

Mohammed Khaleel (D) through LRS. & Ors. Vs. Jayamma

Civil Appeal No. 2187 of 2011 · Supreme Court of India · 2026-06-23 · Prashant Kumar Mishra · N.V. Anjaria · F2J-C-1148

Full judgment text

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[Civil Appeal No. 2187 of 2011]

Prashant Kumar Mishra, J.

1. The present Appeal is preferred against the impugned judgment and order dated 09.12.2009 passed by the Division Bench of the High Court at Bangalore in R.F.A No.418 of 2003, whereby the High Court set aside the judgment and decree dated 31.01.2002 passed by the learned Principal Civil Judge (Sr. Dn.), Mysore. Resultantly, the suit for specific performance filed by the appellant stands dismissed.

A. FACTUAL MATRIX

2. The appellant - Mohammed Khaleel was the original plaintiff who died during the pendency of the subject suit. The subject suit was contested by his legal representatives who are the appellants before us in this Appeal.

3. The appellant/original plaintiff and the respondent/original defendant entered into an agreement to sell on 20.12.1990 for a total sale consideration of Rs. 3,00,000/- for a vacant site measuring 100 feet by 78 feet. An amount of Rs. 25,000/- was paid by the appellant as earnest money and it was agreed that the sale deed shall be registered within four months and the balance sale consideration of Rs. 2,75,000/- would be paid before the Sub-Registrar at the time of registration of the suit property.

4. Under the said agreement to sell dated 20.12.1990, the respondent/defendant handed over to the appellant/plaintiff, the original copy of the title documents viz., original will deed, settlement deed, katha extract issued by the Corporation, endorsement regarding the change of katha of the suit property, tax paid receipts, encumbrance certificate dated 06.08.1989, application addressed to the Revenue Officer dated 03.05.1982 and photocopy of sale deed dated 07.06.1961, plan of property indicating division into eight shares.

5. It is the case of the appellants that the respondent also agreed that her brothers and sisters would execute an interim agreement where an approach road would be formed within the area starting from T. Narasipura Main Road opposite to Milk Diary up to the end of the schedule property. The appellant/plaintiff was thereafter put in the possession of the schedule property. However, in the written statement filed by the respondent/defendant before the Trial Court, it was categorically stated that there was already an approach road to the suit property. It was also asserted in the written statement that there was no other land or vacant space in or near the suit property to carve out any separate approach road.

6. The appellant/plaintiff vide notice dated 15.04.1991, urged the respondent/defendant to perform her part of the contract; however, the same was not served upon the respondent/defendant due to the wrong house number mentioned thereon. It is alleged that in the said notice the appellant/plaintiff admitted that the suit property was not measured and the road was also not formed and, hence, the appellant/plaintiff could not be compelled to purchase the suit property.

7. Thereafter, the respondent/defendant issued a legal notice dated 26.04.1991 to the appellant/plaintiff wherein it was mentioned that the original documents pertaining to the suit property were in the custody of the appellant/plaintiff and since he failed to obtain the permission under the Urban Land (Ceiling and Regulation) Act 1976 and as the time had expired for executing the sale deed, the respondent/defendant was compelled to rescind the agreement and forfeit the earnest money.

8. The appellant/plaintiff issued another legal notice dated 30.04.1991 whereby he admitted having received the documents from the respondent/defendant under the said agreement to sell and also stated that since no approach road was made, necessary permission was not obtained. The appellant/plaintiff would sue the respondent/defendant for specific performance.

9. A further legal notice dated 30.07.1992 was issued by the appellant/plaintiff stating that the respondent/defendant had secured the possession of the suit property forcibly, and that the appellant/plaintiff was ready and willing to perform his part of the contract, provided the necessary permission under ULCRA be obtained. The respondent/defendant in her reply dated 11.08.1992 to the appellant/plaintiff categorically stated that she is not the owner of the adjoining lands where the appellant/plaintiff is insisting on making a road. Further, the act of the appellant/plaintiff of putting subsequent conditions before the execution of the sale deed amounted to his unwillingness to perform his contractual obligations.

10. As the appellant/plaintiff and the respondent/defendant could not reconcile the issue, the appellant/plaintiff filed a suit being O.S No.432 of 1993 before the learned Principal Civil Judge (Senior Division), Mysore, on 20.12.1993 wherein he prayed for specific performance of the agreement to sell dated 20.12.1990 and possession of the suit property. Alternatively, the appellant/plaintiff sought compensation of Rs. 3,00,000/- from the respondent/defendant on account of breach of the contract by her in case relief of specific performance is not granted to him.

11. Before the learned Civil Judge, PW-1 (K.M. Mohammed Hayath), who is one of the legal representatives of the appellant, deposed on his behalf. Twentynine documents were exhibited before the Trial Court. These included the correspondence exchanged between the parties, postal receipts and acknowledgments, and importantly, four Fixed Deposit Receipts² of Rs. 70,000/- each.

12. On the other hand, the respondent/defendant led no oral evidence whatsoever, did not step into the witness box and also did not get herself crossexamined.

13. The Trial Court ultimately decreed the suit on 31.01.2002, answering the issues raised in the favour of the appellant/plaintiff and held as follows:

a. On the question of possession, the Trial Court held that the possession was delivered to the appellant/plaintiff on 20.12.1990.

b. On the question of time being of essence of contract, the Trial Court held that the time limit was subject to extension from time to time. Hence, in this case the time was not of essence.

c. On the question of readiness and willingness on the part of the appellant/plaintiff, the Trial Court held that the appellant/plaintiff was ready and willing to perform his part of the contract.

d. On the question of recession or termination, the Trial Court held that the respondent/defendant rescinded the contract without justifiable cause.

14. The High Court on the other hand, by the impugned judgment, reversed the Trial Court's decree on the following grounds:

a. The appellant/plaintiff has failed to aver and prove that he was ready and willing to perform his part of his contract.

b. Since both, the appellant/plaintiff and the respondent/defendant had to apply for ULCRA permission under the requirements of law, failure of the appellant/plaintiff to submit an affidavit to the authorities for the permission showed that the appellant/plaintiff was not ready and willing to perform his part of the contract.

c. On the issue of delay in filing the suit for specific performance by the appellant/plaintiff, the High Court held that though the suit was filed within the period of limitation yet the laches of 2 years and 9 months in filing the suit for specific performance was critical.

B. SUBMISSIONS OF THE PARTIES

15. Learned counsel for the appellants argues that the impugned judgment is erroneous insofar as it concluded that the appellant/original plaintiff failed to establish his readiness and willingness to perform his part of the contract.

16. On the aspect of financial readiness, it was argued on behalf of the appellants that the High Court was incorrect in observing that only two FDRs of Rs.70,000/- each totaling Rs.1,40,000/- were available with the appellant(s). The High Court, however, failed to properly assess Ex.-29 (before the Trial Court) which reflected four FDRs of Rs.70,000/- each dated 04.10.1999, 22.11.1999, 03.04.2001, and 23.08.2001, totaling Rs.2,80,000/- which was sufficient to satisfy the balance sale consideration of Rs.2,75,000/-.

17. The learned counsel for the appellants further submits that the High Court erred in treating the request for demarcation as a lack of original plaintiff's willingness to perform his part of contract. Since demarcation and proper measurement are essential for valid conveyance of immovable property, a purchaser insisting on demarcation is facilitating completion of the transaction, not avoiding it. Additionally, under the terms of the agreement to sell, the respondent/defendant was obligated to undertake all acts necessary to convey a perfect title. The request for demarcation was, therefore, within the contractual framework and part of the natural sequence of performance.

18. The learned counsel for the appellants submits that the High Court erred in attributing a lack of readiness to the appellant/plaintiff on the issue of ULCRA permission. While permission under the ULCRA was necessary, the primary obligation to initiate and secure such permission vested with the respondent/defendant as she was the transferor of the property.

19. Further, the appellant/plaintiff was always ready to cooperate in completing the formalities. The respondent/defendant, on the other hand, failed to produce any evidence that she ever sought the appellant/plaintiff's cooperation for effectuating valid title to him.

20. It was argued that the appellant/plaintiff had expressly undertaken, in his reply dated 30.04.1991, to sign all necessary documents for obtaining ULCRA permission. Despite this, the respondent/defendant took no steps for nearly eighteen months. Hence, there has been a complete disregard of the contractual obligations from the side of the respondent/defendant and not the appellant/plaintiff.

21. The appellants also dispute the High Court's finding on delay in approaching the Trial Court in filing the suit for specific performance, as no such issue on delay was framed or argued before the Trial Court. Hence, the same could not be raised for the first time in appeal. Even otherwise, the suit was filed within the limitation period.

22. Per contra, the learned counsel for the respondent/defendant argued that the appellant/plaintiff did not have the readiness and willingness to perform his part of the contract and, hence, the impugned judgment did not suffer from any infirmity.

23. On the issue of the FDRs, the learned counsel for the respondent/defendant submitted that from the date of the agreement to sell till the date of the first FDR i.e., 4.10.1999, for a period of nine years, there was nothing placed on record by the appellant/plaintiff that he had sufficient balance sale consideration amount. Even in the year 1999, the appellant/plaintiff was ready with only Rs.1,40,000/- and not with Rs.2,75,000/-, the balance consideration that was to be payable by the appellant/plaintiff.

24. Further that the High Court was correct in holding that no permission under ULCRA was obtained by the appellant/plaintiff and that there was nothing like only one person was responsible for obtaining such permission.

25. It was further argued on behalf of the respondent/defendant that there has been an unexplained delay in filing the suit seeking the specific performance on the part of the appellant/plaintiff as the agreement to sell dated 20.12.1990 stipulated completion of the sale within four months, the appellant/plaintiff failed to act within that period. Further, in his first legal notice dated 15.04.1991, the appellant made performance conditional upon the construction of a road which subsequently indicated to the unwillingness on the part of the appellant/plaintiff to perform his part of the contract.

26. It was argued that due to the appellant/plaintiff's unwillingness to perform his contractual obligations, the respondent/defendant by notice dated 26.04.1991 had to rescind the agreement and seek return of the documents. Despite this, the appellant/plaintiff initiated delayed legal proceedings and filed the suit for specific performance only on 20.12.1993, which was at the very end of the limitation period and the same disentitles the appellant/plaintiff for the relief of specific performance.

27. The rival arguments now fall for our consideration.

C. ANALYSIS

28. The only question that arises for our consideration is - whether the High Court was correct in concluding that the appellant/plaintiff failed to establish his readiness and willingness to perform his obligations under the contract and whether the delayed filing of the suit for specific performance undermines such readiness and willingness.

The Statutory mandate of 'readiness and willingness' and its continuing nature

29. The relief of specific performance is one based on equity for enforcing contractual obligations undertaken by the parties. Section 16(c) of the Specific Relief Act, 1963 (as it stood prior to the amendment dated 01.10.2018) required the person seeking specific performance to specifically aver and prove his continuous readiness and willingness to perform his obligations. A failure to satisfy these requirements would ultimately make him disentitled for the relief of specific performance.

30. The term 'readiness' refers to the financial capacity, and the term 'willingness' reflects the conduct and intention of the party seeking the relief to perform the contract. Thus, both these conditions cumulatively have to be seen for making out a case of specific performance.

31. The principles governing readiness and willingness have been well settled through a long line of decisions of this Court. In the case of N.P. Thirugnanam (Dead) by LRs. vs. Dr. R. Jagan Mohan Rao and Others³, this Court held that continuous readiness and willingness to perform the part of the contract is a condition precedent to grant the relief of specific performance. This Court held thus:

"5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963 (for short "the Act"). Under Section 20, the court is not bound to grant the relief just because there was a valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant.

The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances.

The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract."

32. This Court in the case of His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar⁴ held as follows:

"2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27-2-1975. The draft sale deed was not returned after being duly approved by the petitioner.

The factum of readiness and willingness to perform plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the

petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bid for the time which disentitles him as time is of the essence of the contract."

33. In *Umabai and Another vs. Nilkanth Dhondiba Chavan (Dead) by LRs. and Another*⁵, this Court held that a finding as to whether the plaintiffs were all along and still ready and willing to perform their part of the contract, was a mandatory requirement under Section 16(c) of the Specific Relief Act. Thus, to examine the readiness and willingness, the Court will have to take into account the entirety of the pleadings and also the evidence brought on record.

34. Further in the case of *Man Kaur (Dead) by LRs. vs. Hartar Singh Sangha*⁶, this Court held as under:

"40. A person 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 the terms the performance of which has been prevented or waived by the defendant) is barred from claiming specific performance. Therefore, even assuming that the defendant had committed breach, if the plaintiff fails to aver in the plaint or prove that he was always ready and willing to perform the essential terms of contract which are required to be performed by him (other than the terms the performance of which has been prevented or waived by the plaintiff), there is a bar to specific performance in his favour.

Therefore, the assumption of the respondent that readiness and willingness on the part of the plaintiff is something which need not be proved, if the plaintiff is able to establish that the defendant refused to execute the sale deed and thereby committed breach, is not correct. Let us give an example. Take a case where there is a contract for sale for a consideration of Rs. 10 lakhs and earnest money of Rs. 1 lakh was paid and the vendor wrongly refuses to execute the sale deed unless the purchaser is ready to pay Rs. 15 lakhs.

In such a case there is a clear breach by the defendant. But in that case, if the plaintiff did not have the balance Rs. 9 lakhs (and the money required for stamp duty and registration) or the capacity to arrange and pay such money, when the contract had to be performed, the plaintiff will not be entitled to specific performance, even if he proves breach by the defendant, as he was not "ready and willing" to perform his obligations."

35. Coming to the case before us, it was argued on behalf of the appellants that they possessed a sum of Rs. 2,80,000/- at the relevant period, through four FDRs and that such availability of funds established their readiness and willingness to perform their part of the contract. However, looking at the dates on these FDRs, it can be seen that these four FDRs are dated 04.10.1999, 22.11.1999, 03.04.2001 and 23.08.2001, all of which were created after several years of the institution of the suit on 20.12.1993. Therefore, these FDRs cannot be said to establish appellants' financial readiness during the relevant period, namely from the date of the agreement till the filing of the suit.

36. Though it was not necessary for the appellants to physically deposit the consideration amount before the Court, they must nevertheless have to place reliable and acceptable evidence on record to show that they possessed sufficient funds to complete the transaction at the relevant time.

37. In the present case, there is no material whatsoever to show that the appellant/plaintiff had the balance sale consideration available either at the time of execution of the agreement, within the stipulated period of four months for performance of the contract, or even at the time of filing of the suit in the year 1993. Thus, in our view, the High Court has rightly observed that the availability of funds must be proved with reference to the relevant point of time and not by relying upon financial documents generated long after the filing of the suit.

38. Further, on the issue of obtaining permission under ULCRA, it is clear from the record that the permission was to be obtained by both the parties. Even testimony of PW-1, son of the appellant/plaintiff makes it evident that the appellant/plaintiff did not furnish the necessary affidavit or requisite forms for obtaining such clearance. The appellant/plaintiff instead remained passive and waited for the respondent/defendant to take steps. Such conduct clearly establishes that the appellant/plaintiff failed to prove his continuous readiness and willingness.

The impact of unexplained delay on claiming an equitable relief

39. Now, let us examine the conduct of the appellant/plaintiff on the aspect of approaching the Court for relief of specific performance at a belated stage.

40. It is settled that for claiming an equitable relief such as that of specific performance, the conduct of the party claiming it must be beyond reproach. This includes that the plaintiff approaches the Court on time, which does not merely mean within the period of limitation itself but also promptly with diligence and equitability.

41. This Court in *Rajesh Kumar vs. Anand Kumar and Others*⁷ speaking through one of us (Prashant Kumar Mishra, J.) while denying the relief of specific performance on account of long delay in filing the relief of specific performance held as under:

"23. The effect of filing a suit for specific performance after long delay, may be at the fag end of period of limitation fell for consideration before this Court in *K.S. Vidyanadam v. Vairavan* [*K.S. Vidyanadam v. Vairavan*, (1997) 3 SCC 1] wherein this Court held thus in para 10: (SCC p. 7)

"10. 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. The period of limitation prescribed by the Limitation Act for filing a suit is three years. From these two circumstances, it does not follow that any and every suit for specific performance of the agreement (which does not provide specifically that time is of the essence of the contract) should be decreed provided it is filed within the period of limitation notwithstanding the time-limits stipulated in the agreement for doing one or the other thing by one or the other party.

That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in *Chand Rani v. Kamal Rani* [*Chand Rani v. Kamal Rani*, (1993) 1 SCC 519] : (SCC p. 528, para 25)."

24. In *Azhar Sultana v. B. Rajamani* [*Azhar Sultana v. B. Rajamani*, (2009) 17 SCC 27 : (2011) 1 SCC (Civ) 761], this Court held thus in para 28: (SCC p. 35)

"28. The court, keeping in view the fact that it exercises a discretionary jurisdiction, would be entitled to take into consideration as to whether the suit had been filed within a reasonable time. What would be a reasonable time would, however, depend upon the facts and circumstances of each case. No hard-and-fast law can be laid down therefor. The conduct of the parties in this behalf would also assume significance."

25. In *Saradamani Kandappan v. S. Rajalakshmi* [*Saradamani Kandappan v. S. Rajalakshmi* (2011) 12 SCC 18 : (2012) 2 SCC (Civ) 104], this Court held that every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring 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 one or two years to file a suit and obtain specific performance.

26. In *Atma Ram v. Charanjit Singh* [*Atma Ram v. Charanjit Singh*, (2020) 3 SCC 311 : (2020) 2 SCC (Civ) 107] , this Court has observed in para 9 thus: (SCC p. 316)

"9. No explanation was forthcoming from the petitioner for the long delay of three years, in filing the suit (on 13-10-1999) after issuing a legal notice on 12-11-1996. The conduct of a plaintiff is very crucial in a suit for specific performance. A person who issues a legal notice on 12-11-1996 claiming readiness and willingness, but who institutes a suit only on 13-10-1999 and that too only with a prayer for a mandatory injunction carrying a fixed court fee relatable only to the said relief, will not be entitled to the discretionary relief of specific performance."

42. Coming to the facts of the present case, it is important to note that the first legal notice was issued on 15.4.1991 by the appellant/plaintiff, after which the respondent/defendant gave a categorical refusal to effectuate her obligations under the agreement vide reply dated 26.04.1991 as the appellant/plaintiff failed to take necessary permission under ULCRA prior to the registration of the sale deed; the time stipulated for completion of the sale transaction had also expired; and the appellant/plaintiff failed to tender the balance sale consideration within the stipulated time or initiate prompt legal proceedings. In fact, the appellant/plaintiff chose to file the suit for specific performance after two years and nine months i.e., on 20.12.1993. This conduct of the appellant/plaintiff, in our

view, reflects lack of continuous readiness and willingness to perform his part of the contract, which is a sine qua non for the grant of relief of specific performance.

D. CONCLUSION

43. After examining the entire facts of the case and the evidence produced on record, we are of the definite view that this is not a fit case where the discretionary relief of specific performance can be granted in favour of the appellants. Keeping in view the twin statutory mandate of 'readiness' and 'willingness', the appellants not only failed to demonstrate their readiness and willingness but also failed to approach the Court with quite promptitude, which disentitle them from grant of the equitable relief of specific performance.

44. For all these reasons, the Appeal deserves to be dismissed and the same is hereby dismissed.

.....J. (Prashant Kumar Mishra)

.....J. (N.V. Anjaria)

New Delhi;

June 23, 2026.

1 For short, 'ULCRA'

2 For short, 'FRDs'

3 (1995) 5 SCC 115

4 (1996) 4 SCC 526

5 (2005) 6 SCC 243

6 (2010) 10 SCC 512

7 (2024) 13 SCC 80

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