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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.11.2026

Pronounced on : 20.11.2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

OSA No. 69 of 2024 and CMP.No.8821 of 2024

CNR: {HCMA010452012024}

Case QR

1. Kamakshi Kumaran

2. M/s.Sree Builders
   Represented by its proprietor V.Radhakrishna
   (Deceased) No.15, I Avenue, Besant
   Nagar,Chennai -90, Represented through its
   Power Agent Mrs. Kamakshi Kumaran

3. R.Suchitra
4. V.R.Vighnesh
5. V.R.Vaishnave
   (Plaintiffs 3 to 5 impleaded as per order dated
   07.07.2021 in A.No.2298 of 2021)

..Appellant(s)

Vs

1. Venkatramani
2. C.R.Chandrasekaran (Deceased)
3. C.R.Revathi alias Gowri Chandrasekaran
4. C.Kirupa Shankar
   (The Defendants 2 to 4 impleaded as per order
   dated 25.09.2014 in Appl.No.5361 of 2014)
5. Sowmiya Srikanthan
   R5 brought on record as LRs of deceased R2
   viz C.R.Chandrasekaran vide court order dt.
   02.11.2026 made in CMP 29866 of 2026 in
   OSA 69 of 2024 NSKJ and GKMJ

..Respondent(s)

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Original Side Appeal filed under Order XXXVI Rule 9 of OS Rules read with Clause 15 of Letters Patent to set aside the judgement and decree dated 10.07.2023 in C.S.No. 82 of 2007.

For Appellant(s):	Mr.R.Venkatraman for M/s.Tatva Legal Chennai
For Respondent(s):	Mr.R.Thiagarajan for R1 Vasudha Thiagarajan Mr.Ashwin Shanbhag for R3 & R4 Ms.Jheertha for R5

JUDGMENT

N.Sathish Kumar, J.

Challenging the decree and judgment of the learned Single Judge dismissing the suit for specific performance and decreeing the suit for granting alternate relief of directing the first defendant to pay a sum of Rs.10 lakhs with interest @ 7.5% per annum on Rs.2 lakhs from 07.12.2005 till the time amount was deposited in the court, the present appeal has been filed.

2. The parties are arrayed to as per their own ranking before the Trial Court

3. The following are the brief facts leading to filing this appeal:-

3.a. The first defendant being the owner of the suit property has agreed to sell the property for a total sale consideration Rs.59 lakhs and received a sum of Rs.10 lakhs on 21.07.2005 by way of cheque bearing No.093345 dated 21.07.2005 drawn on Indian Bank, Chennai. It was agreed that balance sale consideration shall be paid within 90 days from the date of agreement, but the

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same is subject to fulfillment of certain conditions and obligations set out in the agreement of sale. At the time of entering into agreement of sale, the 1st defendant did not produce the original title deeds with regard to the suit schedule property and other parent documents, encumbrance certificates and other papers for approving the title. While the same was demanded for, the 1st defendant informed the plaintiffs that the original title deed and other documents are lying with Bank of India, Cathedral Road Branch, Chennai - 86 as security for the loans availed by the defendant. At the request of 1st defendant to discharge the loan amount, the plaintiffs believed his representation and paid a substantial advance of Rs.10 lakhs to enable the 1st defendant to discharge the loan amount and to retrieve the title deeds from the said Bank. Inspite of taking huge amount as advance amount, the first defendant has not discharged the loan amount and retrieved and turned over the documents to the plaintiffs for the purpose of approving the title and completion of sale transaction. Despite frequent requests made by the plaintiffs for several months after the agreement, the defendant has not produced the encumbrance certificate and handed over the title deeds, therefore, the plaintiff has issued legal legal notice dated 26-02-2006 calling for the defendant to come forward and execute the sale deed after discharging the mortgage from Bank of India, however, the first defendant issued a reply notice making several allegations inter alia contending that agreement itself was terminated due to non-performance of the terms of conditions of the agreement. According to the plaintiffs, such allegations are

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totally false. The plaintiffs also came to know that the first defendant is not willing to execute the sale deed in favour of the plaintiffs and negotiating with third parties, therefore, the plaintiffs lodged complaint to the police for initiating action against the first defendant; since the issue is civil in nature, the plaintiff sent reply notice dated 09.11.2006 to the notice sent by the first defendant dated 01.11.2026 by not only returning the advance amount sent by the first defendant, but also called upon him to perform his obligations.

3.b. The plaintiffs were having sufficient funds to pay the balance sale consideration and they were always ready and willing to perform their obligations so far as performance of sale transactions. It is the first defendant who committed breach with regard to the terms and conditions, hence, the plaintiffs are entitled to specific performance. The first defendant had sold the property in favour of defendant Nos.2 & 3, by way of sale deed dated 08-12-2008 and the defendant Nos.2 and 3, in turn, had settled their interest and ownership on the suit property in favour of their son viz., the 4th defendant through a settlement deed dated 08.06.2011 creating further encumbrance over the suit property. Hence, the suit seeking specific performance.

3.c. According to the first defendant, the first plaintiff is the mother-in-law of the second plaintiff. They are in the real-estate business. They entered into a sale agreement with the first defendant for purchasing the suit property with a view to develop it and to build few apartments. About a week prior to the

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sale agreement, on 13.07.2005, the second plaintiff addressed a letter to this defendant and made the following offer which varied from the sale agreement was that of the balance sale consideration of Rs.49.0 lakhs, Rs.10.0 lakhs would be paid a week before the registration of the sale deed and that the balance Rs.39.0 lakhs would be paid at the time of registration. Even before the execution of the sale agreement, the first defendant had handed over the copies of title deed and allied documents to the plaintiffs. Besides they were informed that the property was outstanding on a mortgage with M/s Bank of India, Cathedral Road branch since 22.06.2004, to secure a loan of Rs.8.0 lakhs, and that the original title deed of the suit property had been deposited with it, and that he was still due to pay the bank a sum of Rs.7.5 lakhs. The plaintiffs had verified these facts with the bank pursuant to a written request made by this defendant to his banker. Indeed, the letter dated 13.07.2005 referred to earlier was given by the plaintiffs only after they had verified the facts. The first defendant had agreed to obtain the documents only after receiving the balance sale consideration of Rs.10.0 lakhs out of the balance sale consideration. Though there was no express clause that the plaintiffs should pay Rs.10.0 lakhs a week before the registration, there was a consensus on this aspect, as the intent was to utilise this fund to discharge the debt dues to the bank and to redeem the mortgage to render the property free of encumbrance.

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3.d. The three months time stipulated in the agreement is an essential term of the contract. This is because the bank which is the mortgagee of the suit property was preparing to initiate action to realise the loan dues, and the intention to sell the property inter alia was for averting the coercive action by the bank. That apart, the first defendant required funds for arranging marriage alliance for his daughter. Due to the breach of contract by the plaintiff, that alliance came to be dropped. That apart, trusting the promise of the plaintiffs that they would perform their part of the contract, the defendant even vacated the tenant of the suit property and paid him the rental advance of Rs.70,000/- that the tenant had earlier left with him, and lost the rental income of Rs.7,000/- p.m., plus the interest income on the advance amount left by the tenant. Apart from this, the defendant had also booked an apartment then under construction and paid an advance of Rs.10.0 lakhs to the builder on 23.07.2005, on the very next day after the execution of the sale agreement. As the defendant intended to make subsequent payment to his builder from and out of the sale proceeds, and since due to the plaintiffs defaulted to perform their part of the contract, the first defendant could not pay the builder, and consequently, the builder terminated the contract, and had returned only Rs.7 lakhs as against a payment of Rs.10 lakhs paid by the first defendant. The plaintiffs were never ready and willing to pay the balance sale consideration, despite several demands made by the first defendant. The plaintiffs did not have requisite funds to perform their part of the contract.

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3.e. Due to breach of contract by the plaintiffs, the first defendant could not service his debt to the bank and redeem the suit property in time. He was forced to pay Rs.8.80 lakhs towards the repayment of loan liability and redeem the mortgage. The sale agreement dated 21.07.2005 stands automatically terminated on 21.10.2005. The plaintiffs have waived and abandoned their contractual right and cannot keep the contract alive. Under these circumstances, the first defendant forfeited Rs.2.0 lakhs towards liquidated damages and returned Rs.8.0 lakhs through a cheque along with his reply notice, but that was refused. Again on 07.12.2005, he issued a demand draft for Rs.8.0 lakhs, drawn in favour of the first plaintiff, and sent the same along with the reply notice dated 02.03.2006. This demand draft was not accepted and was returned, but the plaintiffs have concealed this fact in their plaint. The first defendant has raised a counter claim of Rs.15.0 lakhs as damages.

3.f. The defendants 2 to 4 have filed their written statement in line with the first defendant stating that on 05.02.2007, defendants 2 and 3 had entered into a sale agreement with the first defendant for the purchase of the suit property for a total consideration of Rs.96.0 lakhs and that under the agreement they had paid Rs.4.0 lakhs as advance, and upon payment of the entire sale consideration, the first defendant executed a sale deed on 08.12.2008 in favour of defendants 2 and 3. Subsequently on 08.06.2011, these defendants had settled the suit property in favour of the 4th defendant. These defendants had made

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substantial improvements to the property since the purchase. Now, the 4th defendant is in occupation of the property. Since the defendants 2 and 3 have paid the full consideration to the first defendant, the suit is not specifically enforceable.

3.g. The plaintiffs filed their rejoinder cum written statement to the counter claim of the first defendant pleading that the counter claim is badly barred by limitation. In terms of the reply notice of the first defendant, the suit sale agreement stood terminated even on or before 02.03.2006, and if the first defendant has a right to claim damages, that should have been done within three years at least from 02.03.2006. The counter claim however was raised only on 29.06.2016 and hence is barred by limitation. In terms of the sale agreement, the first defendant is under an obligation to sell the property free of encumbrance, but he had never redeemed the mortgage from his banker. He has not explained why he did not utilise Rs.10.0 lakhs which he had received as advance amount under the sale agreement for discharging the loan and for clearing the encumbrance over the property. The plaintiffs' readiness, or their turn to perform their part of the contract would arise only after the first defendant had cleared the encumbrance over the property. Time is not an essential of the contract. The intention of the first defendant is to break the contract and to sell the property for a higher consideration.

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3.h. Though various issues were originally framed, the learned Single Judge re-casted the issue and the same are as follows:-

1.Whether time is the essence of the Agreement of Sale dated 21.07.2005, entered between the plaintiffs and the 1st defendant, for sale of the schedule property?

2.Were the plaintiffs ready and willing to perform their part of the contract?

3.Who among the parties here to has committed breach of contract?

4.Whether the plaintiffs are entitled for the relief of specific performance of the contract dated 21.07.2005? Or, to the alternate prayer for refund of advance amount paid thereunder.

5.Who among the parties on either side is entitle to damages for breach of contract, and if anyone is so entitled, what is the decree as to the quantum of damages?

6.Whether the defendants 2 and 3 are bonafide purchaser for value without notice of the contract between the plaintiffs and the first defendant? And, will the doctrine of lis pendens affect their purchase

7.To what other reliefs are the parties entitled to ?

3.i. On the side of plaintiffs, power agent of the plaintiff was examined as PW1 and Exs.P1 to P27 were marked. On the side of defendants, first defendant

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was examined as D.W.1 and third defendant was examined as D.W.2 and they marked Exs.D1 to D31.

3.j. Based on the oral and documentary evidences, the learned Single Judge dismissed the suit for specific performance, however, granted alternate relief directing the first defendant to pay a sum of Rs.10 lakhs with interest @ 7.5% per annum on Rs.2 lakhs from 07.12.2005 till the time amount was deposited in the court. Challenging the same, the present appeal has been filed.

4. The learned counsel for the appellants submitted that the conduct of the first defendant assumes significant. Having received an advance of Rs.10 lakhs only in order to redeem the mortgage, he has not taken any steps to discharge the mortgage from the bank, whereas, the defendant had invested that amount for purchase of plot, that itself clearly shows that the first defendant's intention was only to defeat the contract. The readiness and willingness would arise only on the performance of the contract by the first defendant on bringing of encumbrance certificate and original documents, therefore, would submit that the plaintiff has proved the readiness and willingness by sending legal notice immediately and the suit is also filed within a period of 3 years and further, there is no hardship caused on the defendant, the subsequent purchase and the settlement is also during the pendency of the suit. Thus, the plaintiff is certainly entitled to specific performance.

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5. It is his further contention that as per Section 13(c) of the Specific Relief Act, where the property is mortgaged for an amount not exceeding the purchase money, the purchaser may compel the vendor to redeem the mortgage and obtain a valid discharge and where necessary also a conveyance from the mortgagee. Therefore, it is the duty of the vendor to clear the mortgage. Having received a sum of Rs.10 lakhs to clear the mortgage, the first defendant has not redeemed the mortgage within the time stipulated in the contract, therefore, according to the learned counsel, time is not an essence of contract. The plaintiffs were always ready and willing to perform their contract, their readiness and willingness will arise only on the performance of the first defendant's obligations. When the first defendant has not acted bonafidely and invested the money for purchase of some other plot without clearing the mortgage and made the title marketable, he cannot be shown any leniency. This conduct has to be assessed by the Court and therefore, would submit that the learned Single Judge though having held that time is not an essence of contract, negatived the relief of specific performance.

6. It is his further contention that since the consideration is lower than what was agreed in the contract, that itself shows that subsequent purchasers are not bonafide purchaser; at any event, they purchased the property with the notice of the earlier contract and therefore, would submit that the plaintiffs are certainly entitled to specific performance. In support of his submissions, he

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relied upon decision of the Hon'ble Supreme Court in ***Chandnee Widya Vati Madden v. C.L. Katial and Ors.*** *(MANU/SC/0257/1963)*, contending that as far as the parties to the contract are concerned, they are strictly bound by the terms and conditions of the document executed by them.

7. The learned counsel for the first respondent submitted that the very conduct of the plaintiffs indicate that they were not ready and willing to perform the contract from the very inception; even at the time of contract, they were informed about Rs.8 lakhs mortgage in the Bank of India. It is specifically agreed between the parties that apart from the advance of Rs.10 lakhs, another Rs.10 lakhs will be paid to clear the loan, however, the plaintiffs have not paid the remaining Rs.10 lakhs to clear the loan despite requests being made by the first defendant. The plaintiffs have also verified all the copies of the title deeds even at the time of agreement which has been clearly admitted by PW1. It is the further contention that the plaintiffs have never shown their readiness and willingness, their bank savings accounts and postal savings account produced before the Court clearly shows that at no point of time, they had substantial amounts in their accounts to pay the remaining sale consideration within the agreed period in the agreement. The agreement itselfs clearly indicate that the first plaintiff agreed to purchase only 1/3rd undivided share of the suit property and the 2nd plaintiff agreed to purchase 2/3rd of the undivided share of the suit property, whereas, Exs.P20 and D8 clearly shows that the second plaintiff has

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never parted with any amount for the agreement. These documents indicate as if he has nominated the first plaintiff and he has declared that no amounts whatsoever was paid by him and further, he has declared that he had no right over the property arising out of the agreement dated 21.07.2005. According to the second plaintiff, he has virtually relinquished his right, these facts clearly show that 2nd plaintiff has never parted with any amount, therefore, their contention that they were always ready and willing to pay the remaining sale consideration within a period of 90 days is highly improbable.

8. Further, it is contended that the first defendant had agreed to sell the property due to pressing necessities to celebrate the marriage of his daughter, that apart, also to purchase another plot. As the plaintiffs had failed to pay the remaining sale consideration, the marriage of the daughter was also dropped, therefore, according to him, undue hardship has been caused to him because of the conduct of the plaintiffs. The first defendant has already taken a demand draft for Rs.8 lakhs and sent to the plaintiff after deducting Rs.2 lakhs forfeiture amount from the advance amount of Rs.10 lakhs, immediately during the agreement period. Having sent a legal notice on 26.02.2026, the plaintiffs have not taken any further steps to pay the remaining sale consideration, whereas, on 15.12.2006, they have lodged a police complaint; except that, they have not done anything. Passbook of saving bank accounts and postal savings account produced by the plaintiffs under Exs.A9 to A14 does not prove that the

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plaintiffs had substantial amounts to pay the sale consideration at any point of time, therefore, the learned Single Judge has appreciated this aspect and found that the plaintiffs were never ready and willing to perform the contract.

9. Furthermore, it is the contention of the first defendant that the plaintiffs have never entered into the box, only the power agent of the plaintiffs was examined as PW1. Though power agent is the son of first plaintiff, his evidence indicate that the first plaintiff is only house-wife. PW1 evidence clearly indicate that on 09.12.2005, the first defendant had returned Rs.8 lakhs by way of cheque to the counsel of the plaintiff. The plaintiffs were also aware of the mortgage of Rs.8 lakhs and the original documents are with the bank and they had also verified the copies of the document at the time of agreement, therefore, the contention that the first defendant has not produced the document is introduced only for the first time in the suit and the suit has been filed belatedly. Though the time is not an essence of contract, when the conduct of the parties clearly shows that they are not entitled to specific performance, merely because the property has been sold to third parties, that itself cannot be a ground to grant the decree for specific performance. Hence, seeks for dismissal of the appeal.

10. In support of his submissions, the learned counsel for the first respondent placed reliance on a series of judgments of the Hon'ble Supreme Court and sought for dismissal of this appeal. They are as follows:-

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a. Reliance was placed on ***I.S. Sikandar (D) by LRs v. K. Subramani***, *(2013) 15 SCC 27*, to emphasize that under the law of equity governing specific performance of a real estate contract, the Court looks not merely at the letter but at the substance of the agreement. It must be ascertained whether the parties named a specific time intending strict compliance or whether performance within a reasonable time was intended. An intention to make time the essence of the contract must be expressed in clear and unequivocal language.

b. Reference was made to ***A. Kantamani v. Narseen Ahmed***, *(2017) 4 SCC 654*, wherein it was held that in a suit for specific performance, the plaintiff is required to treat the contract as still subsisting and must prove continuous readiness and willingness from the date of the contract up to the date of hearing. Failure to prove such continuous readiness and willingness inevitably leads to the dismissal of the suit.

c. Relying upon ***Rajesh Kumar v. Anand Kumar***, *(2024) 13 SCC 80*, it was argued that a Power of Attorney holder cannot depose for the principal in respect of matters within the exclusive personal knowledge of the principal. Where the principal fails to step into the witness box to give evidence, an adverse presumption arises against the case set up by them.

d. In respect of the bar of limitation, reliance was placed on ***Valliammai v. K.P. Murali***, *(2024) 20 SCC 363*, highlighting that Article 54 of Part II of the Schedule to the Limitation Act, 1963 prescribes a period of three years from the

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date fixed for performance, or where no such date is fixed, three years from the date when the plaintiff has notice of refusal of performance.

e. Finally, the decision in ***R. Kandasamy v. T.R.K. Saraswathy***, *(2025) 3 SCC 513*, was cited to substantiate that the grant of specific performance is a discretionary relief and Courts are not bound to grant it merely because it is lawful to do so. The phrase "ready and willing" implies readiness to carry out contractual obligations to their logical end. Continuous readiness and willingness on the part of the plaintiff constitutes a mandatory condition precedent for the grant of specific performance.

11. In light of the above, now the points that arise for consideration in this appeals are:-

a. Whether the plaintiffs have proved the readiness and willingness entailing them to seek the relief of specific performance?

b. Whether the first defendant had agreed to produce the original documents immediately after the receipt of Rs.10 lakhs of the advance amount?

c. Is there any breach of contract on the part of the first defendant?

Points a to c

12. Ex.A2 is the agreement of sale entered into between the plaintiffs and the first defendant. On perusal of the agreement dated 21.07.2005, the first defendant had agreed to sell the property for a total sale consideration of Rs.59

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lakhs and had received Rs. 10 lakhs as advance. The agreement further reveals that the first plaintiff has agreed to purchase the 1/3rd undivided share of the suit property. The remaining share of 2/3rd undivided share was agreed to be purchased by the second plaintiff. It was also agreed between the parties that the balance sale consideration of Rs.49 lakhs shall be paid within 90 days from the date of signing the agreement. It was also agreed between the parties if the purchaser fails to comply with any terms of the condition set out, the vendor has the right to forfeit a sum of Rs 2 lakhs from the advance amount of Rs 10 lakhs and return the balance amount of Rs 8 lakhs to the purchaser. The sale agreement makes it very clear that the first plaintiff has agreed to purchase only 1/3rd undivided share of the suit property and the remaining 2/3rd undivided was agreed to be purchased by the second plaintiff. In the entire sale agreement, there is no mention whatsoever with regard to the mortgage loan or its clearance or handing over the title deeds so as to pay the remaining balance sale consideration. What has been agreed between the parties is that the vendor has to furnish the encumbrance certificate till the date of sale for the perusal and record of the purchasers.

13. The suit proceeded as if on the date of agreement, the first defendant did not produce the original title deeds and first defendant informed the plaintiff that the title deeds are lying with the bank and requested to clear the bank loan, hence, the first defendant received Rs.10 lakhs as advance amount. As per the

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plaint averments, they never verified the title deeds while entering into the contract, therefore, according to them, even after receipt of rupees Rs.10 lakh as advance, the same has not been paid to the bank to redeem the mortgage by the first defendant. Whereas the contention of the first defendant is that, apart from the advance amount, it was specifically agreed between the parties that another Rs.10 lakhs would be paid by the plaintiffs so as to clear the mortgage. According to the first defendant, copy of the title deed and the nature of the mortgage with the Bank of India is known to the plaintiffs even at the time of agreement. Though plaintiff is totally silent about this fact, the power agent, who is none other than the son of the first plaintiff, in his cross examination dated 22.11.2016 has categorically admitted that xerox copies were shown to them at the time of agreement and they were also informed that the originals are in the bank. Further, he has feigned ignorance to the question to the effect that whether the first defendant informed the plaintiffs what was the amount due and the balance payable by first defendant; for which PW1 has stated that he does not remember or recollect at this juncture. He has also admitted that he has not filed any document to prove the financial status and though certain documents have been filed, he has clearly admitted that under Ex.P9/the savings accounts balance as on 15.07.2005 in his mother's account was Rs.15,431/- and in December 2005, his mother’s bank balance in savings account was Rs.1,804/- and further, as per Ex.P12/Postal savings account, there was only Rs.40,000/- available which was closed on 04.02.2011. Furthermore, as per Exs.P14 and

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P13, the highest balance in both the accounts in November and December, 2005 was Rs.5,63,960/- as on 25/10/2005.

14. He has also admitted he does not know the nature of business income of his brother-in-law namely the second plaintiff. The plaintiff has specifically agreed to pay the remaining amount of Rs.40 lakhs within a period of 90 days from the date of signing the agreement. First thing that he should establish before the court is that whether he had the capacity to mobilize the remaining sale consideration at the relevant point of time. (see: **His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar**, (1996) 4 SCC 526). Though much emphasis has been made that since the mortgage has not been redeemed within the agreed period, therefore they could not pay the amount, it is specific contention of the first defendant that apart from the Rs.10 lakhs, the plaintiff has also agreed to pay another Rs.10 lakhs to clear the mortgage. It is relevant to note that within the agreed time as per the documents filed by the plaintiff namely the savings account and postal account, it would clearly show that the first plaintiff did not have any sufficient income in her accounts. The second plaintiff under Exs.P8, P20 and D8 has declared that he is not claiming any right over the property and he has also admitted that he has not parted with any amount, whereas the agreement indicates that he has agreed to purchase 2/3rd of undivided share in the suit property. According to the plaintiffs, the second plaintiff has relinquished his right under Exs.P8, P20 and D8. It is relevant to note that any interest in the agreement, though it is transferable, it should be by

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way of assignment. Therefore, merely some declaration in the name of some letter, valid assignment cannot be presumed. Be that as it may. When the second plaintiff is intended to purchase the larger share of the property, namely 2/3rd has not even established the source of his payment for purchase. The evidence of PW1 indicates that her mother was a housewife at the relevant point of time, and his further evidence also indicates that the very agreement was entered into by the second plaintiff. These fact clearly shows that the plaintiffs was never ready and willing to perform the part of the contract.

15. Even assuming that it is the duty of the vendor to clear the mortgage, the person intending to purchase the suit property and having known about the mortgage and mortgage money is only Rs.8 lakh at the relevant point of time; if really the purchasers were intended to purchase the property in time, the normal conduct would be to pay the remaining Rs.10 lakhs within the agreed period and could have compelled the first defendant to discharge the mortgage. The plaintiffs agreeing to complete the sale within a period of 90 days, no attempt whatsoever was made by them except to issue the legal notice only on 26.02.2006. The period of 90 days expired on 20.10.2005 itself. Within the agreed period, no attempts whatsoever was made by the plaintiffs even to show that they were ready to purchase the property or clear the mortgage by paying the amounts. No doubt, there is a clause in the agreement that the vendor has to furnish the encumbrance certificate for the perusal and record of the purchaser. That clearly shows that plaintiff was aware that there was an existing mortgage

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with the bank for Rs.10 lakhs. Therefore, merely because the advance amount has not been utilized by the first defendant, that will not absolve the plaintiffs from paying the remaining balance sale consideration or compel the first defendant to redeem the mortgage. The plaintiffs have not taken any steps. Having sent the legal notice under Ex.A3 on 26.02.2006, plaintiffs have remained silent, whereas the first defendant has sent a reply under the Ex.A4 indicating that the second plaintiff has agreed to pay another Rs.10 lakhs by way of letter dated 13.07.2005 which is marked as Exhibit D1. Ex.D1 clearly shows that it was agreed between the parties that another Rs.10 lakhs will be paid before the registration. If really, the plaintiffs had sufficient means and intention to complete the transaction, having known about the existing mortgage the plaintiffs ought to have taken steps to clear mortgage loan of below Rs.10 lakhs and redeem the original document which has not been done so. PW1 evidence also indicates that they were also aware of the mortgage at the earlier point of time. PW1 has clearly admitted that his father was taken to the bank by the first defendant to inspect the original title deeds.

16. It is relevant to note that the evidence of PW1 clearly shows that the first defendant has told them that he is looking for alliance for his daughter. Therefore he needed funds. However, he has not said about the SARFAESI Act proceedings or about the auction. In this regard, Ex.D4/letter addressed by the Bank of India 27.12.2025 is marked. When Ex.D4 carefully seen, it would indicate that the bank has addressed the letter requesting the first respondent to

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make the payments immediately without any further delay, otherwise, they will classify the accounts as NPA and action will be initiated under SARFAESI Act for recovery of their dues. Though the first defendant has also entered agreement for purchase of plot, it is the main contention of the first defendant that he could not purchase the property since the sale consideration has not been paid. Further, the marriage proposal of his daughter was also dropped. The first defendant only in order to avoid the distress sale, he had to enter into sale with some other third party. At any event, the documents relied upon by the plaintiffs clearly show that the plaintiffs did not have any sufficient fund during the agreement period to pay the remaining sale consideration. Though the second plaintiff has also entered into agreement to purchase the 2/3rd undivided share of the suit property without paying any amount as per the Ex.P20, according to him, he is said to have nominated the first plaintiff and has given up his right in the agreement and the evidence of PW1 clearly shows that he is not aware of the nature of the transaction. Though the suit has been filed by the plaintiffs 1 and 2, none of them had entered into the box. When a person seeking equitable relief, it is for them to come before the court and explain as to what has actually transpired between them and the vendor. Whereas PW1/power agent of the plaintiffs who has no direct knowledge about what has transpired between the plaintiffs and the defendant, he is not the best person to substitute the evidence of principal. *(see:* ***Janki Vashdeo Bhojwani v. IndusInd Bank Ltd.****, (2005) 2 SCC 217;* ***Man Kaur v. Hartar Singh Sangha****, (2010) 10 SCC 512)*.

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17. The above aspects clearly indicate that the plaintiff never intended to purchase the property. The readiness and willingness have to sail together. Readiness is the capacity to mobilize the fund and willingness is the mental attitude. (see: **Kalawati (D) through Lrs and Others vs. Rakesh Kumar and Others** (2018) 3 SCC 658; **U.N. Krishnamurthy v. A.M. Krishnamurthy**, 2022 SCC OnLine SC 840). Only when both sail together, a person succeeds in proving the readiness and willingness. When the ingredients has not been established, the specific performance being an equitable remedy cannot be granted to the plaintiffs.

18. It is further to be noted that the first defendant has shown that hardship that has caused on him due to the non-payment of the remaining sale consideration by the plaintiffs within a period of 90 days. As far as the immovable property is concerned, though time is not an essence of contract, *(see: **Chand Rani v. Kamal Rani**, (1993) 1 SCC 519; **K.S. Vidyanadam v. Vairavan**, (1997) 3 SCC 1)*, but specific time agreed between the parties cannot be ignored altogether. Further, forfeiture clause to forfeit Rs.2 lakhs of amount as damages makes it very clear that, in fact, the parties have intended to make the time as an essence of contract. Therefore, once the plaintiffs had agreed to complete the sale within a period of 90 days by paying the entire balance sale consideration and without performing their obligations as per the contract, now the plaintiffs cannot contend that merely because mortgage is not redeemed, they can seek specific performance. If only the plaintiffs had intended to

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purchase the property, they ought to have paid the remaining sale consideration and get the original document. The evidence of PW1 itself clearly shows that they were aware of the existing mortgage and they had also verified the document in the bank. Even assuming that the initial advance amount has not been paid and the mortgage has not been redeemed by the first defendant, the plaintiffs ought to have paid the remaining Rs.10 lakhs within the period and discharged the mortgage loan, however, the same has not been done so.

19. All these facts clearly shows that the plaintiff has not proved the readiness and willingness. Though the defendant Nos.2 and 3 are the *pendente lite* purchasers, such sale is not void, it is always subject to the result of the suit. *(see:* ***Thomson Press (India) Ltd. v. Nanak Builders & Investors P. Ltd.****, (2013) 5 SCC 397)*. Merely because the purchase is made later during the pendency of the suit, the plaintiffs as a matter of right cannot claim specific performance without establishing the readiness and willingness. The defendants evidence clearly establishes that due to the non-performance by the plaintiffs of the contract, he has suffered hardship of his daughter marriage issues, further, he could not purchase the plot, though he was intending to perform his part of the contract. That apart, under Ex.D24, the bank has also taken coercive steps. These facts clearly show that in fact only to avoid hardship, the first defendant has entered into a further contract and, In fact, he has also tried to make payment of rupees Rs.8 lakh after forfeiting Rs.2 lakh as damages. Such payment is also refused by the plaintiff. PW1 has also admitted in his evidence

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that the payment of Rs.8 lakhs was returned on 09.12.2005 and the same was refused by the mother/first plaintiff. Later, payment is also made by way of Pay Order and that was also refused. All these facts clearly show the defendant in fact was not taking any advantage of the amount. In fact, the first defendant wanted to pay that amount to the plaintiffs.

20. The plaintiff has not proved readiness and willingness and never entered into box. Neither the first plaintiff nor the second plaintiff have entered into the box to confront this documents and they have conveniently remained outside the court. All these facts clearly show that the plaintiffs are not entitled to any relief of specific performance. Accordingly, these points are answered.

21. In view of the above, we are of the view that the learned Single Judge has rightly dismissed the suit for specific performance and granted alternate relief. Accordingly, the judgment and decree of the learned Single Judge dated 10.07.2023 stands confirmed and this original side appeal stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

(N.S.K.,J.) (G.K.M.,J.)
20-11-2026

dhk
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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N.SATHISH KUMAR, J.
AND
GK.MUTHUKUMAAR, J.

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OSA No. 69 of 2024

20-11-2026

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