entitled to the discretionary relief of specific performance. The Trial Court observed that Plaintiff No. 2, in his criminal complaint, had expressly stated that Defendant No. 1 ought to be traced and the sum of ₹85,00,000 recovered from him. Plaintiff No. 2 had further stated in the complaint that he would not have entered into the agreement at all had he known of the injunction order subsisting in respect of the suit property. The Trial Court noted that Plaintiff No. 1 had never disowned these averments by her husband and did not even step into the witness box. Holding that Plaintiffs could not blow hot and cold at the same time, the Trial Court held they had not approached the Court with clean hands and were accordingly not entitled to the equitable relief of specific performance under Section 20 of the Specific Relief Act, 1963.

High Court

29. Aggrieved solely by such refusal of specific performance, Plaintiffs instituted an appeal before the High Court, being AS No. 443 of 2008, in which, *vide* the impugned judgment dated 11.10.2011, the Division Bench set aside the Trial Court's findings on Issue (x) and decreed specific performance.

30. At the outset, the High Court allowed MP No. 1 of 2010 under Order XLI Rule 27 CPC and received additional evidence, namely a xerox copy of the complaint dated 05.09.2005 lodged by Defendant No. 1 against Plaintiff No. 2 before the Judicial Magistrate No. 2, Madurai. The High Court noted that the same was an admitted document, filed by Defendant No. 1 himself in OA No. 5435/2005 in CS No. 838/2005, and none of the respondents therein objected to the Court receiving it. It was relied upon by Plaintiffs, as appellants therein, to show that the complaint lodged by Plaintiff No. 2 was only a counterblast to the earlier complaint. The High Court considered it a vital document and marked it as Ex. A-48.

31. On the point of cross-objections, the High Court, relying on ***S. Nazeer Ahmed v. State Bank of Mysore and Ors.***[3] held that Defendant No. 1 could support the decree by impugning an adverse finding without filing cross-objections, as he sought no additional relief.

32. On clean hands, High Court observed that the complaint dated 27.12.2005 had been filed by Plaintiff No. 2 alone, not by Plaintiff No. 1, the actual vendee.

---

[3] 2007 INSC 34

The High Court also found merit in Plaintiffs' contention that the complaint was a counterblast to that filed by Defendant No. 1, who had deliberately filed it before a court in Madurai having no territorial jurisdiction, and that in a criminal complaint, a complainant cannot seek specific performance, only recovery of money. The mere seeking of such recovery did not amount to waiver or abandonment under Section 63 of the Indian Contract Act, 1872.

33. On readiness and willingness, the High Court held that since Defendant No. 1 had not specifically pleaded in his written statement nor deposed in his chief examination that the Plaintiffs lacked funds, this contention could not be raised for the first time before the Appellate Court. In the High Court's view, the MoU and the subsequent sale of properties at Chennai demonstrated that Plaintiffs had arranged funds. Moreover, they produced a demand draft for ₹1,40,00,000 dated 14.06.2011 before the Division Bench at the hearing of the appeal itself, demonstrating their continuing readiness.

34. Therefore, *vide* the impugned judgement, the High Court set aside Trial Court's refusal and decreed the suit for specific performance, and directed Plaintiff No. 1 to deposit ₹1,40,00,000 before the Trial Court within four weeks, upon which Defendant No. 1 was to execute the sale deed. If the same was not done, the Trial Court was to execute it on his behalf. This judgement came to be assailed by Defendant No. 1 before this Court by way of the instant Appeals.

Analysis

35. At the outset, we affirm the High Court's view, based on ***S. Nazeer Ahmed*** *(supra),* that a respondent supporting a decree may impugn a finding adverse to him without filing cross-objections under Order XLI Rule 22 CPC, provided he seeks no relief beyond what the decree already grants him. As Defendant No. 1 only to sustain the Trial Court's refusal of specific performance, he was entitled to assail the readiness and willingness finding in favour of the Plaintiffs without filing cross-objections.

36. Lastly, Defendant No. 1 has also contended that since Plaintiffs did not seek declaratory relief that the termination of the Agreement to Sell was invalid, the suit was not maintainable from the outset, and the same was pleaded in his written statement as well. The legal question underlying this contention has been addressed by the recent judgment of this Court *viz.* ***Annamalai vs. Vasanthi and Others***[4]

> "**32.** In our view, a declaratory relief would be required where a doubt or a cloud is there on the right of the plaintiff and grant of relief to the plaintiff is dependent on removal of that doubt or cloud. However, whether there is a doubt or cloud on the right of the plaintiff to seek consequential relief, the same is to be determined on the facts of each case. For example, a contract may give right to the parties, or any one of the parties, to terminate the contract on existence of certain conditions. In terms thereof, the contract is terminated, a doubt over subsistence of the contract is created and, therefore, without seeking a declaration that termination is bad in law, a decree for specific performance may not be available. <u>However, where there is no such right conferred on any party to terminate the contract, or the right so conferred is waived, yet the contract is terminated unilaterally, such termination may be taken as a breach of contract by repudiation and the party aggrieved may, by treating the contract as subsisting, sue for specific performance without seeking a declaratory relief qua</u>

[4] 2025 INSC 1267

> validity of such termination. Plaintiff-appellant was not required to seek a declaration."
>
> (emphasis supplied)

Defendant No. 1 relies on the previous decisions of the Court in ***I.S. Sikandar (D) By LRs. & Ors vs. K. Subramani & Ors.***[5] and ***R. Kandasamy (Since Dead) & Ors. vs. T.R.K. Sarawathy & Anr.***[6]. We note that the latter expressly reconciles ***I.S. Sikandar*** *(supra*) with the conflicting precedent in ***Mrs. A. Kanthamani vs. Mrs. Nasreen Ahmed***[7] in the following terms:

> "**41.** A comprehensive reading of the two decisions reveals that in a fact scenario where the vendor unliterally cancels an agreement for sale, the vendee who is seeking specific performance of such agreement ought to seek declaratory relief to the effect that the cancellation is bad and not binding on the vendee. This is because an agreement, which has been cancelled, would be rendered non-existent in the eyes of law and such a non-existent agreement could not possibly be enforced before a court of law. Both the decisions cited above are unanimous in their approval of such legal principle. However, as clarified in **Kanthamani** (supra), it is imperative that an issue be framed with respect to maintainability of the suit on such ground, before the court of first instance, as it is only when a finding on the issue of maintainability is rendered by trial court that the same can be examined by the first or/and second appellate court. In other words, if maintainability were not an issue before the trial court or the appellate court, a suit cannot be dismissed as not maintainable. This is what **Kanthamani** (supra) holds."

This was followed in ***Annamalai*** *(supra).*

37. As the Agreement to Sell did not confer upon Defendant No. 1 any contractual right to unilaterally terminate, it is a case of repudiation squarely covered by this decision. Plaintiffs were entitled to treat the termination as ineffective and sue for specific performance without seeking declaratory relief. In

---

[5] 2013 INSC 577
[6] 2024 INSC 884
[7] 2017 INSC 202

any event, the Trial Court had expressly framed and adjudicated Issue (iv) concerning the validity and effect of the purported termination. The question having been tried and decided, no objection as to the maintainability of the suit survives.

On the issue concerning readiness and willingness

38. Although the Trial Court did not frame any issue relating to readiness and willingness of the Plaintiffs, however while deciding issue (vi), the Trial Court found that the Plaintiffs had no funds at the time of filing of the suit, neither Plaintiffs deposited the balance amount nor had kept apart the required funds ready from the date of the agreement. It is to be noted that Plaintiff No.1 was not examined as a witness and, thus, she cannot disown the averment of the complaint filed by Plaintiff No.2 wherein he only demanded return of money after filing of the suit. The High Court's reasoning that the appellant did not aver in his written statement about the plaintiffs' lack of readiness and willingness would not prove the Plaintiffs' case on this aspect. Moreover, the appellant/defendant had stated during the examination that Plaintiff No.1 did not meet the demand raised for the funds to purchase and was not at all ready and willing to pay the balance. In our considered view, this statement of the appellant/defendant would amount to challenging the plaintiffs' readiness and willingness. The High Court has culled out plaintiffs' readiness and willingness basing a demand draft dated 14.06.2011 for ₹1,40,00,000 produced at the close of hearing. However, in the suit for specific performance, the plaintiffs had to show their means i.e., availability of funds and readiness and willingness continuously at all material points of time i.e., soon after the agreement till the execution of the decree.

39. It is also to be seen that the purported MoU dated 28.04.2005 between Plaintiff No.2 and Dr. B.A. James Santhosam was neither mentioned in Plaintiff No.2's reply dated 23.05.2005 (Ex.A-24) nor in the plaint filed on 12.09.2005. The MoU nowhere demonstrates that money was being transferred into the plaintiffs' account. Thus, considering the evidence on record, the High Court's finding that the plaintiffs had funds available with them is erroneous. This is more clear from the fact that two cheques dated 10.04.2004 and 24.05.2004 for ₹25,00,000 and ₹5,00,000 respectively issued in favour of the appellant/defendant were dishonoured due to insufficient fund in plaintiffs' account. Even if the amounts involved in the cheques were later paid by cash, the fact remains that the plaintiffs had no funds in their bank account leading to dishonour of cheques. Even the Trial Court had found that the plaintiffs had no funds in the bank account. Once again, MoU dated 28.04.2005 between Sowrirajan and Dr. B.A. James Santhosam records that B.A. James Santhosam would buy plaintiffs' property for ₹1,23,00,000 once it is found that it has no encumbrances. The sale deed basing MoU was executed for ₹1,23,00,000 on 29.05.2006. Thus, it clearly demonstrates that on the date of filing of the suit, i.e., 12.09.2005, the plaintiffs had no funds.

40. In the matter of ***Janardan Das and Others vs. Durga Prasad Agarwalla and Others***[8], this Court held thus in paragraph 13.4:

> "**13.4.** The Court observed that the plaintiffs failed to demonstrate continuous readiness and willingness to perform their part of the contract. They did not take effective steps to secure the consent and presence of the sisters within the three-month period specified in the agreement. Their inaction and reliance solely on Defendant 1 and late Soumendra indicated a lack of diligence and commitment to fulfilling the contractual obligations."

41. This Court in ***N.P. Thirugnanam (Dead) by LRs. vs. Dr. R. Jagan Mohan Rao and Others***[9] highlighted the importance of continuous readiness and willingness in a case where the plaintiff is seeking specific performance. This Court in paragraph 5 held thus:

> "**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 under Section 20 of the Specific Relief Act, 1963 (for short "the Act"). Under Section 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

[8] 2024 SCC OnLine 2937
[9] (1995) 5 SCC 115

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

42. Yet again, in ***Nanjappan vs. Ramasamy & Anr.***[10], this Court has summarized the position of law, as it stood before 2018, as follows:

> "**12**. Under Section 20 of the Specific Relief Act, grant of specific performance of contract is discretionary. Though the decree for specific performance is discretionary, yet the court is not bound to grant such a relief merely because it is lawful to do so. But the discretion of the court is not arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a court of appeal and should be properly exercised keeping in view the settled principles of law as envisaged in Section 20 of the Act. The jurisdiction of decreeing specific performance is a discretion of the court and it depends upon facts and circumstances of each case. The court would take into consideration circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen.
>
> **13**. In **Sardar Singh vs. Smt. Krishna Devi & Anr**., (1994) 4 SCC 18, this Court observed that as the court has to see the totality of the circumstances, conduct of the parties and respective interests under the contract while granting/refusing such relief."
>
> (emphasis supplied)

43. In ***Kamal Kumar vs. Premlata Joshi & Ors.***[11], the Court further elucidated:

> "**10.** It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions, which are required to be gone into for grant of the relief of specific performance, are first, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property; second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract; third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually

[10] 2015 INSC 152

[11] 2019 INSC 16

> granted to the plaintiff; and lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds."

44. On the point of a plaintiff's conduct, specifically, this Court in the recent decision of ***Major Gen. Darshan Singh (D) By LRs & Anr. vs. Brij Bhushan Chaudhary (D) By LRs***[12] had succintly summed it up:

> "**9.** Under Section 20 of the 1963 Act, the grant of a decree for specific performance is always discretionary. The exercise of discretion depends on several factors. One of the factors is the conduct of the plaintiff. The reason is that relief of a decree of specific performance is an equitable relief. A person who seeks equity must do equity."
>
> (emphasis supplied)

45. Against this backdrop, we are not able to appreciate the High Court's characterization of Plaintiff No. 2's complaint as a benign 'counterblast' that would not militate against relief of specific performance. No doubt Defendant No. 1 had preferred his complaint at Madurai despite himself stating therein that Plaintiffs and their associates had allegedly come to the suit property at Ooty armed with deadly weapons, committed robbery, and threatened him. However, even a retaliatory motive cannot justify Plaintiff No. 2 lodging his own FIR in which he explicitly requested the Police trace Defendant No. 1 and recover the sum of ₹85,00,000 from him, and also that the amount was obtained by Defendant No. 1 fraudulently suppressing the interim injunction in the partition suit, despite there being an express reference to the same in Clause 7 of the Agreement to Sell. The complaint itself being a 'counterblast' is no excuse in law; in fact, Courts generally censure these kind of retributive criminal proceedings.

---

[12] 2024 INSC 157

46. We note that before the High Court, Plaintiffs had themselves drawn attention to the fact that Defendant No. 1's criminal complaint and the subject suit were instituted in succession on 05.09.2004 and 13.09.2005, respectively, while the counter-complaint came to be preferred only on 27.12.2005. We also note that the latter does not disclose the initiation of civil proceedings. In our view, therefore, the Trial Court was quite justified in observing that the Plaintiffs were blowing "*hot and cold*" about the relief they sought.

47. The fact that Plaintiff No. 2 (and not Plaintiff No. 1) lodged the FIR cannot be a justification; after all, he was hardly a stranger to the Agreement to Sell. From the inception, the Agreement to Sell, the Power of Attorney, and the undertaking given by Plaintiff No. 2 on 01.04.2004 made it clear he was central to the transaction. Defendant No. 1 has strenuously urged this point before us, relying principally on ***Janki Vashdeo Bhojwani and Anr. vs. IndusInd Bank Ltd. and Ors.***[13] and ***Rajesh Kumar vs. Anand Kumar & Ors.***[14] and the same was also found by the Trial Court at the first instance. We are inclined to agree. Plaintiff No. 1 neither disowned her husband's conduct nor stepped into the witness box to give her account, and thus cannot derive advantage from the technical fact that the counter-complaint was given by her husband Plaintiff No. 2 and not herself. Plaintiffs cannot seek to be treated as a composite unit when it benefits them, but resile from the position when it does not.

---

[13] 2004 INSC 695
[14] 2024 INSC 444

48. Moreover, Defendant No.1's objection that Plaintiffs have also taken inconsistent stands in the subject suit and OS No. 75 of 2005 also has merit. In Plaintiffs' legal notices dated 23.05.2005 and the pleadings filed by Plaintiff No. 2 in OS No. 75 of 2005, their position was that the rights under the Agreement to Sell had been assigned to Defendant No. 5 with the knowledge and consent of Defendant No. 1. Hence, the sub-agreement was valid and binding. Yet, in the present proceedings, the Plaintiffs consistently assert that there had been no assignment divesting Plaintiff No. 1 of her contractual rights and that she alone remained entitled to seek specific performance. Whether the transaction with Defendant No. 5 amounted in law to an assignment is ultimately not impugned. Neither can we comment on the commercial rationale underlying such an 'onwards' agreement. What is material here is that the Plaintiffs adopted two contradictory positions which are impossible to reconcile.

49. Moreover, we must examine the legal implications of Plaintiff No. 2 agreeing to sell the suit property to Defendant No. 5 while the Agreement to Sell was subsisting and payments were being made thereunder. If he did so in his capacity as Defendant No. 1's constituted attorney, then he intended to alienate the suit property before title could pass to his wife under the Agreement to Sell, that too for a lower consideration of Rs. 1,50,00,000. Alternatively, if he did it on behalf of his wife (though this is not reflected in the sub-agreement), then her rights would have necessarily assigned to Defendant No. 5. Although both the Power of Attorney and the sub-agreement were subsequently cancelled, we can appreciate why Defendant No. 1 asserts that he takes issue with Plaintiffs creating third-party rights behind his back before Plaintiff No. 1's title was complete. Defendant No. 1 has specifically contended before us that he was made to face trial in OS No. 75 of 2005 and Defendant No. 5 even obtained an interim injunction therein on 11.06.2005, which was vacated at Defendant No. 1's instance on 10.08.2005.

50. In fact, at the close of OS No. 75 of 2005, the Sub-Court had made a number of observations that cannot be brushed aside lightly. It was found that the suit had been undervalued in order to invoke the Court's jurisdiction and also that plaintiff therein (i.e. Defendant No. 5) was acting "*hand in hand*" with present Plaintiff No. 2 and was no more than a "*tool*", "*name-lender*" or mere "*puppet plaintiff*". While denying interlocutory relief, the Sub-Court had held that if the sub-agreement were genuinely valid, the proper remedy was a suit for specific performance, not one for bare injunction through Defendant No. 5.

51. It appears to us that the Plaintiffs may have been desirous of purchasing the suit property and even took steps towards it; however, their subsequent inconsistent conduct countervails the grant of an exceptional and equitable remedy such as specific performance under the unamended Specific Relief Act, 1963. We quote here from our judgement ***Muddam Raju Yadav vs. B. Raja Shanker (D) Through LRs & Ors.***[15] pronounced earlier this year:

> "**12.** In a suit for specific performance, the conduct of the parties is significant as it assists the Court in evaluating the evidence to find out the bona fides of the parties at the time of execution of the agreement. <u>Even a slight doubt in the mind of the Court that the plaintiff was not</u>

[15] 2026 INSC 214

acting bonafidely and that the material facts, having bearing on the agreement, have been withheld in the agreement itself and from the Court also, the equitable and discretionary relief has to be denied. A plaintiff approaching the Court with uncleaned hands, like in the present case—the plaintiff having withheld the document i.e., MoU (Exhibit B-2), as the same was nowhere mentioned in the plaint, the present was a fit case for denial of relief of specific performance and the High Court has rightly allowed the appeal preferred by the respondent(s)/defendant(s) to set aside the judgment and decree passed by the Trial Court."

(emphasis supplied)

52. Moreover, we cannot ignore the fact that over two decades have passed since the Agreement to Sell was concluded. In decisions like ***Mrs. Saradamani Kandappan vs. Mrs. S. Rajalakshmi & Ors.***[16] and ***Nanjappan*** *(supra)*, this Court has held such long lapse of time militates against granting the relief of specific performance. Defendant No. 1 is today a man of highly advanced age and Plaintiff No. 2 has passed away. To compel the transfer of immovable property under these circumstances would not, in our opinion, be equitable. As held in ***Kamal Kumar*** *(supra),* hardship to the defendant is also a recognised factor in the exercise of discretion under Section 20 of the Specific Relief Act, 1963. Justice here requires that we restore and leave the parties where they stood before the transaction.

53. Accordingly, we allow these Civil Appeals and set aside the impugned judgment and decree of the High Court and restore the judgment and decree passed by the Trial Court. Plaintiffs had deposited ₹1,40,00,000 with the State Bank of India, Udhagamandalam Branch on 12.11.2011, which was put in a fixed deposit with a nationalised bank pursuant to the order of this Court dated

[16] 2011 INSC 446

20.01.2012. They are hereby permitted to withdraw the said amount along with the accrued interest. In the facts and circumstances of the case, there will be no order as to costs.

..J.
(PRASHANT KUMAR MISHRA)

..J.
(N.V. ANJARIA)

NEW DELHI;
JULY 31, 2026.