

A                   GADDIPATI DIVIJA & ANR.

v.

PATHURI SAMRAJYAM & ORS.

(Civil Appeal No. 4206-4207 of 2011)

B                   APRIL 18, 2023

**[KRISHNA MURARI AND SANJAY KAROL, JJ.]**

- Specific Relief Act, 1963 – s. 16 – 2018 amendment – Specific Performance – Father of appellants executed an agreement of sale with respondent no. 1-plaintiff, whereby he agreed to sell the suit schedule property measuring Ac. 0.90 cents to respondent no. 1 for a sale consideration of Rs. 11,88,000/- out of which respondent no. 1 paid an amount of Rs. 4,00,000/- as advance – Under the said agreement, father of appellants agreed to execute the sale deed in favour of respondent no. 1 after demarcating the land and receiving the balance sale consideration within three months – Father of appellants and after his death, appellants also failed to measure and demarcate the land – Respondent no.1 filed suit against appellants and sought specific performance of contract – Trial Court held that respondent no.1 failed to prove entitlement for specific performance of contract, however, entitled plaintiff to recover advance amount of Rs.4,00,000/- – However, the High Court directed appellants to execute sale deed in favour of respondent no.1 after receiving balance consideration – On appeal, held: Respondent had established that she was always ready and willing to perform her part of contract by paying the balance sale consideration which is the primary requirement as per Section 16 (c) of the Act – Part of evidence with regard to the respondent's readiness and willingness was not challenged – It can be deduced that unless the vendor (deceased father of the appellants) got the subject land measured and demarcated within three months as per agreement, it would be impossible for the purchaser (respondent) to get a sale deed executed, and as such, the question of paying the balance sale consideration does not arise – It is clear that vendor failed to perform his part of obligation by getting property measured and demarcated – Findings of the High Court upheld.*

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**Dismissing the appeals, the Court**

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**HELD:** 1. It is clear from the facts of the case at hand that the Plaintiff (Respondent No. 1 herein) was ever ready and willing to pay the balance sale consideration. In the sale agreement, it was clearly mentioned that within three months the deceased father of the appellants will get the suit schedule property measured and demarcated and the Plaintiff (Respondent No. 1 herein) shall pay the balance sale consideration. It appears that, at first, the deceased father of the appellants while agreeing to sell 90 cents of land, concealed that he is the owner of only 50 cents of the land. Subsequently, he failed to measure and demarcate the land. On the other hand, the Plaintiff (Respondent No. 1 herein), from the outset, has been clear and blemishless in his conduct. She had paid the advance sale consideration of Rs. 4,00,000/- . When the deceased father of the appellants failed to measure and demarcate the land, the question of the Plaintiff (Respondent No. 1 herein) paying the balance sale consideration does not arise. However, even then the averments of the Plaintiff, her conduct and the testimony of her husband show that the Plaintiff, since the signing of the sale agreement, was ever ready and willing to pay the balance consideration. [Para 30][816-A-D]

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2. However, what is to be seen in the present case, is that the sale agreement dated 14.08.2002 stipulated that the vendor (deceased father of the appellants) was required to get the land measured and demarcated within three months, following which, the purchaser (Respondent No. 1 herein /Plaintiff) was required to pay the balance sale consideration. So, it can be clearly observed that the performance of the purchaser's obligation to pay the balance sale consideration within three months is dependent upon the fulfilment of the vendor's obligation to get the land measured and demarcated within three months. [Para 34][818-G-H; 819-A]

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3. Therefore, it can be deduced that unless the vendor got the subject land measured and demarcated within three months, it would be impossible for the purchaser (Respondent No. 1 herein/Plaintiff) to get a sale deed executed, and as such, the question of paying the balance sale consideration does not arise.

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- A This was also observed by the High Court while placing reliance on the recitals in the sale agreement coupled with the evidence of PW1 and PW2. Moreover, as has been held above, it is clear that the vendor (deceased father of the appellants) failed to perform his part of the obligations by getting the subject land measured and demarcated, while the purchaser (Respondent No. 1 herein/Plaintiff) was ever ready and willing to pay the balance consideration. As such, when specific performance of the terms of the contract has not been done, the question of time being the essence does not arise. [Para 35][819-B-D]
- C *Syed Dastagir v. T.R. Gopalakrishna Setty (1999) 6 SCC 337 : [1999] 1 Suppl. SCR 351; Aniglase Yohannan v. Ramlatha & Ors. (2005) 7 SCC 534 : [2005] 3 Suppl. SCR 440 – relied on.*
- D *Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd. & Ors. (2023) 1 SCC 355 – distinguished.*
- E *N. P. Thirugnanam v. Dr. R. Jagan Mohan Rao & Ors. (1995) 5 SCC 115 : [1995] 2 Suppl. SCR 53; U. N. Krishnamurthy (since deceased) Thr. Lrs. v. A. M. Krishnamurthy 2022 SCC OnLine SC 840; Nanjappan v. Ramasamy & Anr. (2015) 14 SCC 341 : [2015] 2 SCR 606; Jaswinder Kaur v. Gurmeet Singh & Ors. (2017) 12 SCC 810 : [2017] 5 SCR 430; Chand Rani v. Kamal Rani (1993) 1 SCC 519 : [1992] 3 Suppl. SCR 798 – referred to.*
- F *Ardeshir H. Mama v. Flora Sassoon AIR 1928 PC 208; Gomathinayagam Pillai & Ors. v. Palaniswami Nadar (1967) 1 SCR 227; Bank of India Limited v. Jamsetji A. H. Chinoy and Chinoy and Company (1949) LR 77 IA 76 – referred to.*

Case Law Reference

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|---|------------------------|-------------|---------|
| G | [1995] 2 Suppl. SCR 53 | referred to | Para 17 |
|   | [2015] 2 SCR 606       | referred to | Para 19 |
|   | [2017] 5 SCR 430       | referred to | Para 20 |

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|-------------------------|-------------|---------|---|
| [1999] 1 Suppl. SCR 351 | relied on   | Para 27 | A |
| [2005] 3 Suppl. SCR 440 | relied on   | Para 28 |   |
| [1967] 1 SCR 227        | referred to | Para 31 |   |
| [1992] 3 Suppl. SCR 798 | referred to | Para 32 |   |

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4206- B  
4207 of 2011.

From the Judgment and Order dated 05.10.2010 of the High Court of A.P. at Hyderabad in ASMP No.2292 of 2010 in AS No. 45 of 2008.

A. Sirajuddin, Sr. Adv., Venkateswara Rao Anumolu, Sunny C  
Kumar, Puneet Aggarwal, Advs. for the Appellants.

C. Mohan Rao, Sr. Adv., R. Santhanakrishnan, Lokesh Kumar Sharma, Krishna Kumar Singh, Advs. for the Respondents.

The Judgment of the Court was delivered by

**KRISHNA MURARI, J.** D

These two appeals are directed against the judgment and final order dated 05.10.2010 passed by the High Court of Andhra Pradesh at Hyderabad (hereinafter referred to as '**High Court**') in Appeal Suit No. 45 of 2008 filed by Respondent No. 1 herein against the judgment and decree dated 22.08.2007 passed by the Additional Senior Civil Judge, Ongole (hereinafter referred to as '**Trial Court**') in O.S. No. 142 of 2004; and order dated 10.12.2010 in ASMP No. 2292 of 2010 filed by the Appellants herein, seeking to recall the aforementioned judgment dated 05.10.2010 passed in Appeal Suit No. 45 of 2008. E

2. The High Court allowed Appeal Suit No. 45 of 2008 filed by Respondent No. 1 and set aside the judgment and decree dated 22.08.2007 passed by the Trial Court in O.S. No. 142 of 2004, thereby directing the Appellants herein to execute sale deed in favour of Respondent No. 1 herein after receiving balance sale consideration. The subsequent ASMP No. 2292 of 2010 filed by the Appellant herein was dismissed. F G

#### **BRIEF FACTS:**

3. The Appellants in the present case (represented by their maternal grandmother) are the minor children of one G. Venugopala Rao, who died on 13.05.2003, leaving behind his wife and the Appelants H

- A herein. The brief facts giving rise to the present appeals are that during his lifetime G. Venugopala Rao purchased the suit schedule property measuring Ac. 0.90 cents from one B. Alivelu Mangamma under a registered sale deed and obtained possession of the same. Subsequently, on 14.08.2002, G. Venugopala Rao executed an agreement of sale with
- B Respondent No. 1 herein, whereby he agreed to sell the aforementioned suit schedule property measuring Ac. 0.90 cents to Respondent No. 1 herein for a sale consideration of Rs. 11,88,000/- (@ Rs. 2,200/- per annum) out of which Respondent No. 1 herein paid an amount of Rs. 4,00,000/- as advance. Under the said agreement, G. Venugopala Rao agreed to execute the sale deed in favour of Respondent No. 1
- C after demarcating the land and receiving the balance sale consideration within three months.

4. Upon expiry of three months, G. Venugopala Rao issued a notice dated 02.01.2003 to Respondent No. 1 herein, demanding the balance consideration of Rs. 7,88,000/-, failing which, the sale agreement date

- D 14.08.2002 would stand cancelled and the advance amount of Rs. 4,00,000/- would be confiscated.

5. Respondent No. 1 herein sent a reply dated 10.01.2003 to the aforementioned notice, denying the allegations of non-payment of balance amount despite repeated demands. It was also stated that subsequent to

- E the execution of sale agreement, Respondent No. 1 herein got to know that G. Venugopala Rao owed a debt of Rs. 1,69,017/- to one Ch. Subbayamma, who had filed a suit (being O.S. No. 188 of 2002) before the Senior Civil Judge, Ongole for recovery of the said amount, and the property in question had been attached in the said suit. By way of the said reply notice, G. Venugopala Rao was asked to get the property measured, get its attachment removed, following which Respondent No. 1 herein would pay the balance sale consideration and get the property registered in her name.
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6. G. Venugopala Rao sent a rejoinder notice dated 21.01.2003 to the aforementioned reply notice, wherein he denied the allegation that

- G the land is not measured and stated that the same has been duly measured by the surveyor and boundaries have been fixed. It was further stated that Respondent No. 1 herein may deposit an amount of Rs. 1,69,017/- in the aforementioned O.S. No. 188 of 2002 from the balance sale consideration and pay the remaining amount to G. Venugopala Rao, failing
- H which the sale agreement shall stand cancelled.

7. It appears that during his lifetime, G. Venugopala Rao borrowed amounts of Rs. 2,40,000/- and Rs. 2,00,000/- from Kalluri Kondaiah (Respondent No. 2 herein) and M. Koteswara Rao (husband of Respondent No. 3 herein), respectively. After G. Venugopala Rao's death on 13.05.2003, Kalluri Kondaiah and M. Koteswara Rao herein filed O.S. No. 233 of 2004 and O.S. No. 235 of 2004, respectively, before the Senior Civil Judge, Ongole for recovery of the said amounts. Both the suits were decreed.

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8. On 29.03.2004, Respondent No. 1 sent another legal notice to the legal heirs of the deceased G. Venugopala Rao, i.e., his wife and minor children (Appellants herein). In the notice, it was stated that Respondent No. 1 has always been ready and willing to perform her part of the contract by paying the balance sale consideration, and that the legal heirs of the deceased G. Venugopala Rao have been delaying the execution of the sale deed. The legal heirs of the deceased were called upon to clear the attachment over the schedule property by discharging the debt due in O.S. No. 188 of 2002, receive the balance sale consideration, and execute the sale deed in favour of Respondent No. 1 herein; failing which the latter shall file a suit for specific performance, and the legal heirs of the deceased will be liable to bear the costs and consequences.

9. Subsequently, Respondent No. 1 herein filed a suit (being O.S. No. 142 of 2004) before the Senior Civil Judge, Ongole, seeking specific performance of the agreement of sale dated 14.08.2002 by directing the Defendants to execute a sale deed in the Plaintiff's favour. In the said suit, Defendant No. 1 was the wife of deceased G. Venugopala Rao, while Defendant No.s 2 and 3 (Appellants herein) were his minor children. Kalluri Kondaiah (Respondent No. 2 herein) and M. Koteswara Rao (husband of Respondent No. 3 herein) were Defendant No.s 4 and 5, respectively.

10. Based on the pleadings of the parties, the Trial Court framed the following issues for consideration:

(a) *Whether the Plaintiff is entitled for relief of specific performance of sale agreement?*

(b) *To what relief?*

11. After hearing the parties and appreciating the evidence on record, the Trial Court vide judgment and decree dated 22.08.2007, held

- A that the Plaintiff failed to prove that he is entitled for specific performance of the contract. Resultantly, the suit was partly decreed and partly dismissed by holding the Plaintiff to be entitled for recovery of the advance amount of Rs. 4,00,000/- paid by her to the deceased G. Venugopala Rao towards sale consideration with future interest at 6% per annum from the date of suit till the date of realisation. Each party was to bear its own costs.

- 12. Aggrieved by the judgment and decree of the Trial Court, the Plaintiff (Respondent No. 1 herein) filed Appeal Suit No. 45 of 2008 before the High Court. Vide impugned judgment and final order dated 05.10.2010, the appeal was allowed. The judgment of the Trial Court was set aside and the Plaintiff's suit was decreed. The Plaintiff was directed to pay the decretal amount in O.S. No. 233 of 2004 and O.S. No. 235 of 2004, respectively, before the Senior Civil Judge, Ongole, and subsequently, the balance amount was to be deposited in the Court in the names of the minors, i.e., Defendant No.s 2 and 3 (Appellants herein). Thereafter, guardians of Defendant No.s 2 and 3 were directed to execute a sale deed by duly demarcating the suit schedule property, failing which, the Court would execute a sale deed.

- 13. Subsequently, ASMP No. 2292 of 2010 was filed before the High Court on behalf of the minor Appellants herein by their maternal grandmother, seeking recall of the judgment dated 05.10.2010 in Appeal Suit No. 45 of 2008 on the ground that the Appellants were not heard. The High Court noted that there was no representation on behalf of the Appellants despite being given multiple opportunities, following which judgment was delivered on merits. As such, the question of recalling the judgment pronounced on merits does not arise under Section 151 of the F Code of Civil Procedure, 1908. Accordingly, the Miscellaneous Petition was dismissed.

- 14. It is against these two judgments of the High Court that the Appellants have preferred the present appeal.

- G 15. We have heard the learned counsel for the parties.

#### **SUBMISSIONS:**

- 16. Mr. A. Sirajuddin, learned Senior Counsel appearing on behalf of the Appellants contended that the High Court erred in allowing the appeal filed by Respondent No. 1 herein (Plaintiff) and decreeing the H suit for specific performance.

17. The learned Senior Counsel relied on this Court's judgment in **N.P. Thirugnanam vs Dr. R. Jagan Mohan Rao & Ors.**<sup>1</sup> to show that the plaintiff must aver and prove that she was always ready and willing to perform her part of the contract. However, in the present case, except the two-line pleading that the Plaintiff (Respondent No. 1 herein) was ever ready and willing to perform her part of the contract, there are no other details to show her readiness and willingness. Moreover, even in the chief examination, only the said two lines are available without further details. It was also contended that the Trial Court had observed that the Plaintiff had not marked any document to show that she was having necessary funds to pay the balance.

18. Reliance was also placed on this Court's judgment in **U.N. Krishnamurthy (since deceased) Thr. Lrs. vs A.M. Krishnamurthy**,<sup>2</sup> wherein it was held that:-

*"42. It is, therefore, patently clear that the respondent plaintiff has failed to prove his readiness to perform his part of contract from the date of execution of the agreement till date of decree, which is a condition precedent for grant of relief of specific performance. This court finds that the respondent plaintiff was not entitled the relief of specific performance."*

19. It was argued that the deceased G. Venugopala Rao had performed his part of obligation, while Respondent No. 1 failed to perform her part of the agreement with regard to the payment of balance sale consideration within three months as stipulated by the agreement. It was submitted that the deceased G. Venugopala Rao sent the first notice to Respondent No. 1 herein on 02.01.2003, i.e., after four months from the date of signing of the sale agreement. Respondent No. 1 sent a reply notice stating that the deceased G. Venugopala Rao had not got the property measured and demarcated, and the property was attached in O.S. No. 188 of 2002. In rejoinder to the said reply notice, the deceased G. Venugopala Rao stated that the land been measured and further asked Respondent No. 1 herein to deposit the balance consideration in O.S. No. 188 of 2002. In his evidence, PW 1 admitted that the schedule property was within specific boundaries bounded by survey stones. Following the deceased G. Venugopala Rao's rejoinder notice, the Plaintiff (Respondent No. 1 herein) did not pay the balance sale consideration

<sup>1</sup> 1995 (5) SCC 115

<sup>2</sup> 2022 SCC OnLine SC 840

- A and remained silent for 14 months, and when the price of the property had increased substantially, she gave another legal notice to the deceased G. Venugopala Rao's legal heirs (including the Appellants herein), which was followed by the suit for specific performance. Now, the market value property has gone up manifold and it is around Rs.1,50,000 per gadi. Therefore, directing the Appellants herein to execute the sale deed for the original price after 20 years would undue loss to the Appellants herein. Reliance in this regard was placed on this Court's judgment in **Nanjappan vs Ramasamy & Anr.<sup>3</sup>**
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20. The learned Senior Counsel further contended that the sale agreement was for 90 cents of land at the rate of Rs. 2,200 per Gadi.
- C But, the suit was filed by the Plaintiff for with regard to land to the extent of 50 cents only. As per Section 12 (1) of the Specific Relief Act, the plaintiff cannot seek to enforce the contract for a lesser extent. To support his contention, the learned Senior Counsel relied on this Court's judgment in **Jaswinder Kaur vs Gurmeet Singh & Ors<sup>4</sup>**. It was also argued that the deceased G. Venugopala Rao's mother (who was his class 1 legal heir and a necessary party having 1/4<sup>th</sup> share in the suit schedule property) was not impleaded in the suit. The Trial Court had specifically held that the suit cannot be decreed in the absence of a necessary party, but the High Court ignored this aspect. Lastly, it was argued that the Appellants herein are minors, and, in the High Court, the Plaintiff had shown them as being represented by their maternal grandmother. But, when the appeal was taken up, there was no representation for the minors. When the guardian of the minors had not effectively defended the cause of the minors, then, as per Order 32 Rule 11 of the Code of Civil Procedure, 1908, the Court has to *suo motu* appoint a new guardian and proceed to adjudicate the appeal thereafter. In the present case, the High Court simply proceeded to dispose the appeal ex-parte which is not legally sustainable.
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21. Per contra, Mr. C. Mohan Rao, learned Senior Counsel appearing on behalf of the Respondents argued that the present Civil Appeal is liable to dismissed with costs in view of the detailed judgment of the High Court, which was passed after minutely examining the evidence on record. The learned Senior Counsel contended that the deceased G. Venugopala Rao entered into a sale agreement with

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H <sup>3</sup>(2015) 14 SCC 341  
<sup>4</sup>2017 (12) SCC 810

Respondent No. 1 herein with regard to 90 cents of land. Out of the said 90 cents, he was the owner of 50 cents which he had purchased from one Smt. Balsa Allvelu Magamma. The deceased G. Venugopala Rao claimed that he had an agreement with Smt. Balsa Allvelu Magamma in respect of the remaining 40 Cents, and agreed to sell the entire 90 Cents of land to Respondent No. 1herein at the rate of Rs.2200/-per Gadi. Respondent No. 1 paid an advance amount of Rs.4,00,000/- towards sale consideration. The agreement specifically stipulated that the land shall be demarcated within 3 months from the date of agreement, with the boundaries as indicated inthe agreement in respect of 90 cents land. However, the deceased G. Venugopala Rao did not carry out the demarcation of land as stipulated in the agreement. Moreover, on 18.11.2002, i.e., immediately after completion of three months of the sale agreement on 14.11.2002, the deceased G. Venugopala Rao executed two simple mortgages covering 25 cents each in favour of his close relatives, who were Defendant No.s 4 and 5 in the suit. The deceased G. Venugopala Rao concealed this fact from Respondent No. 1 herein and issued a legal notice dated 02.01.2003 seeking payment of the balance amount of Rs.7,88,000/-. Respondent No. 1 replied to the said notice and pointed out that the balance consideration amount was to be paid after the land is measured and boundaries are fixed in terms of the agreement. In her reply, Respondent No. 1 also mentioned that she came to know that the property in question was attached in a money recovery suit filed against the deceased G. Venugopala Rao by one Ch. Subbayamma. Respondent No. 1 called upon the deceased G Venugopala Rao to remove the attachment and perform his part of contract and stated that she is ever ready to perform her part of contract by paying the balance sale consideration. Meanwhile, Smt. Allvelu Magamma sold the aforementioned 40 cents of land to some third party, and the deceased G. Venugopala Rao could sell only 50 cents of land to Respondent No. 1 herein. Under these circumstances, Respondent No. 1 filed a suit for specific performance of the sale agreement regarding 50 cents of land. The learned Senior Counsel further stated that during trial of the suit, the husband of Respondent No. 1 was examined as PW1 and he deposed that he and his wife have sufficient means to pay the balance amount and they were ever ready to perform their part of the contract. It was further pointed out by the learned Senior Counsel that the Trial Court erroneously held “..... *Admittedly no such documents were filed into court to show as on the date of agreement of sale or as on date of expiry of three months time they were having Rs.11,88,000/-.*”,

A           **ANALYSIS:**

22. We have carefully considered the rival contentions of the learned Senior Counsel appearing for the parties and perused the entire records. The only issue involved in the instant appeal before us is:-

- B           *Whether the High Court was justified in allowing Respondent No. 1's appeal and decreeing the suit for specific performance, by holding that the deceased G Venugopala Rao and his legal heirs (including the Appellants herein) failed to perform their obligation with regard to getting the property measured and demarcated, while Respondent No. 1 herein was always ready and willing to perform her part of contract by paying the balance sale consideration?*
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- D           23. At the outset, we would like to mention that Section 16 (c) of the Specific Relief Act, 1963 (along with its explanation) is the relevant provision of law which is attracted in the present case, and as has also been held by the High Court. The 2018 Amendment to the Specific Relief Act made certain amendments to Section 16 as well. However, it has been clarified in the recent 3-Judge Bench<sup>5</sup> judgment of this Court in **Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd. & Ors.**<sup>6</sup>, that the 2018 Amendment was not a mere procedural enactment, but it had substantive principles built into its working, and, as such, the said Amendment is prospective in nature and cannot apply to those transactions that took place prior to its enforcement. Therefore, in the present case, Section 16, as it stood prior to the 2018 Amendment, would be applicable, since the matter dates back to 2002. Section 16 (as it then stood) is being reproduced hereunder:-
- F           “**16. Personal bars to relief.**— Specific performance of a contract cannot be enforced in favour of a person—
  - (a) who would not be entitled to recover compensation for its breach; or
- G           (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at

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<sup>5</sup> Coram: CJI N.V. Ramana (as he then was), Krishna Murari (Author) and Hima Kohli, JJ.

H           <sup>6</sup>(2023) 1 SCC 355

*variance with, or in subversion of, the relation intended to be established by the contract; or* A

*(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.* B

*Explanation.— For the purposes of clause (c),—*

- (i) *where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;* C
- (ii) *the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.”* D

24. On a bare perusal of the aforementioned section, it becomes clear that prior to the 2018 Amendment, clause (c) of Section 16 laid down that the plaintiff is entitled for a specific performance of contract if he avers and proves that he has performed or has always been ready and willing to perform his obligation under the contract. The explanation attached to clause (c) further clarified that in a contract involving the payment of money, the plaintiff need not actually deposit the money to the defendant, and that he must aver that he has performed, or is ready and willing to perform the contract according to its true construction. E

25. Before delving further into the discussion of Section 16 (c) of the Act, we would like to trace a bit of history of the said provision. The old Specific Relief Act of 1877 did not contain any express provision regarding the averment of readiness and willingness as being necessary in a suit for specific performance, but this was the law of the land. As early as 1928, Their Lordships of the Privy Council in **Ardeshir H. Mama vs Flora Sassoon**<sup>7</sup>, while taking note of the fact that there was an absence of an express provision in Indian law regarding readiness and willingness, held that the requirements of Indian and English law in this matter are the same. F

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<sup>7</sup>AIR 1928 PC 208 G

- A        26. In the present case, the High Court while discussing Section 16 (c) of the Specific Relief Act, 1963 (hereinafter referred to as ‘**Act**’), observed that it is necessary for the Plaintiff to perform his part of the contract from the date of contract till the date of hearing. The High Court also stated that it is fairly well settled that mere stipulation of time would not make time the essence of the contract and in case of sale of immovable property normally the time may not be essence of the contract. It was also stated that the explanation to Section 16 (c) of the Act provides that there must be pleading by the Plaintiff that he was always ready and willing to perform his part of contract. The High Court then noted that a specific plea was taken by the Plaintiff in her plaint that she was ready and willing to perform her part of the contract. Moreover, PW1 (Plaintiff’s husband who testified on her behalf) categorically stated that he and the Plaintiff were ever ready to perform their part of contract with regard to the payment of the balance sale consideration, but the Defendants failed to perform their part of the obligations. At this juncture, the High Court took note of a very crucial fact that the aforementioned part of the evidence (with regard to the Plaintiff’s readiness and willingness) was not challenged by the counsel appearing for Defendant Nos. 1 to 3 in the Trial Court, and when a fact has been stated by witness and the same has not been challenged, it can be said that such a fact is admitted. PW2 (scribe of the sale agreement) categorically stated that it was agreed that the extent of land would be measured for the purpose of calculation at the time of the execution of the sale deed. Therefore, it was observed that the recitals in the sale agreement coupled with the evidence of PW1 and PW2 shows that the extent of land has to be measured within three months, and unless the land is measured and demarcated, it would be impossible for the Plaintiff to get a sale deed executed, and as such, the question of paying the balance sale consideration does not arise. The High Court was of the view that the obligation with regard to the demarcation of the property was not performed by either the deceased G. Venugopala Rao or his legal heirs (Defendants in the suit, including the Appellants herein) thereafter, while the Plaintiff had established that she was always ready and willing to perform her part of contract by paying the balance sale consideration which is the primary requirement as per Section 16 (c) of the Act. It was held that these aspects were not considered by the Trial Court and there was no appreciation of evidence with reference to Section 16 (c) of the Act.
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27. In **Syed Dastagir vs T.R. Gopalakrishna Setty**<sup>8</sup>, it was A held, “*the language in Section 16 (c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So, the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form.”*

28. In **Aniglase Yohannan vs Ramlatha & Ors.**<sup>9</sup>, this Court B held:-

“*11. Lord Campbell in Cort v. Ambergate, Nottingham and Boston and Eastern Junction Rly. Co. [(1851) 117 ER 1229 : 17 QB 127] observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it, had it not been renounced by the defendant.*

12. *The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.*” D E

29. In our view, the High Court has rightly held that the deceased G. Venugopala Rao or his legal heirs (Defendants in the suit, including the Appellants herein) failed to perform their obligation with regard to the demarcation of the property, while the Plaintiff had established that she was always ready and willing to perform her part of contract by paying the balance sale consideration which is the primary requirement as per Section 16 (c) of the Act. F

30. In light of the aforementioned **Aniglase Yohannan** judgment (supra), and as held by the High Court, the primary requirement to seek relief under Section 16 (c) of the Act is that the Plaintiff was ever ready and willing to perform his part of the contract. It is clear from the facts G

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<sup>8</sup>(1999) 6 SCC 337

<sup>9</sup>(2005) 7 SCC 534

- A of the case at hand that the Plaintiff (Respondent No. 1 herein) was ever ready and willing to pay the balance sale consideration. In the sale agreement, it was clearly mentioned that within three months the deceased G. Venugopala Rao will get the suit schedule property measured and demarcated and the Plaintiff (Respondent No. 1 herein) shall pay the balance sale consideration. It appears that, at first, the deceased G. Venugopala Rao while agreeing to sell 90 cents of land, concealed that he is the owner of only 50 cents of the land. Subsequently, he failed to measure and demarcate the land. On the other hand, the Plaintiff (Respondent No. 1 herein), from the outset, has been clear and blemishless in his conduct. She had paid the advance sale consideration
- B of Rs. 4,00,000/-.
- C When the deceased G. Venugopala Rao failed to measure and demarcate the land, the question of the Plaintiff (Respondent No. 1 herein) paying the balance sale consideration does not arise. However, even then the averments of the Plaintiff, her conduct and the testimony of her husband show that the Plaintiff, since the signing of the
- D sale agreement, was ever ready and willing to pay the balance consideration.

31. The Appellants have contended that Respondent No. 1 (Plaintiff) was not having sufficient funds to pay the balance sale consideration. On the other hand, as noted above, Respondent No. 1 has been ever ready and willing to pay the balance sale consideration. In
- E **Gomathinayagam Pillai & Ors. vs Palaniswami Nadar<sup>10</sup>**, this Court referred to the judgment of Their Lordships of the Privy Council in *Bank of India Limited vs Jamsetji A.H. Chinoy and Chinoy and Company<sup>11</sup>*. The relevant portion of the said judgment is reproduced as under:

- F “18. ....In *Bank of India Limited v. Jamsetji A.H. Chinoy and Chinoy and Company* [(1949) LR 77 IA 76] the Privy Council decreed specific performance of the contract to sell shares. On the question of readiness and willingness of the buyer to perform the contract, Lord MacDermott observed at p. 91 of the Report:

- G “It is true that the first plaintiff stated that he was buying for himself, that he had not sufficient ready money to meet the price and that no definite arrangements had been made for finding it at the time of repudiation. But to prove himself ready

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H <sup>10</sup>(1967) 1 SCR 227  
<sup>11</sup>(1949) LR 77 IA 76

*and willing a purchaser has not necessarily to produce the money or to vouch a concluded scheme for financing the transaction.”*

Therefore, even if the aforementioned contention of the Appellants herein was to be considered, the same does not have any substance, as the Plaintiff has successfully established her readiness and willingness to perform her part of the contract by paying the balance sale consideration.

32. Before parting with the judgment, we would like to clarify another aspect, i.e., with regard to whether time is of the essence in the sale agreement in the present case or not. In **Siddamsetty Infra Projects (P) Ltd. (*supra*)**, this Court was dealing with a similar question with respect to a sale agreement for an immovable property, while referring to an earlier judgment in *Chand Rani v. Kamal Rani*,<sup>12</sup> it was reiterated that in sale of immovable property there is no presumption that time is the essence of the contract, however, the court may infer performance in a reasonable time if the conditions are evident *from the express terms of the contract, from the nature of the property, and from the surrounding circumstances.*

33. However, the set of facts and circumstances in **Siddamsetty (*supra*)** were substantially different from the case at hand. The relevant portion of the said judgment is reproduced as under:

*“33. At the outset, this Court has perused Clause 3 of the agreements, which is in two parts. The first part provides for the purchaser’s obligation, while the second part details the obligation of the vendors to provide the requisite certificates. Although both the obligations were required to be completed within the stipulated period of three months, there is a substantive difference between these two sets of obligations. The obligation upon the vendors concerned was production of certain certificates, such as income tax exemption certificate and agriculture certificate. No consequences were spelt out for non-performance of such obligations. Whereas the obligation on the purchaser, was to make the complete payment of the sale consideration within three months. The clause further mandates forfeiture of the advance amount if the*

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<sup>12</sup>(1993) 1 SCC 519

- A      *payment obligation is not met within the time period stipulated therein.*
34. In this context, this Court in *Chand Rani v. Kamal Rani* [*Chand Rani v. Kamal Rani*, (1993) 1 SCC 519], held as under : (SCC p. 528, para 25)
- B      “25. From an analysis of the above case law it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract the court may infer that it is to be performed in a reasonable time if the conditions are evident:
1. From the express terms of the contract;
  2. From the nature of the property; and
  3. From the surrounding circumstances, for example : the object of making the contract.”
- D      .....
- E      73. From the above, we can safely conclude that the purchaser was not ready or willing to perform his part of the contract within the time stipulated and accordingly, specific performance cannot be granted for the entire contract. “
- F      34. From a perusal of the above extracted portion of **Siddamsetty (supra)**, it is clear that in the said case, the agreement stipulated that both the purchaser as well as the vendor were to fulfil their obligation within three months. But, in case of non-compliance of the vendor’s obligations (of producing certain documents) within three months, no consequences were mentioned; whereas, on the other hand, in case of non-compliance of the purchaser’s obligations (of paying the balance sale consideration) within three months, the advance amount would be forfeited. This Court while concluding that the purchaser was not ready or willing to perform his part of the contract within the stipulated time
- G      period, denied to grant specific performance for the entire contract. However, what is to be seen in the present case, is that the sale agreement dated 14.08.2002 stipulated that the vendor (deceased G. Venugopala Rao) was required to get the land measured and demarcated within three months, following which, the purchaser (Respondent No. 1 herein
- H      /Plaintiff) was required to pay the balance sale consideration. So, it can

be clearly observed that the performance of the purchaser's obligation to pay the balance sale consideration within three months is dependent upon the fulfilment of the vendor's obligation to get the land measured and demarcated within three months.

35. Therefore, it can be deduced that unless the vendor got the subject land measured and demarcated within three months, it would be impossible for the purchaser (Respondent No. 1 herein/Plaintiff) to get a sale deed executed, and as such, the question of paying the balance sale consideration does not arise. This was also observed by the High Court while placing reliance on the recitals in the sale agreement coupled with the evidence of PW1 and PW2. Moreover, as has been held above, it is clear that the vendor (deceased G. Venugopala Rao) failed to perform his part of the obligations by getting the subject land measured and demarcated, while the purchaser (Respondent No. 1 herein/Plaintiff) was ever ready and willing to pay the balance consideration. As such, when specific performance of the terms of the contract has not been done, the question of time being the essence does not arise. In this way, the facts of the present case are distinguishable from that of **Siddamsetty (*supra*)**, and the Appellants herein cannot claim that time was of the essence of the contract.

36. In view of the above, we are of the considered opinion that the High Court was justified in allowing the appeal and decreeing the suit for specific performance filed by Respondent No. 1 herein. The findings of the High Court are hereby upheld. The present appeals, in our view, have no merit and are liable to be dismissed.

37. Accordingly, both the appeals are dismissed, and the judgment dated 05.10.2010 as well as order dated 10.12.2010, passed by the High Court are affirmed. However, in the facts and circumstances of the case, we do not make any order as to costs.