

Mohan Vs Kasthuri @ Avani

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SooperKanoon Citation : sooperkanoon.com/1413823

Court : Chennai

Decided On : Jun-18-2026

Judge : Honourable Mr Justice C.V. Karthikeyan,Honourable Mr.Justice K.Rajasekar

Appeal No. : AS/68/2015

Appellant : Mohan

Respondent : Kasthuri @ Avani

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2026

PRONOUNCED ON : 18.06.2026

CORAM

THE HONOURABLE MR. JUSTICE C.V. KARTHIKEYAN And THE HONOURABLE MR. JUSTICE K. RAJASEKAR and C.M.P. No.7734 of 2017

1. Mohan

2. Jayanthi ... Appellants -vs-

1. Kasthuri @ Avani

2. Narayanasamy

3. Devanathan

4. Ranga Thiruvankadam

5. Ranga Kalaiselvi

6. Ranga Muthusamy

7. Ranga Udayakumar

8. Parisu

9. Dayalan

10. Kaliyaperumal (Died)

11. Babu

12. Murugan

13. Pandurangan

14. Indira Gandhi

15. Manikandan

16. Manibala ... Respondents

(R10 Died, R14 to R16 are brought on record as LR's of deceased R10 viz., Kaliyaperumal, vide order of the Court, dated 21.12.2022 made in C.M.P.Nos.22222 & 22224/ 2022 in A.S.No.1033 / 2012)33/ 2012)

Prayer: First Appeal filed under Section 96 and Order 41 Rule 1 R/w Section 151 of Civil Procedure Code, to set aside the judgment and decree passed in O.S.No.42 of 2007 dated 24.10.2014 by the Hon'ble III Additional District Judge, Puducherry. For Appellants : Mr. T.R. Rajagopal (Senior Advocate) For Mr. G. Veerapathiran For RR 1 to 3 & 8 to 14 : No Appearance For RR 4 to 7 : Mr. V. Raghavachari (Senior Advocate) For M/s. V. Srimathi *****

JUDGMENT

[Order made by K. RAJASEKAR, J.]

This appeal filed by the plaintiffs against the judgment and decree dated 24.10.2014 in O.S.No.42 of 2007 passed by the learned III Additional District Judge, Puducherry, rejecting the relief for specific performance of agreements and for directing defendants 1 and 3 to 13 to receive Rs.25,02,385/- as balance sale consideration on execution and registration of sale deed and to delivery possession of 5/7th share of suit property in favour of the plaintiffs.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Trial Court.
3. The case of the appellants/ plaintiffs is that the first plaintiff had

entered into an agreement for sale dated 19.06.2004 to purchase the 1/7 th share of suit properties from defendants 1 & 2, for a total sale consideration of Rs.7,14,288/- and on the same day, an advance sale consideration of Rs.3,57,144/- was paid and one of the conditions entered is that, all the documents shall be handed over by defendants 1 & 2 to the first plaintiff within a period of one month. Further, the third defendant has also come forward to sell his 1/7 th share in favour of the second plaintiff, for a total sale consideration of Rs.7,60,000/- and an agreement of sale was also entered on 23.06.2004 and on the same day,

an advance sale consideration of Rs.3,57,144/- was paid. Thereafter, defendants 4 to 7 have also come forward to sell their 2/7th shares in the suit property, based on the declaration of shares made in the partition decree dated 23.06.1999 passed in O.S.No.74 of 1999 on the file of the learned Additional District Judge, Puducherry for a total sale consideration of Rs.14,28,100/- and they have also received a sum of Rs.5,00,000/- as advance sale consideration. Similarly, defendants 8 to 13 have also come forward to sell their

consideration of Rs.7,54,285/- and a sum of Rs.2,00,000/- was paid as part of consideration on the date of agreement. Thus, the plaintiffs have agreed to purchase totally 5/7th share in the suit property and they are ready and willing to pay the balance sale consideration. Subsequently, plaintiffs have come to know that there

was an appeal in A.S.No.624 of 1999 was filed before the High Court of Madras, against the decree passed in O.S.No.74 of 1999, hence they were not in a position to pay the balance sale consideration and conclude the contract entered between them and defendants. In the meantime, defendants 1 and 3 have sent legal notices to the plaintiffs stating that the plaintiffs have not come forward to conclude the contract of sale, which was also suitably replied by the plaintiffs, stating that they were ready for execution. Whiles, one of the vendor in agreement dated 30.09.2004 was died on 11.11.2004 and immediately the plaintiffs met the legal heirs of the deceased vendor, who are defendants 8 to 13 and they also promised that they will execute the sale deed at the earliest and will resolve all the disputes in their family and then undertook to arrive compromise in A.S.No.624 of 1999. Whiles, the first plaintiff suffered heart attack and undergone major surgery, therefore the other vendors have assured that they are ready to wait till the recovery of the first plaintiff and to execute the sale deed. Further defendants have also requested the plaintiffs to pay an additional sum of Rs.50,000/- each to the five sharers of vendors and the plaintiffs have also agreed for the

same, on condition that the vendors shall submit all the documents. Subsequently in May 2007, the defendants have made an attempt to enrich themselves by dealing with the properties behind the back of plaintiffs, hence the plaintiffs have come forward with the suit for specific performance.

4. The defendants 1, 3 to 13 have filed written statement and stated that as

per the preliminary decree dated 23.06.1999 passed in suit in O.S.No.74 of 1997, defendants 1 and 2 have jointly allotted 1/7th share, defendants 3 and 4 each were allotted 1/7th share, defendants 8 to 18 were jointly allotted 1/7 th share and another

executed a release deed relinquishing the right over 1/7th share in favour of defendants 4 to 7, accordingly defendants 4 to 7 acquired title over 2/7 th share. Further, they denied the execution of agreement of sale of their respective shares and receipt of advance sale consideration. These shares were determined by way of preliminary decree passed in O.S.No.74 of 1997 and the same is also challenged in A.S.No.624 of 1999 before the High Court, Madras and the compromise memo filed in the appeal was also pending. They also denied the demand of additional sale consideration of Rs.50,000/- to each of the sharers and also the fact that the first plaintiff have suffered Heart attack. They also pleaded that each agreements relied on by the plaintiffs are having different sale consideration for each of the shares in the suit property and also denied that the defendants have already handed over the possession of the suit properties to the plaintiffs and the plaintiffs are in possession of the suit properties. They also stated that there is another agreement entered by the second plaintiff on 16.09.2004 for a sale consideration of Rs.26,78,100/- for two shares, which is also suppressed by the first plaintiff. Further the period of

completion of the contract ranges from 10 days to 60 days from the date of execution of the sale agreement, but the suit was filed only on 15.06.2007. Thereby the plaintiffs were not ready and willing to perform their part of contract. The defendants have already issued notices to the plaintiffs as early as on 16.10.2004 and 20.12.2004, calling upon the plaintiffs to come forward to pay the balance sale consideration and to get the sale deed executed in their favour. The agreement of sale entered by the first plaintiff with the third defendant is on 19.06.2004, then he had cancelled it under a written document dated 23.06.2004 and on the same day, the second plaintiff had entered into an agreement with the third defendant, therefore the plaintiffs have adopted several illegal methods to defraud the defendants. The first plaintiff issued a cheque dated 09.10.2004 to the second defendant for a sum of Rs.25,000/- towards part of the advance sale consideration, but that cheque was returned dishonoured on 12.10.2004 with the endorsement funds insufficient, since the advance sale consideration was not paid, the agreement of sale is not valid. Further the plaintiffs have no sufficient funds to purchase the suit property and the defendants have stated that the lands in Survey No.54/2B was under acquisition process by the Government of Puducherry in the year 2006, which forms substantial portion of the suit property, hence the plaintiffs are not entitled for specific performance.

5. The Trial Court after considering the pleadings on both sides, framed the following issues and additional issue:

1. Whether the suit is maintainable?

2. Whether the suit is barred by limitation?

3. Whether the defendants handed over the possession of suit property to the plaintiff?

4. Whether the plaintiffs paid the entire advance amount to the 12 th defendant at the time of agreement itself?

5. Whether the agreement between the plaintiffs and defendants are valid in law?

6. Whether the plaintiffs are entitled for judgment and decree?

7. To what other reliefs the plaintiffs are entitled to? Additional issue:

1. Whether the plaintiff as entered another sale agreement dated 16.09.2004 with the defendants 4 to 7 for enhancing the sale consideration?

6. On the side of the plaintiff, P.W.1 was examined and Exs.A.1 to A.26 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B.1 to B.19 were marked.

7. After considering the evidence placed on record, the Trial Court has taken a view that the suit has been filed nearly after 3(1/2) years from the date of

agreement and the plaintiffs are not ready and willing to perform their part of the contract and the suit is barred by limitation. Further the Trial Court has taken a view that the possession of the suit property claimed by the plaintiffs is not acceptable, since the suit properties itself is undivided among the sharers by metes and bounds. It is also held that the cheque issued by the plaintiffs towards the advance sale consideration in favour of the 12th defendant was dishonored, thereby the plaintiffs were are having capacity to pay the sale consideration. Further there is also suppression of fact relating to agreement of sale entered with fourth and seventh defendants. Accordingly the Trial Court held that all the issues against the plaintiffs, however ordered refund of payment of advance sale consideration with interest at the rate of 7.5% from the date of filing till the date of realisation.

8. Aggrieved over the above said findings, this appeal has been filed by the plaintiffs.

9. The learned counsel for the appellants/ plaintiffs submitted that the

Trial Court has failed to appreciate the fact that, all agreements of sale entered between the parties have been admitted by the defendants. There is also explanation given during the trial with regard to the execution of another agreement of sale dated 16.09.2004 for a total sale consideration of Rs.26,78,100/- for 2/7 th share in

the suit property with Defendants 4 to 7. It was admitted by the witnesses that there was no second agreement, as alleged by defendants, hence the Trial Court has wrongly held that the plaintiffs have approached the Trial Court by suppressing the fact. He further submitted that the Trial Court has also held that the suit is barred by limitation, which is not proper, since within the period of 3 years from the date of completion of contract period of six months. The plaintiffs have produced sufficient documents to show that, due to pendency of an appeal filed by the defendants before High Court, plaintiffs were not in a position to immediately pay the balance sale consideration and to register the sale deeds. There is no dispute with regard to fact that plaintiffs have paid an advance sale consideration of Rs.2,00,000/- to the defendants 8 to 13, at the time of execution of agreement of sale dated 30.09.2004. Since the 12th defendant had sought for additional payment of Rs.25,000/- towards brokerage for arranging the sale transactions with other parties and plaintiffs have come forward to pay Rs.25,000/- to the 12 th defendant through cheque. Subsequently, plaintiffs have refused to pay the same, therefore the cheque was dishonored. However the same was wrongly interpreted by the Trial Court, as if the cheque was issued towards advance sale consideration, and to set aside the findings rendered by the Trial Court and decree the suit in favour of the plaintiffs.

10. Per contra, the learned counsel for respondents submitted that, though it

has been held that the suit is not maintainable, since the same was filed after nearly 3 years from the date of agreements of sale. He also submitted that the plaintiffs have kept quiet and have not come forward to conclude their part of contract by paying the balance sale considerations and getting the sale deeds to be registered for more than 3 years. He further stressed on the legal notice (Exs.A.6 and A.7) issued by the defendants to plaintiffs, demanding the plaintiffs to come forward to pay the balance sale consideration and register the sale deeds, which clearly show that the defendants were always ready to perform their part of the contract, however the plaintiffs have not come forward to execute the sale deed, therefore the Trial Court has rightly held that the plaintiffs are not ready and willing to perform their part of the contract. Though the time is not essence of the contract generally in the agreement of sale relating to immovable property, whereas in this case one month time was fixed to enable the parties to conclude the contract and the same was not complied by plaintiffs. He also submitted that plaintiffs had delayed the process of concluding the contract, therefore plaintiffs are not entitled for specific performance, hence prays to confirm the judgment and decree of the Trial Court.

11. We have considered the submissions made on both sides and perused

the materials available on record, including the judgment and decree of the Trial Court. For the purpose of deciding the appeal, the following points arises for consideration.

1. Whether the plaintiffs have suppressed the material fact and whether this suppression shall non-suit the plaintiffs?
2. Whether the plaintiffs are ready and willing to perform their part of the contract?
3. Whether the Trial Court's findings that the plaintiffs are not in possession to perform their part of the contract is proper?
4. Whether the plaintiffs are entitled for specific performance?

12. It is the case of plaintiffs that they have entered into four agreements of

sale for purchasing totally 5/7th share in the suit property. The first agreement of sale dated 19.06.2004 (Ex.A.2) was entered between the first plaintiff and the Defendants 1 & 2 towards purchase of 1/7 th share in the suit property and this execution of sale agreement was admitted by the parties, hence there is no question relating to execution of this agreement of sale. Similarly, second agreement of sale dated 23.06.2004 (Ex.A.3) was entered between the second plaintiff and the third defendant towards purchase of another 1/7 th share in the suit property. The third agreement of sale dated 30.09.2004 (Ex.A.5) was entered between the second plaintiff and the Defendants 8 to 13 towards purchase of another 1/7 th share in the suit property, and these execution of sale agreements were not disputed. Therefore, agreements of sale entered between the parties towards purchase of totally 3/7 th

share in the suit property was not disputed.

13. As far as the agreement of sale entered between the second plaintiff and

defendants 4 to 7, the defendants alleges that there was a suppression of material fact by plaintiffs, and according to them, on 16.09.2004, two agreements were entered between the plaintiff No.2 and defendants 4 to 7. It is pleaded by plaintiffs that the defendants 4 to 7 were agreed to sell their 2/7 th share for a sum of Rs.14,28,100/-, which was sought to be enforced by way of filing this suit, however the defendants alleged that plaintiffs have entered into another agreement, for a total sale consideration of Rs.26,78,100/- for the very same 2/7th share in the suit property.

14. The execution of another agreement of sale for higher sale

consideration stated in written statement have not been immediately replied by the plaintiffs. They proceeded with the trial and the first plaintiff

was examined as P.W.1 and he deposed that on 16.09.2004, only one sale agreement was entered with defendants 4 to 7 for a total sale consideration of Rs.14,28,100/- towards purchase of 2/7th share, and a sum of Rs.5,00,000/- was paid as advance sale consideration. He specifically denied that he nor his wife have entered into any other sale agreement for higher sale consideration of Rs.26,78,100/- on the same day. After

examination of P.W.1, plaintiffs have once again come forward with the reply statement to strengthen their evidence. According to them, there was no two sale agreements, only one sale agreement was entered on 16.09.2004 between the second plaintiff and the defendants 4 to 7 for a sum of Rs.14,28,100/-, which was marked as Ex.A.4.

15. To counter this, the defendants 1, 3, 8 to 13 have filed additional

written statement and a separate memo was also filed by defendants 4 to 7 by reiterating the fact that two sale agreements were executed on the same day and the second sale agreement entered between the second plaintiff and defendant 4 to 7 towards purchase of 2/7th share in the suit property for a total sale consideration of Rs.26,78,100/- was marked as Ex.B.3. They also submitted that the signature of the second plaintiff in Ex.B.3, who is the proposed purchaser of the 2/7 th share in the suit property from defendants 4 to 7 was also admitted by P.W.1. Whether there is another agreement of sale - Ex.B.3 entered between the parties and same is suppressed by the plaintiffs will be answered after considering the readiness and willingness of the plaintiffs.

16. In the cross examination of P.W.1, it is revealed that the defendants 8 to

13 issued notice, calling upon the plaintiffs to come forward to pay the balance sale consideration and conclude the contract. It was replied by the plaintiffs by reply

notice dated 30.12.2004, stating that defendants 8 to 13 have failed to produce necessary documents for registration, hence they were not in a position to register the same and the plaintiffs have also called upon the defendants 8 to 13 to produce the documents for the purpose of registration, failing which the plaintiffs will approach the Court of law for specific performance. After the above reply, there was also rejoinder dated 05.01.2005 sent by the defendants 8 to 13, wherein they once again narrated the facts holding registration of documents. However, they specifically stated that they have cancelled the agreement dated 30.09.2004 and also intimated regarding the dishonor of the cheque issued by the plaintiffs in favour of the 12th defendant.

17. As far as other defendants are concerned, plaintiffs have not taken any

steps to get the sale deed registered within the prescribed time limit. There is no pleadings to show that whether plaintiffs have regularly demanded other defendants to come forward to execute the sale deed or not. There is also a pleading that the defendants have demanded plaintiffs for an additional consideration of Rs.50,000/- to each of the five sharers, which was also agreed by plaintiffs, since the defendants demanded additional sale consideration and failed to complete their litigation, and failed to produce necessary documents, there was a delay.

18. On careful perusal of the legal notices dated 16.10.2004 and

20.12.2004, marked as Exs.A.6 and A.7, it is revealed that the defendants 1 & 3 sent two separate legal notices to the plaintiffs, demanding the plaintiffs to come forward to execute the sale deed by paying the balance sale consideration, since the time limit mentioned in the agreement of sale entered between them was lapsed and they are ready to execute the sale deed within the period of one week. They have also stated that failing of concluding the sale contract, the agreement entered between the parties shall be cancelled automatically. The above

notices were replied by the plaintiffs, vide two notices marked as Exs.A.8 and A.9, wherein the plaintiffs have demanded production of relevant documents within a week on the receipt of the reply notice, failing which they would proceed with the suit for specific performance. However the plaintiffs have not taken any steps to file the suit for specific performance, as stated in their reply notice.

19. The plaintiffs after receiving rejoinder notice dated 05.01.2005 from

defendants 8 to 13 had not filed the suit for specific performance. It is well settled that when a party seeking the relief of specific performance, it is the duty on the part of the party to establish as per Section 16(c) of the Specific Relief Act, that he was ready and willing to perform his part of the contract from the date of contract to the date of hearing of the suit. The plaintiffs have taken a stand that the defendants have not furnished relevant documents and there was a litigation pending before High Court. The evidence placed on record shows that the first plaintiff has suffered

from health issues and undergone surgery.

20. Admittedly in this case, though separate agreements were entered

between four branches of the original owner namely one Suppuraya Kounder. The legal heirs of Suppuraya have initiated a suit for partition and obtained a decree, declaring their respective shares. The plaintiffs have entered into four agreements of sale, who were holding five shares in the suit property, which were marked as Exs.A.2 to A.5. On careful perusal of these exhibits, it reads that originally the suit property belongs to one Muthusamy, after his death, his legal heirs namely Suppuraya and Muthu Kumarasamy inherited the same. Subsequently, they orally partitioned and the suit property was allotted to Suppuraya. The said Suppuraya died in the year 1965 and thereafter, the suit property was inherited by seven branches of his legal heirs.

21. Ex.A.2 is the first agreement for sale dated 19.06.2004, entered

between the first plaintiff and defendants, for a total sale consideration of Rs.7,14,288/- and an advance sale consideration paid was Rs.3,57,144/- . The time limit fixed for concluding the contract of sale is one month. It also contains the recitals that, if the contract is not concluded within the time limit, the parties are entitled to initiate legal action. It is also declared that there was no encumbrance over their share in the suit property and plaintiffs are entitled to measure and fence

the suit property. On careful perusal of the schedule of property, it only declares that the property agreed to purchase is only 1/7 th share of the total area of the suit property.

22. Ex.A.3 is the second agreement of sale dated 23.06.2004, entered between the second plaintiff and the third defendant towards purchase of another

advance amount paid is Rs.3,57,144/- and the time limit fixed for concluding the contract of sale is one month. Ex.A.4 is the third agreement of sale dated 16.09.2004, which is entered between defendants 4 to 7 and the second plaintiff, to sell their 2/7th share for a total sale consideration of Rs.14,28,100/- and the advance amount paid is Rs.5,00,000/- and the total outer limit for conclusion of this contract of sale is 10 days. Ex.A.5 is the fourth agreement of sale dated 30.09.2004 entered between the second plaintiff and defendants 8 to 13 for a total sale consideration of Rs.7,54,285/- and the advance amount paid is Rs.2,00,000/- and the total outer time limit for conclusion of this contract of sale is 60 days. Thereby, plaintiffs have entered into four agreements of sale towards purchase of 5/7 th share in the suit property from four branches of legal heirs of the deceased Suppuraya.

23. The Hon'ble Apex Court in Chand Rani vs. Kamal Rani [(1993) 1 SCC 519], considered the legal position regarding the time limit fixed for sale of

agreement of immovable property and has observed in paragraph No.19 as follows: 19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.

24. The Apex Court in *Saradamani Kandappan vs. S. Rajalakshmi and*

Others [(2011) 12 SCC 18] has once again considered the previous decision of the above legal position and has held in paragraph Nos.26, 27 and 28 as follows: 26. It is now well settled that laws, which may be reasonable and valid when made, can, with passage of time and consequential change in circumstances, become arbitrary and unreasonable.

26.1) In *Rattan Arya v. State of Tamil Nadu* - (1986) 3 SC 385, this Court held: "We must also observe here that whatever justification there may have been in 1973 when Section 30(ii) was amended by imposing a ceiling of Rs. 400 on rent payable by tenants of residential buildings to entitle them to seek the protection of the Act, the passage of time has made the ceiling utterly unreal. We are entitled to take judicial notice of the enormous multifold increase of rents throughout the country, particularly in urban areas. It is common knowledge today that the accommodation which one could have possibly got for Rs. 400 per

month in 1973 will today cost at least five times more. In these days of universal day to day escalation of rentals any ceiling such as that imposed by Section 30(ii) in 1973 can only be considered to be totally artificial and irrelevant today. As held by

this court in *Motor General Traders v. State of A.P.* (1984) 1 SCC 222, a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14."(emphasis supplied)

26.2) In *Malpe Vishwanath Acharya v. State of Maharashtra* -

(1998) 2 SCC 1 a three Judge bench of this court considered the validity

of determination of standard rent by freezing or pegging down the rent as on 1.9.1940 or as on the date of first letting, under sections 5(10)(B), 7, 9(2)(b) and 12(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This court held that the said process of determination under the Act, which was reasonable when the law was made, became arbitrary and unreasonable in view of constant escalation of prices due to inflation and corresponding rise in money value with the passage of time.

This Court held: "In so far as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay,

necessary that some protection should be given to the tenants in order

to ensure that they are not exploited. At the same time such a law to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants..... Taking all the facts and circumstances into consideration, we have no doubt that the existing provisions of the Bombay Rent Act relating to the determination and fixation of the standard rent can no longer be considered to be reasonable....." The principle underlying the said decisions with reference to statutes, would on the same logic, apply to decisions of courts also.

27. A correct perspective relating to the question whether time is not

of the essence of the contract in contracts relating to immovable property, is given by this court in K.S. Vidyanadam and Others vs. Vairavan - (1997) 3 SCC 1 (by Jeevan Reddy J. who incidentally was a member of the Constitution Bench in Chand Rani). This Court observed: "It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect.

In the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades - particularly after 1973.We cannot be oblivious to the reality and the reality is constant and continuous rise in the values of urban properties - fuelled by large scale migration of people from rural areas to urban centres and by inflation.

Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties - evolved in times when prices and values were stable and inflation was unknown - requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so." (emphasis supplied)

Therefore there is an urgent need to revisit the principle that time is not of the essence in contracts relating to immovable properties and also explain the current position of law with regard to contracts relating to immovable property made after 1975, in view of the changed circumstances arising from inflation and steep increase in prices. We do not propose to undertake that exercise in this case, nor referring the matter to larger bench as we have held on facts in this case that time is the essence of the contract, even with reference to the principles in Chand Rani and other cases. Be that as it may.

28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in K.S. Vidyanadam (supra) :

(i) Courts, while exercising discretion in suits for specific

performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed

merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.

25. In this case, it is admitted that the first plaintiff is a real estate person,

he has come forward to purchase the undivided shares in the suit property and paid advance amount for the same, and he was permitted to enter into the property for levelling it. Though time limits were fixed for the payment of balance sale consideration, the contract of sale was not concluded. The recitals reads that the defendants have to furnish various documents including the title deed of the suit property. On careful reading of the evidence of P.W.1, it has been admitted that the suit property belongs to defendants and the same is undivided among them. He also

stated that the suit property belongs to seven branches, however two branches have not come forward to sell their shares in the suit property in his favour and further they demanded more sale consideration than the others. Since five branches have come forward to sell their shares in the suit property, the plaintiffs have agreed to purchase the same as undivided share.

26. Further the evidence of P.W.1 is that, the first agreement of sale was

entered by him and the remaining agreements were entered in favour of the second plaintiff, who is his wife. He also admitted that he was satisfied with the title of the sharers to whom, he entered with sale agreements. The above evidence categorically shows that plaintiffs have satisfied with the title of individual shares of the defendants in the suit property, hence they cannot contend that there was an obligation made on the part of the plaintiffs that some more documents are to be produced to prove the title of the defendants and only for that purpose, there was a delay in concluding the contract of sale.

27. The terms of the contract reveals that the balance sale consideration

would be paid after production of necessary documents, as contended by plaintiffs. Though there were time limits fixed for payment of balance sale

consideration and furnishing documents, it is admitted fact that the defendants 1, 3 and 8 to 13 have separately issued legal notices to the plaintiffs, immediately after lapse of time limit

agreed, calling upon the plaintiffs to pay the balance sale consideration and conclude the contract of sale. It was replied by the plaintiffs that they need some more documents to conclude the contract. Though, multiple notices were exchanged between the parties, the plaintiffs have not come forward to initiate the suit and only after the rejoinder notice issued by defendants 8 to 13, wherein they have categorically stated that they have cancelled the agreement of sale dated 30.09.2004 entered between them and the second plaintiff, the plaintiffs have come forward to initiate the suit.

28. Apex court in P.Meenakshisundaram vs. P.Vijayakumar and Another

[(2018) 15 SCC 80], it is reiterated that the plaintiffs have to establish that they were ready and willing to perform their part of the contract from the date of agreement till the date of hearing of the suit. In this case, though it is contested by the plaintiffs that the suit was filed within the limitation period of three years. Their conduct shows that the last rejoinder notice was received by them as early as on 05.01.2005 and only in the year 2007, the plaintiffs have come forward to file the suit, it clearly shows that the plaintiffs were not ready and failed to establish their readiness, to demand defendants to conclude the contract, by paying balance sale consideration.

29. The next point held by the Trial Court against the plaintiffs is that the

plaintiffs have issued a cheque for a sum of Rs.25,000/- as advance sale consideration, which was dishonored and returned as insufficient funds, which shows that plaintiffs are not having capacity to pay the sale consideration. Though the same was disputed by plaintiffs by stating that

the 12 th defendant was issued with the cheque for a sum of Rs.25,000/- only as a brokerage for the role played by him in arranging the parties for execution of agreements of sale.

30. There is no evidence to substantiate that the money paid by way of

cheque towards payment of commission to the 12th defendant. However in this case, the burden is on defendants 8 to 13 to show that the payment of Rs.25,000/- was paid as advance to the sale consideration. On perusal of Ex.A.5 - sale agreement entered between defendants 8 to 13, it has been categorically recorded that the defendants 8 to 13 have received a sum of Rs.2,00,000/- by way of cash and there is no mentioning of about payment of Rs.25,000/- by way of cheque. This shows that the defendants have failed to substantiate their case that the cheque dishonored for the value of Rs.25,000/- is the part of the advance amount and the plaintiffs were not having capacity to pay the same. Accordingly, we are of the view that the finding rendered by the Trial Court, that the plaintiffs were not having capacity to pay Rs.25,000/- is not proper and the same is not sustainable.

31. The plaintiffs tried to adduce reasons for delay in filing of the suit and

submitted that the first plaintiff had become ill, hence they could not immediately come forward to execute the sale deeds and conclude their part of the contract. They have taken a stand that the civil dispute regarding the suit property, in respect of allotment of shares to the parties is pending before High Court. Whereas on careful perusal of evidence of P.W.1, it reveals that there is no title dispute regarding the shares of the defendants, which are intended to be purchased by plaintiffs. Though the appeal is pending before this Court, the evidence was placed on record to show that the parties themselves entered compromise and the Appellate Court has not passed order at that point of time and this pendency of the appeal is not a reason for the plaintiffs

to delay the payment of balance sale consideration and to conclude the contract.

32. In the back ground of the evidence adduced by plaintiffs, the Trial

Court has held that plaintiffs have not taken any steps within the relevant period and awaited for maximum period of three years, and only for the purpose of avoiding limitation, they have come forward with the suit. As observed by the Trial Court and as discussed above, there is categorical evidence from the plaintiffs that, there was no dispute regarding the title to the property, plaintiffs were aware about the rights of each sharers and after proper negotiations, they entered into agreements of sale with five branches out of seven branches. It is also stated by P.W.1 that, other two share holders refused to sell their share, hence they proposed to purchase 5

shares that too, by referring undivided portions of the property. Thereby the plaintiffs admitted that, they have no legal impediment to go for registration of the property and to conclude the contract. The plaintiffs were also permitted to level the lands and to develop the same. The inclination to purchase undivided shares, after verification of title is also not disputed. Under such circumstances, the burden to prove the readiness and willingness, after exchange of notices and cancellation of agreement has not been discharged by the plaintiffs. They had awaited for 3 years for filing the suit. Thereby they failed to establish that they are ready and willing to perform their part of contract.

33. The next contention raised by the defendants is that, there were two

agreements of sale executed on 16.09.2004, marked as Exs.A.4 and B.3, towards purchase of 2/7th share in the suit property, for a total consideration of Rs.14,28,100/- and Rs.26,78,100/-, respectively. The evidence of D.W.3, who is the witness to both agreements of sale

(Exs.A.4 and B.3) before the Trial Court is that, he knew both defendants and plaintiffs and further stated that plaintiffs have come forward to purchase 2/7th share in the suit property from the 7th defendant for a total sale consideration of Rs.14,00,000, however the 7th defendant has demanded a sum of Rs.28,00,000/-. Therefore two agreements were prepared on the same day and in both agreements, the D.W.3 had subscribed his signature as one of witnesses. It was also agreed that the final sale consideration will be finalized after some time and an

advance sale consideration of Rs.5,00,000/- was also paid on the same day. There is no dispute that D.W.3 is witness to both documents and he had subscribed his signature in both documents marked as Exs.A4 and B.3, which was also admitted by the P.W.1 in the cross examination. Further in the cross examination of the D.W.3, questions were put him regarding the total sale consideration of Rs.14 lakhs/-, however there was no denial regarding the agreement of sale for a sale consideration of Rs.28 lakhs/-. Though it is elicited in the cross examination that plaintiffs have not subscribed their signature in any other document, except Ex.A.4 on 16.09.2004, but this answer given in the cross examination is not sufficient to throw away the entire evidence of D.W.3, who had categorically stated that two agreements were entered, one for a sale consideration of Rs.14 lakhs and another for a sale consideration of Rs.28 lakhs. There was no whisper about the execution of the second agreement by the plaintiffs in their pleadings and they have taken a stand that only one agreement was entered for a sale consideration of Rs.14 lakhs.

34. The 7th defendant was separately examined as D.W.2 and he had

elaborately deposed the circumstance in which two agreements were entered. According to him, for the purpose of convincing other parties, Ex.A.4 was prepared for a total sale consideration of Rs.14,28,100/-, however the actual sale consideration agreed is Rs.26,78,100/-, as per

Ex.B.3. In the cross examination, it was elicited that the 7th defendant has not filed a separate written statement and

thereby, he is not entitled to rely on the written statement of defendants 1, 3 and 8 to 13.

35. Admittedly the 7th defendant has not filed any written statement stating

the execution of two agreements dated 16.09.2004, however there was a categorical pleading made in the written statement filed on behalf of defendants 1, 3 and 8 to 13 in this regard. After additional written statement being filed by defendants 1, 3 and 8 to 13, the same was also adopted by the 7th defendant, but fact remains is that there was a second agreement (Ex.B.3). Since there was sufficient pleading made by other defendants, though not by the 7th defendant, in the cross examination of P.W.1, the questions were asked touching the evidence of the D.W.3. The plaintiffs have not come forward to examine any of the attestors of Ex.A.4. Only defendants have examined the attestor of Ex.A.4 on their side evidence and the plaintiffs failed to produce any contra evidence to throw away the evidence of D.W.3. In the back ground of evidence of D.W.3, we are of the view that the evidence of D.W.2 - 7 th defendant could not be rejected on the ground that there was no pleading. Hence, we are of the view that the evidence adduced on the side of the defendants to support the fact that there was an agreement (Ex.B.3) entered between the second

plaintiff and 4th defendant has been suppressed and the Trial Court has rightly held

that there is a suppression of material fact of execution of Ex.B.3.

36. With regard to the contention raised by the plaintiffs that they were in

possession of the suit property, there is no dispute that the defendants had agreed in the sale agreement that they permit the plaintiffs to enter into the land for the purpose of levelling the same and fixing the fence. But, admittedly the suit property is an undivided property, the plaintiffs have also purchased only five shares out of the seven shares, since the remaining two sharers have not come forward to sell their shares in the suit property, it is not possible for the plaintiffs to enter into the land and level the same. Further, even if it is admitted that they entered into the land and levelled the same, it cannot be taken as a valid possession and it is only levelling of the land, hence the Trial Court has rightly held that the plaintiffs are not in possession of the property. We are also inclined to agree with the said finding of the Trial Court.

37. In view of the above discussions, we are of the view that the Trial

Court has rightly dismissed the suit, after elaborately considering the evidence placed before it. We have also independently assessed the evidence placed on record and agree with a view taken by the Trial Court, hence the appeal filed by the plaintiffs is liable to be dismissed.

38. Accordingly, this appeal is dismissed and the judgment and decree

dated 24.10.2014 in O.S.No.42 of 2007 is hereby confirmed. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs. (C.V. KARTHIKEYAN, J.) (K. RAJASEKAR, J.) 18-06-2026 Index : Yes/No Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No stn To

1. The III Additional District Judge, Puducherry.
2. The Section Officer, V.R. Section, High Court of Madras.

C.V. KARTHIKEYAN, J.

AND

K. RAJASEKAR, J.

Pre-delivery Judgment made in and C.M.P. No.7734 of 2017 18.06.2026

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