

# **Specific Performance of Agreement**

**S.S. Upadhyay**

*Former District & Sessions Judge/*

*Former Addl. Director (Training)*

*Institute of Judicial Training & Research, UP, Lucknow.*

*Member, Governing Body,*

*Chandigarh Judicial Academy, Chandigarh.*

*Former Legal Advisor to Governor*

*Raj Bhawan, Uttar Pradesh, Lucknow*

*Mobile : 9453048988*

*E-mail : ssupadhyay28@gmail.com*

*Website: lawhelpline.in*

- 1. Pleading and proof required in a suit for specific performance of contract:** It is settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. Following material questions are required to be gone into for grant of the relief of specific performance:
  - (i). Whether there exists a valid and concluded contract between the parties for sale/ purchase of the suit property
  - (ii) Whether the plaintiff has been ready and willing to perform his part of the contract and whether he is still ready and willing to perform his part as mentioned in the contract
  - (iii) Whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of table of grant of the relief of specific performance to the plaintiff against the defendant in relation to the suit property or it will cause any kind of hardship

to the defendant and, if so, how and in what manner and extent if such relief is eventually granted to the plaintiff

- (iv) Whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of the earnest money etc. and, if so, on what grounds.
- (v) To avail relief of specific performance, parties are required to plead and prove all statutory requirements prescribed under the provisions of Sections 16(c), 20, 21, 22 & 23 of the Specific Relief Act, 1963 and Forms 47 & 48 of Appendix A to C of the CPC. See:
  - (i) Katta Sujatha Reddy Vs Siddamsetty Infra Projects Private Limited, (2023 ) 1 SCC 355 (Three-Judge Bench)
  - (ii) Kamal Kumar Vs. Premlata Joshi, AIR 2019 SC 459.
  - (iii) Kalawati Vs. Rakesh Kumar, (2018) 3 SCC 658 (Para 19)
  - (iv) I.S. Sikandar Vs. K. Subramani, (2013) 15 SCC 27 (Para 19)

- 2. Conduct of plaintiff important while exercising discretionary jurisdiction to order specific performance of contract:** Interpreting the provisions of Sec. 45 of the Indian Contract Act and Sections 15 & 20 of the Specific Relief Act, 1963, the Supreme Court has held that a person cannot be compelled to bring an action at law if he does not want to do so and at the same time he cannot be prevented from bringing an action by any rule of law or practice merely because he is a joint promisee and the other promisee refuses to join as a co-plaintiff. Suit for specific performance of contract should be filed at the first instance. Plaintiff's conduct plays an important role in the

matter of exercise of discretionary jurisdiction by the courts. However, some delay may not be a bar in granting a relief of specific performance. See:

- (i) Pydi Ramana Vs Davarasety Manmadha Rao, (2024) 7SCC 515
- (ii) G. Jayashree vs. Bhagwandas S. Patel, 2009(1) Supreme 302
- (iii) Mohammadia Cooperative Building Society Limited vs. Lakshmi Srinivasa Cooperative Building Society Limited, (2008) 7 SCC 310
- (iv) Sanjana M. Wig (Ms.) vs. Hindustan Petroleum Corp. Ltd., (2005) 8 SCC 242
- (v) Nirmala Anand vs. Advent Corporation (P) Ltd., (2002) 8 SCC 146.

**3. When specific performance of the terms of contract has not been done, the question of time being essence of contract does not arise:**

Unless the vendor got the subject land measured and demarcated within three months, it would be impossible for the purchaser (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 failed to perform his part of the obligations by getting the subject land measured and demarcated, while the purchaser (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.** See: Gaddipati Divija Vs. Pathuri Samrajyam (2023) SCC Online SC 442

4. **Suit for specific performance can't be decreed merely because it is filed within the period of limitation by ignoring the time-limits stipulated in the agreement:** In the case noted below, the Hon'ble Supreme Court has held that 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. The 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 that 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 the 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. Following factors must be considered by the courts before decreeing a suit for specific performance of contracts:
  - (i) the 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) the courts will apply greater scrutiny and strictness when considering whether the purchaser was "ready and willing" to

perform his part of the contract. See: K.S. Vidyanadam v. Vairavan, (1997) 3 SCC 1

5. **The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance:** It would amount to injustice to hold that a vendor who took a very meagre sum as earnest money, and agreed that the rest of the consideration would be paid within a stipulated period of time, did not intend that time was of essence to the contract. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and “non-readiness”. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in

injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.” See: Saradamani Kandappan v. S. Rajalakshmi, (2011) 12 SCC 18 (Para 37)

6. **Hardship of the vendor to be considered by court where purchaser/plaintiff is found not ready and willing to comply with the terms of agreement:** It is clarified that the result of this appeal has been arrived at having regard to the conduct of the plaintiff, which does not reflect his willingness to comply with the terms of the agreement of sale dated 7th August, 2005. The suit for specific performance of the agreement of sale of Kanam and Kuzhikoor rights would fail on the sole ground that the plaintiff has failed to comply with the essential requirements of Section 16(c) of the Specific Relief Act. Although it is acknowledged that the defendants would be put through hardship if the suit for specific performance was decreed in favour of the plaintiff, the appeal has been decided dehors considerations of hardship to the defendants, or of other circumstances under which the contract was entered into which could give the plaintiff an unfair advantage over the defendants, which are considerations in equity as the relief of specific performance is essentially an equitable remedy though crystallised in the form of a

legislation as per the Act. Thus, the appeal has not been decided in light of Section 20 of the Act, as it stood prior to the Amendment Act of 2018. The question as to applicability of the provision of Section 20 of the Act as it stood prior to its amendment in 2018, on transactions entered into prior to the date on which the Amendment Act of 2018, is thus kept open. See: C. Haridasan Versus Anappath Parakkattu Vasudeva Kurup and Others, 2023 SCC OnLine SC 36

7. **Time when to be treated to be essence of contract?:** In the present case, the purchaser did not voluntarily adhere to the time stipulations under the contract and in order to bypass the condition of time being the essence, the purchaser invoked the standard of good faith. The Supreme Court held that the said standard prescribed a higher duty of care for parties entering into a contract and unless such duty is expressly stipulated, good faith standard cannot be implicitly read into any contact. See: Katta Sujatha Reddy Vs Siddamsetty Infra Projects Private Limited, (2023 ) 1 SCC 355 (Three-Judge Bench)
8. **Court should be slow to grant discretionary relief of specific performance in contravention of mandate of Section 20 of the Specific Relief Act, 1963 by relying upon untrustworthy, shaky and vague evidence like that of a handwriting expert:** Where in a suit for specific performance of agreement, the attesting witness had deposed that the executants had put his signatures on the agreement under compulsion without knowing the contents thereof and the handwriting expert on the basis of photocopies of admitted documents had opined that signatures on agreement did not tally with specimen

signatures of the executants and the trial court, on proper appreciation of evidence, dismissed the suit but the High Court in appeal relied upon the untrustworthy, shaky and vague evidence to grant discretionary relief of specific performance in contravention of mandate of Section 20 of the Specific Relief Act, 1963, it has been held by the Hon'ble Supreme Court that the handwriting expert's opinion u/s 45 & 73 of the Evidence Act is a weak evidence and courts should be slow to base their findings solely on such opinion but should apply their own mind and take a decision. See: Garre Mallikharjuna Rao (Dead) By LRs. & Others Vs. Nalabothu Punniah, (2013) 4 SCC 546

9. **Agreement to sell or power of attorney are not documents of transfer of title:** In the present case, it goes without saying that the power of attorney executed by the appellant-defendant is of no consequence as on the strength of said power of attorney, neither sale deed has been executed nor any action pursuant thereof has been taken by the power-of attorney holder which may confer title upon the respondent-plaintiff. Non-execution of any document by the general power-of-attorney holder consequent to it renders the said general power of attorney useless. In connection with the general power of attorney and the will so executed, the practice, if any, prevalent in any State or the High Court recognizing these documents to be documents of title or documents conferring right in any immovable property is in violation of the statutory law. Any such practice or tradition prevalent would not override the specific provisions of law which require execution of a document of title or transfer and registration so as to

confer right and title in an immovable property of over Rs 100 in value. In this regard, reference may be had to two other decision of the Delhi High Court in *Intiaz Ali v. Nasim Ahmed* and *G. Ram v. DDA* which inter alia observe that an agreement to sell or the power of attorney are not documents of transfer and as such the right, title and interest of an immovable property do not stand transferred by mere execution of the same unless any document as contemplated under Section 54 of the Transfer of Property Act, 1882, is executed and is got registered under Section 17 of the Registration Act, 1908. The decision of the Supreme Court is *Suraj Lamp & Industries (P) Ltd. v. State of Haryana* also deprecates the transfer of immovable property through sale agreement, general power of attorney and will instead of registered conveyance deed. Legally an agreement to sell may not be regarded as a transaction of sale or a document transferring the proprietary rights in an immovable property but the prospective purchaser having performed his part of the contract and lawfully in possession acquires possessory title which is liable to be protected in view of Section 53-A of the Transfer of Property Act, 1882. The said possessory rights of the prospective purchaser cannot be invaded by the transferor or any person claiming under him. See: *Ghanshayam vs Yogendra Rathi* (2023) 7 SCC 361 (Paras 12, 14, 15 & 16)

- 10. Presumption of knowledge of execution of document from date of its registration:** When a document is required by law to be registered and is got registered, then the whole world comes to know (by way of constructive notice) about the execution and registration of such

document from the date of its registration. Referring to Explanation I to Section 3 of the Transfer of Property Act, 1882, it has been held by the Supreme Court that knowledge of execution and registration of such document for purposes of limitation starts from the date of its registration. See:

- (i). Uma Devi Vs. Anand Kumar, (2025) 5 SCC 198 (Para 13)
- (ii). Suraj Lamp & Industries (P) Limited Vs. State of Haryana, (2012) 1 SCC 656 (Paras 15 &17)

- 11. Court has discretionary power to grant time to decree-holder to deposit the balance sale consideration:** If during the specified time period the decree holder is not in a position to deposit the balance sale consideration or, in other words, fails to deposit the balance sale consideration and later upon expiry of the specified time period seeks permission to deposit, then it would be within the discretion of the trial court to grant further time to deposit the balance sale consideration or decline. This discretion has to be exercised judiciously keeping in mind various factors like bona fide of the decree holder, the cause for failure to deposit the balance sale consideration in time, the length of delay and also the equities that might have been created during the interregnum period in favour of the judgment debtor. It is the cumulative effect and considerations of such factors that should weigh with the court concerned while permitting the decree holder to deposit the balance sale consideration beyond the time period that might have been prescribed by the trial court in its final decree. See: Ram Lal Versus Jarnail Singh, 2025 SCC OnLine SC 584 (Para 50)

**12. Appeal is a continuation of the original proceedings of the suit:** It should also be borne in mind that appeal is a continuation of the original proceedings and the power of the Court to extend the time for depositing the amount can be exercised even in the appellate stage by the Court. The Court has been conferred with the power to extend the time to pay the amount and while taking into consideration the delay that is sought to be condoned by the plaintiff, the Court does not adjudge the same like an application under Section 5 of the Limitation Act, 1963 where each day's delay must be explained. The Court is given the discretion to extend the time and the provision therefore seeks to provide complete relief to both the parties in terms of the decree for specific performance. The power and jurisdiction granted under Section 28 (1) of the Specific Relief Act enables the Court to extend the period for payment of the purchase money if it has not been paid within the period allowed by the decree. It also enables the judgment debtor to seek for rescinding the contract for non-compliance of the directions given in the decree and while considering this application, the Court is given the discretion to rescind the contract or in an appropriate case to even extend the time for paying the purchase money. See: Ram Lal Versus Jarnail Singh, 2025 SCC OnLine SC 584 (Para 46, 47 & 48)

**13. Decree of trial court merges with the decree of appellate court and it is the appellate decree that can be executed by the executing court:** The doctrine of merger is based on the principles of propriety in the hierarchy of the justice delivery system. The doctrine of merger

does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time. It is trite that when an appellate court passes a decree, the decree of the trial court merges with the decree of the appellate court and even if and subject to any modification that may be made in the appellate decree, the decree of the appellate court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the appellate court affirms, modifies or reverses the decree passed by the trial court. See:

- (i) Ram Lal Versus Jarnail Singh, 2025 SCC OnLine SC 584  
(Paras 40 & 41)
- (ii) Khoday Distilleries Ltd. v. Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd., (2019) 4 SCC 376
- (iii) Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724 (Para 23)

**14. Limitation period for filing application for execution of decree for specific performance of agreement is 12 years from the date of the decree:** In the case on hand, undoubtedly, there was a delay on the part of the decree holder in filing the execution petition and thereby seeking permission to deposit the balance sale consideration. As per Article 136 of the Limitation Act, 1963, the limitation period for presenting an application for execution of decree including decree for specific performance of agreement is 12 years from the date of the decree or from the date when it becomes enforceable as specified in the decree. Just because a decree of specific performance can be

executed within 12 years from the date of original decree or from the date the appellate court affirms such decree that, by itself, does not mean that a decree holder deposits the balance sale consideration at his own sweet will. See: Ram Lal Versus Jarnail Singh, 2025 SCC OnLine SC 584 (Para 51)

- 15. Reasonable time is the rule where no particular time period is prescribed for deposit the sale consideration:** If the appellate court had failed to stipulate any particular time period then it is expected of the decree holder to deposit the same within a reasonable period of time. See: Ram Lal Versus Jarnail Singh, 2025 SCC OnLine SC 584 (Para 52)
- 16. In a suit for specific performance of contract, plaintiff/ purchaser may ask for possession also even if it has not been specifically asked for it:** As per Section 22(1)(a) of the Specific Relief Act, 1963, a person suing for specific performance of contract may ask for possession also even if it has not been specifically asked for it. See:
  - (i) Krishan Gopal Vs. Gurmeet Kaur, 2025 SCC OnLine SC 1438 (Para 17)
  - (ii) Babu Lal Vs. Hazari Lal Kishori Lal, (1982) 1 SCC 525
- 17. Transferee pendente lite can be impleaded as party:** Transferee pendente lite can be impleaded as party to, a suit under Order 1, rule 10 CPC. See: Yogesh Goyanka Vs Govind,(2024) 7 SCC 524

- 18. Cancellation of a document, whether registered or unregistered, can be sought:** A document, whether registered or unregistered, can be cancelled by the court. See: Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties, (2021) 4 SCC 786 (Para 22) (Three-Judge Bench)
- 19. A case involving specific performance of an agreement can also be decided by Arbitrator under:** A case involving specific performance of an agreement can also be decided by Arbitrator under Arbitration and Conciliation Act, 1996. See:
- (i) Deccan Paper Mills Company Limited Vs. Regency Mahavir Properties, (2021) 4 SCC 786 (Three-Judge Bench) (Para 23)
  - (ii) Olympus Superstructures (P) Limited Vs. Meena Vijay Khetan, (1999) 5 SCC 651

\*\*\*\*\*