IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, KANNIYAKUMARI AT NAGERCOIL.

Present : Thiru K. Dhanasekaran, M.L., L.L.M.
Principal District Judge.

Thursday, the 25th day of June, 2026.

Original Suit No. 66/2022

(CNR No.TNKK01-001288-2022)

G. William Kombaiyan ... Plaintiff

-Vs-

A. Eskin Marc

S/o F. Abraham

Represented by his power agents

1. V.P. Babu

2. A. Ramesh ...Defendant

This suit came up on 15.06.2026 for final hearing before me in the presence of

Thiru B. Harikesavan - Advocate for the plaintiff

Thiru M. Ashok Padma Raj - Advocate for the defendants

and upon hearing both sides and upon perusing the written notes of argument filed by both sides and upon perusing the materials available on record and having stood over for consideration till this day, this court delivered the following: -

JUDGMENT

The plaintiff has filed the suit for specific performance seeking a decree directing the defendant to execute and register the sale deed in favour of the plaintiff, upon receipt of the balance sale consideration of Rs.8,08,380/-, in terms of the Agreement for Sale dated 18.04.2018, together with such other consequential reliefs as this Court may deem fit and proper.

2. **The averments in the plaint, in brief, are as follows:**

The suit schedule property and certain other properties absolutely belong to the defendant, who purchased the same under Sale Deed No.1368/2016 dated 27.07.2016, registered before the Sub-Registrar Office, Vadasery, Nagercoil. The defendant proposed to develop the said land into residential plots and offered to sell a portion thereof measuring 4 cents and 263 sq. links to the plaintiff. Accordingly, the power agent of the plaintiff namely G.Perinbasiga and the power agents of the defendants entered into an Agreement for Sale dated 18.04.2018, wherein the proposed vendors and the proposed purchaser fixed the total sale consideration at Rs.11,08,380/- for the suit schedule property. Out of the total sale consideration, the defendant received a sum of Rs.3,00,000/- as advance from the plaintiff. The proposed purchaser agreed to pay the balance sale consideration of Rs.8,08,380/- at the time of execution of the sale deed. The plaintiff would contend that he was in constant touch with the defendant. The defendant had obtained a No Objection Certificate from the office of the Assistant Director of Geology and Mining, Kanyakumari District, even prior to 09.07.2020. Further, he obtained a No Objection Certificate from the District Forest Officer and he also obtained No Objection Certificate from the office of the Agricultural Engineering Department, Nagercoil. According to the plaintiff, he expressed his readiness and willingness to complete the transaction and requested the defendant to execute the sale deed on 25.11.2021. However, the defendant issued a legal notice dated 01.12.2021 unilaterally revoking the Agreement for Sale and called upon the plaintiff to furnish his bank account details for refund of the advance amount. The plaintiff caused a notice dated 02.02.2022, contending that although the defendant had received and utilized the advance amount for the development of the suit schedule property and other properties, he had adopted dilatory tactics with a view to avoid performance of the Agreement for Sale. The plaintiff further stated that he had always been ready and willing to perform his part of the contract and that the defendant was not entitled to unilaterally cancel the Agreement for Sale. The plaintiff would further contend that time was not the essence of the contract. Since the defendant and his power agents themselves had failed to obtain the required approvals and No Objection Certificates from the competent authorities within the stipulated period, they could not take advantage of their own default. According to the plaintiff, the unilateral termination of the Agreement for Sale by the defendant is illegal and amounts to breach of contract. Therefore, Section 55 of the Indian Contract Act would apply to the facts of the case. On the above averments, the plaintiff has prayed that the suit be decreed as prayed for in the plaint.

3. **<u>The contentions raised in the written statement filed by the defendant, in brief, are as follows</u>**: -

i) The suit for specific performance is not maintainable as it is founded on an unregistered agreement for sale. The defendant admits the execution of the agreement for sale dated 18.04.2018 executed by his power agents and receipt of an advance amount of Rs.3,00,000/-. Except for the facts specifically admitted, all other allegations contained in the plaint are denied. According to the defendant, the plaintiff was never in constant touch with them and had not expressed his readiness and willingness to perform his part of the contract. The defendant further state that his power agents had obtained a No

Objection Certificate from the Assistant Director of Geology and Mining Department.

ii) The defendant stated that he appointed the power agents by virtue of a registered Power of Attorney bearing Document No.1062 of 2016 on the file of the Sub Registrar Office, Vadasery. Further he would contend that the power agents of the defendant undertook considerable efforts to obtain layout approval from the competent Town Planning Authority and secured No Objection Certificates from various departments, including Kaniyakulam Panchayat, the Assistant Director of Geology and Mining, the District Forest Officer, Nagercoil, and the Agricultural Engineering Department. According to them, these approvals negate the allegations made by the plaintiff. The defendant further contend that, owing to the issuance of G.O.(Ms.) No.66 dated 30.03.2020 by the Government of Tamil Nadu, registration of the plaint schedule property became impossible in the absence of layout approval from the Town Planning Authority. Despite their efforts, they were unable to secure such approval from the competent authority. Consequently, performance of the agreement for sale became impossible.

iii) The defendant submit that, although the power agents had entered into the agreement for sale dated 18.04.2018 with the plaintiff, the subsequent issuance of G.O.(Ms.) No.66 dated 30.03.2020 rendered performance of the contract impossible, despite their having taken reasonable steps to fulfil their obligations. Therefore, the agreement became void on account of impossibility of performance. The defendant further state that the power agents cancelled the agreement by issuing a notice dated 01.12.2021. It is also contended that time was the essence of the contract and that the plaintiff had never demonstrated his readiness and willingness to perform his part of the agreement. According to the defendant, the power agents were willing to execute the sale deed only upon obtaining the requisite approval from the Panchayat authorities. Hence, they pray for dismissal of the suit with costs.

4. **On the basis of the pleadings, the following issues have been framed on 03.10.2024 :-**

(i) Whether the suit filed on the basis of unregistered agreement for sale is maintainable in law?

(ii) Whether time is essence of contract as alleged by the defendant?

(iii) Whether in the absence of permission by Town Planning Authority for layout, registration of sale deed could not have been done as claimed by the defendant?

iv) Whether the plaintiff was ready and willing to perform his part of contract?

v) Whether the plaintiff is entitled for relief of specific performance of the suit sale agreement, dated: 18.04.2018?

vi) For what other reliefs ?

5. In support of the plaintiff's case, P.W.1 and P.W.2 were examined and Exts.A1 to A7 were marked. On behalf of the defendant, D.W.1 was examined and Exts.B1 to B6 were marked.

6. **Issue No. (i):**

The counsel for the plaintiff argued that though Ext.A.1 agreement for sale dated 18.04.2018 executed between the parties in issue in respect of sale of property but it is an unregistered document, however, there is no bar to file the original suit against the defendant seeking relief of specific performance to perform their part of contract agreed by them. Moreover, the power agents of the defendant have refused to perform their part of contract under Ext. B.1. through notice only on 01.12.2021. Under Article 54 of the Limitation Act, 1963, suit for specific performance of contract has to be filed three years from the date of refusal of the promiser to perform the contract. In the present case, the power agents of the defendant have refused to perform their part of contract to sell the property mentioned therein only on 01.12.2021. The Original Suit was filed on 14.02.2022. On computation of three years period, the plaintiff has filed the original suit against the defendant within three years from the date of refusal of the defendant to perform their part of contract. Hence, the Original Suit against the defendants is maintainable.

7. Whereas, the learned counsel for the defendant replied that the power agents of the defendants have entered into agreement for sale with the plaintiff on 18.04.2018. The plaintiff has filed the original suit against the defendant seeking relief of specific performance on 14.02.2022. On calculating three years period as stipulated under Article 54 of the Limitation Act, 1963, the plaintiff ought to have been filed the original suit against the defendant within three years from the date of agreement for sale deed dated 18.04.2018, it comes to an end on 17.04.2021, but the plaintiff has filed the original suit against the defendant seeking relief of specific performance only on 14.02.2022. Hence the suit is barred by law of limitation.

8. On perusal of the pleadings, it would be reflected that the suit schedule property and other properties absolutely belonged to the defendant and subsequently, the defendant appointed power agents and executed a power of attorney deed through a document registered in document No.1062/2016 on 16.06.2016 over one acre 24 cents 735 sq. links of land in the suit schedule property. The power agents of the defendant had proposed to develop the said

land by converting their agricultural land into residential plots. Accordingly, they offered to sell a portion thereof measuring 4.263 cents to the plaintiff under agreement for sale dated 18.04.2018. The parties in issue have agreed and fixed the total sale consideration as Rs.11,08,380/- for which the plaintiff has paid Rs.3,00,000/- as advance amount in cash to the power agents of the defendant who in turn agreed to undertake to get proper permission from the competent authorities and sell the same but no sale deed was executed as per terms of the agreement for sale.

9. Though agreement for sale was executed on 18.04.2018 in respect of sale of property, but no sale deed was executed within six months from the date of agreement. The power agents of the defendant have sent a notice under Ext.B.1 stating that they had revoked the said agreement thereby, they calling upon the plaintiff to furnish bank details in order to get back advance amount of Rs.3,00,000/-. Thus, the power agents of the defendant have refused to perform the contract as mentioned in the agreement for sale dated 18.04.2018. The date of refusal of the power agents of the defendant to perform the contract seems to be appear as on 01.12.2021. On calculating the date of refusal of the power agents of the defendant to perform the contract and the date of filing of the suit it seems to be appeared that the plaintiff has filed the

original suit against the defendant seeking relief of specific performance within statutory period in terms of Article 54 of the Limitation Act, 1963.

10. The defendant has specifically contended that the suit for specific performance is not maintainable in law, since it is founded upon an unregistered agreement for sale dated 18.04.2018. According to the defendant, an agreement relating to immovable property involving substantial rights and obligations ought to have been registered and, in the absence of registration, the plaintiff cannot seek enforcement of the same through a decree for specific performance. It is the further case of the defendant that the unregistered agreement does not confer any enforceable right upon the plaintiff and, therefore, the plaintiff is not entitled to invoke the equitable jurisdiction of the Court for specific performance. The defendant would submit that the very foundation of the suit being an unregistered document, the suit itself is not maintainable and is liable to be dismissed in limine. The defendant therefore prayed that the suit instituted on the basis of the unregistered agreement for sale dated 18.04.2018 is not maintainable in law and, consequently, the plaintiff is not entitled to any of the reliefs sought for in the plaint.

11. The plaintiff contended that the suit for specific performance based on the agreement for sale dated 18.04.2018 is perfectly maintainable in law notwithstanding the fact that the agreement is an unregistered document. According to the plaintiff, an agreement for sale does not by itself create, declare, assign, limit or extinguish any right, title or interest in immovable property and, therefore, its registration is not compulsory for the purpose of maintaining a suit for specific performance. The plaintiff further contended that the execution of the agreement for sale and the receipt of the advance sale consideration have been unequivocally admitted by the power agents of the defendant. Once the existence and execution of the agreement are admitted, the defendant cannot be permitted to contend that the suit is not maintainable merely on the ground that the agreement is unregistered. It is the specific case of the plaintiff that an unregistered agreement for sale is admissible in evidence for the collateral purpose of proving the contract between the parties and can form the basis of a suit for specific performance. The question whether the plaintiff is entitled to the relief of specific performance depends upon the facts and circumstances of the case, including his readiness and willingness to perform his part of the contract, and not upon the mere fact of non-registration of the agreement. Therefore, the plaintiff contended that the suit instituted on the strength of the agreement for sale dated 18.04.2018 is legally maintainable and

that he is entitled to seek enforcement of the contractual obligations undertaken by the power agents of the defendant.

12. The defendant has contended that the suit for specific performance is not maintainable since it is founded upon an unregistered agreement for sale dated 18.04.2018. According to them, an unregistered agreement cannot be enforced through a court of law and, therefore, the suit is liable to be dismissed at the threshold.

13. On the contrary, the plaintiff contended that registration of the agreement for sale is not compulsory for maintaining a suit for specific performance and that an unregistered agreement can be received in evidence for proving the contract between the parties.

14. It is an admitted fact that the power agents of the defendant have not denied the execution of the agreement for sale dated 18.04.2018. The receipt of the advance sale consideration under the said agreement has also been admitted by the power agents of the defendant. Therefore, the existence of the contract between the parties is not in serious dispute. It is well settled that an agreement for sale, by itself, does not create any right, title or interest in

immovable property. It merely evidences a contract between the parties for the transfer of property at a future date on fulfilment of the agreed terms and conditions. Consequently, an agreement for sale does not require compulsory registration merely for the purpose of instituting a suit for specific performance.

15. Reliance placed in the case of **S. Kaladevi v. V. R. Somasundaram,** reported in **AIR 2010 SC 1654,** wherein **the Hon'ble Supreme Court** has culled out the following principles: -

> "1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
>
> 2. Such unregistered document can however be used as evidence of collateral purpose as provided in the proviso to Section of the Registration Act.
>
> 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
>
> 4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable

property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

16. In the above citation, one more principle was added that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.

17. Thus, it is crystal clear an unregistered document affecting immovable property may be received in evidence as evidence of a contract in a suit for specific performance. Therefore, the mere fact that the agreement for sale is unregistered does not render the suit non-maintainable. In the present case, the plaintiff does not claim title to the suit property on the basis of the agreement for sale. The agreement is relied upon only as evidence of the contractual obligations undertaken by the parties. Whether the plaintiff is entitled to the relief of specific performance is a matter to be decided on the basis of readiness and willingness, enforceability of the contract, and other relevant circumstances. However, the maintainability of the suit cannot be

defeated solely on the ground that the agreement for sale is unregistered. Accordingly, this Court holds that the suit for specific performance instituted on the basis of the unregistered agreement for sale dated 18.04.2018 is maintainable in law. The contention of the defendant to the contrary is liable to be rejected. Issue No.(i) is answered accordingly.

18. **Issue No. (ii) : -**

The learned counsel appearing for the defendant vehemently contended that Ext.A1 Agreement for Sale dated 18.04.2018 envisaged reciprocal promises to be performed by both parties within the stipulated period of six months from the date of its execution. According to him, under the terms of the agreement, the power agents of the defendant were required to obtain the necessary permission from the competent authorities for completion of the proposed sale transaction, whereas the plaintiff was obligated to pay the balance sale consideration of Rs.8,08,380/- and complete the purchase. The plaintiff had not taken any effective steps towards the performance of his part of the contract. It was argued that there is absolutely no evidence to show that the plaintiff had arranged the balance sale consideration or had called upon the defendants to execute the sale deed within the period stipulated under Ext.A1. According to the defendant, the plaintiff remained completely inactive throughout the contractual period and failed to evince his readiness and willingness to perform the essential terms of the contract as mandated under law.

19. The learned counsel would further contend that Ext.A1 specifically provides that the parties shall perform their respective obligations within a period of six months from the date of execution of the agreement. Though the agreement came into existence on 18.04.2018, the plaintiff did not take any step whatsoever to perform his contractual obligations within the agreed period. In such circumstances, the plaintiff cannot be permitted to seek the discretionary and equitable relief of specific performance. Thus, the stipulation regarding the period of six months was intended by the parties to be a material term governing the performance of the contract and, consequently, time was the essence of the contract. Since the plaintiff failed to perform or evince his readiness and willingness to perform his part of the contract within the stipulated period, he has forfeited his right to seek specific performance. On the aforesaid grounds, it was prayed that the suit be dismissed with costs.

20. Whereas, the learned counsel appearing for the plaintiff replied that, under the terms of the Agreement for Sale dated 18.04.2018, the obligation to obtain the requisite permissions from the competent authorities

squarely rested upon the defendant. According to the plaintiff, despite the execution of the agreement and receipt of the advance sale consideration, the power agents of the defendant failed to secure such permissions and thereby committed default in performing their contractual obligations.

21. The learned counsel further contended that the plaintiff had, at all material times, been ready and willing to perform his part of the contract. In order to demonstrate his bona fides, the plaintiff had deposited the balance sale consideration before this Court after obtaining necessary leave. It was further submitted that, though the power agents of the defendant had issued legal notices dated 01.12.2021, the plaintiff had suitably replied thereto, unequivocally expressing his readiness and willingness to complete the sale transaction in accordance with the terms of the agreement.

22. It was also argued that the plaintiff had repeatedly approached the power agents of the defendant and called upon them to perform their part of the contract by obtaining the necessary approvals and executing the sale deed on receipt of the balance sale consideration. However, the power agents of the defendant, under the guise of obtaining permission from the competent authorities, continuously deferred the performance of the contract

and failed to take effective steps towards its completion. The learned counsel for the plaintiff therefore submitted that the conduct of the parties subsequent to the execution of the agreement unmistakably reveals that neither party had treated the stipulated period as sacrosanct or fundamental to the contract. On the contrary, both parties continued to act upon the agreement even after the expiry of the stipulated period. Hence, it was contended that time was never intended to be, nor was it treated as, the essence of the contract, and therefore the defendants are precluded from contending otherwise.

23. In the case of **Gomathinayagam Pillai case [1967 (1) SCR 227 : 1967 AIR(SC) 868] and Govind Prasad Chaturvedi vs Hari Dutt Shastri And Another reported in AIR 1977 SC 1005** wherein **the Honourable Supreme Court of India** held that … Fixation of the period within which the contract has to be performed does not make the stipulation as to time, the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. The intention to treat time as the essence may be evidenced by circumstances which are sufficiently strong to displace the normal presumption.

24. **The Constitutional Bench of the Honorable Supreme Court of**

India in the case of **Chand Rani vs Kamal Rani** reported in **AIR 1993 SC 1742 in** paragraph no 19 that 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.

25. Upon considering the rival submissions advanced on behalf of the plaintiff and the defendant, it is evident that the defendant has specifically contended that time was the essence of the contract in respect of the performance of the reciprocal obligations undertaken by the parties under the agreement for sale dated 18.04.2018. The said contention has been emphatically denied by the plaintiff. Therefore, the principal question that arises for determination is whether time was intended to be the essence of the contract

governing the respective obligations of the parties under the said agreement.

26. In order to ascertain the intention of the parties, this Court has carefully perused Ext.A1 – Agreement for Sale dated 18.04.2018. The relevant recitals contained therein are extracted hereunder: -

> *"அட்வான்ஸ் போக பாக்கி கிரயத்தொகையை இன்று முதல் 6 (ஆறு) மாதங்களுக்குள் 1 வது கட்சி 2 வது கட்சிகளிடம் கொடுத்துக் கொள்ள வேண்டியதும், 2 வது கட்சிகள் 1 வது கட்சியின் பத்திரச்செலவில் 1 வது கட்சி பெயருக்கோ, 1 வது கட்சி குறிப்பிடும் நபர் அல்லது நபர்கள் பெயருக்கோ கிரயப்பத்திரம் எழுதி உரிய அலுவலகம் வந்து பத்திரம் பதிவு செய்து கொடுத்துக்கொள்ள வேண்டியதுமாகும். "*

On a reading of the aforesaid agreement, it is evident that the plaintiff and the defendant had stipulated a period of six months for the performance of their respective obligations under the contract. In terms of the agreement, the plaintiff was required to pay the balance sale consideration to the power agents of the defendant within the stipulated period, and, upon receipt of the same, the power agents of the defendant were obliged to execute and register the sale deed in favour of the plaintiff before the jurisdictional Sub-Registrar.

For better understanding of the agreement for sale deed, this court has also looked into Page No.4 & 5 therein, the relevant portion is extracted below: -

> “ *இந்த கிரய உடன்படிக்கை பத்திரத்துக்கு இன்று முதல் 6 (ஆறு) மாத காலாவதி வைத்திருப்பதும், தற்போது அரசு உத்தரவுப்படி மேற்படி சொத்தில் உட்பட்டு வரும் மனைப்பிரிவை வரைமுறைப்படுத்த வேண்டியுள்ளதும், ஆனால் தற்போது மேற்படி சொத்தில் உட்பட்டு வரும் மனையானது மலையிடப்பாதுகாப்பு பகுதி எல்கையில் உட்பட்டு வருவதால் மலையிடப்பாதுகாப்பு பகுதி NOC (அதாவது, தடையின்மை சான்று)-யினை மேற்படி 6 (ஆறு) மாத காலாவதிக்கு முன்பாக 2 வது கட்சிகள் 1 வது கட்சியிடம் வாங்கிக் கொடுத்துக்கொள்ள வேண்டியதும், மேலும் மனைப்பிரிவு வரைமுறைப்படுத்த வேண்டிய காரியங்கள் அனைத்தையும் 2 வது கட்சிகளே செய்து கொடுத்துக் கொள்ள வேண்டியதும், மேற்படி 10.492 சென்றுக்குரிய வரைமுறைப்படுத்தும் செலவுகளை 1 வது கட்சிகள் கொடுத்துக் கொள்ள வேண்டியதுமாகும். மேற்படி 6 (ஆறு) மாத காலாவதிக்கு முன்பாக வரைமுறைப்படுத்துவது முடிந்து விட்டால் உடனடியாக கிரயப்பத்திரம் முடித்துக் கொள்ள 1 வது கட்சி சம்மதித்திருப்பதுமாகும்.* ”

On a careful reading of the aforesaid recitals contained in Ext.A.1, it is manifest that the power agents of the defendant were under an obligation to obtain the necessary permissions in respect of the suit property, which admittedly falls within the Hill Area Conservation Zone. Consequently, it was incumbent upon the power agents of the defendant to secure the requisite approvals from the competent authorities, including the Hill Area Conservation Authority and the Town and Country Planning Department. The recitals further disclose that upon obtaining such approvals, both parties were required to come forward for the execution and registration of the sale deed, even before the expiry of the stipulated period of six months.

27. Though the parties had agreed to perform their respective obligations under Ext.A.1 agreement for sale, the agreement does not contain any clause providing for termination in the event of non-performance by either party. Ordinarily, a termination clause reflects the intention of the parties regarding the consequences that would ensue upon failure to perform their respective contractual obligations. However, no such provision has been incorporated in Ext.A.1. A bare perusal of the agreement reveals that it is conspicuously silent as to the rights, liabilities, and consequences that would arise in the event of non-performance of the obligations undertaken by either party.

28. Ext.A.1 agreement for sale was executed on 18.04.2018, and

the period stipulated for performance was six months. Accordingly, the contractual period expired on 17.10.2018. It is pertinent to note that from 17.10.2018 till 01.02.2022, there was no correspondence or transaction between the parties concerning the performance of the agreement. It was only when the power agents of the defendant issued Ext.B.1 notice dated 01.12.2021, calling upon the plaintiff to furnish his bank account particulars for refund of the advance sale consideration, that the plaintiff came forward with a reply asserting his rights under the agreement.

29. Though the power agents of the defendant have claimed as if they got approval from the concerned Panchayat Board and No Objection Certificate from the Assistant Director of Mines and Minerals Department but they have stated that they were unable to secure approval from Town and Country Planning Authority and No Objection Certificate from Hill Area Conservation Authority. Despite the absence of such approvals, the power agents of the defendant expressed their willingness to execute the sale deed in favour of the plaintiff. The plaintiff, on the other hand, declined to proceed with the transaction on the ground that the mandatory approvals from the competent authorities had not been obtained. The said stand of the plaintiff is reflected in Ext.B.3. notice. Therefore, the dominant intention of the parties, as discernible

from Ext.A.1, was that the power agents of the defendant should first obtain the requisite statutory approvals from the competent authorities before the sale transaction could be completed. Since the parties in issue had not been in dispute between each other from the date of agreement for sale i.e on 18.04.2018 and from the date of legal notice i.e on 01.12.2021. Therefore, they kept silent under the impression that they would have been performed their respective part of performance of the contract mentioned in Ext.A.1. agreement for sale. In such circumstances, the stipulation of six months cannot be construed as making time the essence of the contract. On the contrary, the obtaining of statutory approvals constituted a condition precedent for the performance of the contract, and until such approvals were secured, the obligation to complete the sale could not effectively arise. Hence, this Court is of the considered view that time was not intended to be the essence of the contract between the parties. Issue No.(ii) is answered accordingly.

30. <u>Issue No. (iii), (iv) & (v)</u> :-

(iii) Whether, in the absence of approval from the Town and Country Planning Authority for the layout, the sale deed could not have been registered as claimed by the defendants?

(iv) Whether the plaintiff was always ready and willing to perform his part of the contract?

(v) Whether the plaintiff is entitled to the relief of specific performance of the Agreement for Sale dated 18.04.2018 ?

The plaintiff contends that the defendants entered into an Agreement for Sale dated 18.04.2018 in respect of the suit schedule property for a total sale consideration of Rs.11,08,380/-, out of which he paid a sum of Rs.3,00,000/- as advance. According to the terms of the agreement, the power agents of the defendant undertook to obtain the necessary permissions from the competent authorities for conversion of the agricultural land into residential plots. Based on such assurance, the plaintiff agreed to purchase the property by paying the balance sale consideration at the time of execution of the sale deed. The plaintiff further submits that he regularly contacted the power agents of the defendant and requested them to perform their obligations under the agreement. However, the power agents of the defendant continuously prolonged the matter on the pretext of obtaining approval from the competent authorities. Subsequently, upon receiving the legal notice dated 01.12.2021 from the power agents of the defendant, he came to know that they had unilaterally cancelled the agreement for sale. Therefore, he issued a notice Ext.B.3. dated 02.02.2022, expressing his readiness and willingness to perform his part of the contract and calling upon the defendants to honour the agreement. Instead, after obtaining leave of this Court, he deposited the balance sale consideration before the Court. The plaintiff also contends that while the power agents of the defendant obtained approval from the concerned Panchayat Board and a No Objection Certificate from the Assistant Director of Mines and Minerals Department, they failed to secure approval from the Town and Country Planning Authority for development of the residential layout. According to the plaintiff, time was not the essence of the contract, as the parties intended to perform the agreement upon fulfillment of the conditions stipulated therein. In this regard, the defendants themselves remained inactive from the date of the agreement, namely 18.04.2018, until the issuance of the legal notice on 01.12.2021.

31. The Agreement for Sale executed between the parties contains reciprocal, mutual and independent obligations. The terms of the agreement clearly indicate that the power agents of the defendant were required to obtain the necessary permissions from the competent authorities before execution of the sale deed. Though the power agents of the defendant executed sale deeds in favour of several purchasers in respect of adjacent plots based on approval obtained from the Panchayat Board, they had never been come forward to execute the sale deed in favour of the plaintiff in terms of the agreement. According to the plaintiff, the conduct of the power agents of the defendant

clearly demonstrates their unwillingness to perform their part of the contract, whereas he has always been ready and willing to complete the transaction by paying the balance sale consideration. Therefore, he claims entitlement to the relief of specific performance as prayed for in the plaint. The plaintiff further submits that the defendants retained the advance amount of Rs.4,00,000/- paid by him on 19.04.2018 until 27.12.2021, thereby unjustly enriching themselves at his expense. Hence, he prays for a decree as sought for in the suit.

32. Per contra, the defendant contend that the Agreement for Sale dated 18.04.2018 specifically stipulated that time was the essence of the contract and fixed a period of six months for its performance. Although the plaintiff had agreed to keep the balance sale consideration ready, he never communicated the same to the defendants.

33. The defendant further submit that the power agents of the defendant had obtained approval from the concerned Panchayat Board and a No Objection Certificate from the Assistant Director of Mines and Minerals Department. However, they were unable to obtain approval from the Town and Country Planning Authority in view of G.O.(Ms.) No.66 dated 30.03.2020 issued by the Government of Tamil Nadu, under which the suit property was classified as falling within the Hill Area Conservation Zone. Consequently,

according to the defendant, performance of the contract became impossible.

34. The defendants further contend that the Agreement for Sale became incapable of performance due to subsequent events. They submit that the plaintiff was aware, even at the time of execution of the agreement, that the suit property fell within the Hill Area Conservation Zone. Therefore, the power agents of the defendant cannot be held responsible for non-performance when the contract became impossible to perform due to the Government Order. The defendants further submit that the plaintiff was never ready and willing to perform his part of the contract. Though the agreement was executed on 18.04.2018, he remained silent and failed to make arrangements for payment of the balance sale consideration. From 18.04.2018 till 02.02.2022, he did not issue any communication demonstrating his readiness and willingness or proving that he had arranged the balance consideration amount. Hence, the plaintiff cannot claim that he was continuously ready and willing to perform his obligations under the contract.

35. The defendants further submit that after becoming aware of the impossibility of performance, they issued a notice dated 01.12.2021 requesting the plaintiff to furnish his bank account details for refund of the advance amount of Rs.3,00,000/-. However, the plaintiff did not respond positively. According

to the defendant, the Agreement for Sale contains reciprocal and concurrent obligations, and therefore the plaintiff was also required to keep the balance sale consideration ready and tender the same simultaneously. Since he failed to do so, he cannot be said to have been ready and willing to perform his part of the contract.

36. Before deciding the prayer for the equitable and discretionary relief of specific performance, it is necessary to refer to the legal principles laid down by the Hon'ble Supreme Court of India. In ***K. Narendra v. Riviera Apartments (P) Ltd.,*** reported in ***AIR 1999 SC 2309*** wherein the Hon'ble Supreme Court held that Section 20 of the Specific Relief Act, 1963 confers discretionary jurisdiction upon the Court to grant or refuse the relief of specific performance. Though such relief may be lawful, the Court is not bound to grant it in every case. The discretion must be exercised on sound and reasonable judicial principles. The Court further held that where performance of the contract would cause unforeseen hardship to the defendant, while its non-performance would not cause corresponding hardship to the plaintiff, the Court may properly refuse to grant specific performance. The doctrine of comparative hardship has thus been statutorily recognised. However, mere inadequacy of consideration or the onerous nature of the contract by itself would not amount to

an unfair advantage to the plaintiff or an unforeseen hardship to the defendant.

37. In ***Nirmala Anand v. Advent Corporation (P) Ltd.,*** reported in ***AIR 2002 SC 2290*** wherein the Hon'ble Supreme Court held that in contracts relating to immovable properties, grant of specific performance is the rule and refusal is an exception, which must be founded on valid and cogent reasons. It was further held that a party cannot take advantage of its own wrong and thereafter contend that a decree for specific performance would result in unfair advantage to the opposite party.

38. Ext.A1, the Agreement for Sale dated 18.04.2018, reveals that the defendants agreed to sell the suit property for a sale consideration of Rs.11,08,380-, out of which the plaintiff paid a sum of Rs.3,00,000/- as advance. Under the terms of the agreement, the power agents of the defendant undertook to obtain the necessary permissions from the competent authorities for conversion of the agricultural land into residential plots within six months from the date of the agreement. The plaintiff, in turn, agreed to pay the balance sale consideration at the time of execution of the sale deed. The agreement further stipulated that upon obtaining the requisite approvals, including a No Objection Certificate from the Hill Area Conservation Authority, the sale deed would be executed on receipt of the balance sale consideration.

39. The plaintiff stated that though the power agents of the defendant have been agreed to obtain No Objection Certificate from Hill Area Conservation Authority and approval from Town and Country Planning Authority before the date of execution of the sale deed, but they had not been obtained the same. However, they conveniently executed various sale deeds to him favour of various purchasers including P.W.2. as described in encumbrance certificate Ext.A.5 only upon approval from the President of the concerned Panchayat Board. P.W.2. has also reiterated the same. During the cross examination of D.W.1, he also admitted the same whereas, the defendants replied that they had obtained approval from concerned Panchayat Board but they could not able to obtain No Objection Certificate/regularization Certificate from Hill Area Conservation Authority, consequently they could not able to obtain approval from Town and Country Planning Authority. On careful consideration of the Ext.A.7. Order dated: 30.03.2020 it reveals that the Government of Tamil Nadu issued an order restricting to regularize the unauthorized and unapproved plots layouts to get clearance. The defendants had not filed any documents to let in to show that they had attempted to get approval from Hill Area Conservation Authority and approval from Town and Country Planning Authority. In this regard, P.W.1. during his cross examination as if the

power agents of the defendant have obtained certificate from Town and Country Planning Authority, but no document was let in to prove the same.

40. The evidence of P.W.2. it reveals that though he purchased the land from defendants only upon approval from concerned Panchayat Board, but he does not know about as to whether approval was granted from Town and Country Planning Authority or not. On careful scrutiny of P.W.1. it reveals that Hill Area Conservation Authority had not been granted any approval or regularization for the layout situated in the suit property, consequently they could not able to obtain approval from Town and Country Planning Authority. Though the agreement for sale deed was executed on 18.04.2018, but they had not filed any document to prove that whether they had not taken any steps to get regularization from the Hill Area Conservation Authority and approval from the Town and Country Planning Authority.

41. The plaintiff himself has admitted in Ext.B.3 legal notice that the power agents of the defendant approached him for execution of the sale deed after obtaining Panchayat approval, but he declined the proposal. It is also evident that after issuance of the Government Order declaring the suit property as falling within the Hill Area Conservation Zone, the Agreement for Sale

became difficult to perform. Consequently, obtaining a No Objection Certificate from the Hill Area Conservation Authority and approval from the Town and Country Planning Authority became considerably more difficult.

42. At this juncture, the question that arises for consideration is whether the suit property could have been validly registered before the Registration Authority in the absence of approval from the competent planning authority. It is an admitted fact that the parties agreed to perform the contract only after the power agents of the defendant obtained the requisite approvals from the competent authorities. The records reveal that the power agents of the defendant have not obtained approval from the Town and Country Planning Authority for conversion of the agricultural land into residential plots.

43. Section 22-A(2) of the Registration Act, 1908, as amended by the Tamil Nadu Act 2 of 2009 and brought into force on 20.10.2016, mandates that the Registering Officer shall refuse registration of any instrument relating to the transfer of ownership of lands converted into house sites without obtaining development approval from the concerned planning authority. This statutory provision is intended to regulate transfers relating to unapproved layouts and authorises the Registering Authority to refuse registration in such cases. Therefore, the sale deed could not have been registered for want of

approval from the Town and Country Planning Authority for the layout as claimed by the defendants. Issue No. (iii) is answered accordingly.

44. In this regard, the Hon'ble Madurai Bench of the Madras High Court, in ***L. Saranya v. The Inspector General of Registration and Others in W.P. No.203 of 2025, dated 07.01.2025,*** observed that unapproved plots cannot be registered unless they are duly regularised in accordance with law and that no building approval, electricity connection, water supply, or other civic amenities can be granted in respect of such unapproved plots. Therefore, the Registration Authority is justified in refusing registration of properties situated in unapproved layouts.

45. In **S. Santhalekshmi v. Inspector General of Registration and Others** in ***W.P. No.9413 of 2025, dated 15.10.2025***, the Hon'ble High Court held that where a promoter intends to sell plots situated in an unapproved layout for the first time, such promoter is bound to obtain approval in accordance with Rule 3 of G.O. Ms. No.78, Housing and Urban Development Department, dated 04.05.2017.

46. On a careful consideration of Ext.A1 and the other materials available on record, it is evident that the suit property forms part of an

unapproved layout. Therefore, the power agents of the defendant, being promoters, could not have lawfully executed a sale deed in favour of the plaintiff without obtaining approval from the Town and Country Planning Authority and the requisite No Objection Certificate from the Hill Area Conservation Authority. Consequently, the suit property was not capable of being registered before the Registration Authority in the absence of such approvals, in view of Section 22-A (2) of the Registration Act, 1908 and G.O. (Ms.) No.66 dated 30.03.2020 issued by the Government of Tamil Nadu. Issue No. (iii) is answered accordingly.

47. It is well settled law that as far as suit for specific performance on the basis of agreement for sale relating to immovable properties is concerned, grant of specific performance is the rule but refusal is an exception which must be founded on valid and cogent reasons. However, one party cannot take advantage of its own wrong. At this juncture, this court has looked into the Judgment of the Hon'ble Supreme Court of India reported in the case of ***Mehboob-Ur-Rehman (Dead) through LRs v. Ahsanul Ghani***, reported in ***(2019) 19 SCC 415***, the Hon'ble Supreme Court held that a decree for specific performance cannot be granted unless the plaintiff establishes continuous readiness and willingness to perform his part of the contract throughout the

subsistence of the agreement.

48. Likewise, in ***N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao***, reported in **(1995) 5 SCC 115**, the Hon'ble Supreme Court held that the plaintiff must prove continuous readiness and willingness from the date of the agreement until the date of the decree. Mere pleading is insufficient, and the plaintiff must establish his financial capacity and conduct demonstrating such readiness and willingness.

49. On reading of the above said citations laid down by the Hon'ble Supreme Court, it is crystal clear that the plaintiff has to continuously ready and willing to perform his part of contract from the date of agreement for sale till the execution of the sale deed. In the present case, wherein though the plaintiff pleaded as if he was always ready and willing to perform his part of the contract and possessed sufficient funds to pay the balance sale consideration, but no document was filed to substantiate the same. It is apposite to extract the relevant portion of evidence of P.W.1. hereunder for better understanding.

> **"...........இந்த வழக்கில் சம்பந்தப்பட்ட கிரய ஒப்பந்த பத்திரம் மார்க்ஸ் என்ற நபருக்கும், பிரதிவாதிக்கும் இடையே ஏற்பட்ட ஒப்பந்தம் என்றால் சரிதான்................பிரதிவாதி சொன்ன நேரத்தில் என்னால் வரமுடியாததால்**

சிகாபேரின்பத்தை கையொப்பம் போட சொல்லியிருந்தேன். அவர் கையொப்பம் போட்டு அதை என்னிடம் கொண்டு வந்தார்.............அதில் குறிப்பிடப்பட்டுள்ள முன்பணத் தொகையை யார் கொடுத்தது என்றால் சிகாபேரின்பம் மூலமாக என்னுடைய பணத்தை முன்பணமாக கொடுத்தேன். "

50. On reading of the above, it appears that the plaintiff himself admitted in his evidence that he has not been paid any balance sale consideration from the date of agreement for sale till the receipt of legal notice from the defendants. The plaintiff has not sent any writing or legal notice to the power agents of the defendant calling upon him to receive balance sale consideration from the date of agreement for sale till the receipt of the notice of the power agents of the defendant. Though the plaintiff claims as if they used to contact the power agents of the defendant on every month to perform his part of contract, but no concrete evidence was let in to prove the same.

51. At this juncture, this court has looked into the proof affidavit of P.W.1. it reveals that during the month of November, 2021, plaintiff and his friends Jegan and Rajakumar were met defendants in respect of agreement for sale. They stated as if they had obtained No Objection Certificate from Assistant

Director, Mines and Minerals Department and they applied an application before the Director of Town and Country Planning Authority for approval so that they were returned back. Therefore, it is crystal clear that though the agreement for sale was executed on 18.04.2018, but the plaintiff and the P.W.2. remained silent till the month of November, 2021. Therefore, the plaintiff has not been taken any steps to perform his part of contract as described under agreement for sale from the date of agreement till November, 2021.

52. On juxta position of reading of agreement for sale (Ext.A.1) and notice (Ext.B.3 of the plaintiff, it reveals that the plaintiff and the power agents of the defendant have been entered into agreement for sale on 18.04.2018, but the plaintiff sent notice to the power agents of the defendant only on 02.02.2022 as if he was ready and willing to perform his part of contract. Though the power agents of the defendant have been come forward to execute sale deed in favour of the plaintiff only upon approval from concerned Panchayat Board, but the plaintiff had refused to register the sale deed in his favour for want of approval from Town and Country Planning Authority as described in Ext.B.3 notice. Thus, the plaintiff was not continuously ready and willing to perform his part of contract from 18.04.2018 to 02.02.2022.

53. A careful perusal of the Ext.A.7, it reveals that the

Government of Tamil Nadu has passed order dated: 30.03.2020 stating that the suit property comes under the category of Hill Area Conservation area for its Hill Area Conservation Authority is nominated for the purpose of regularizing of unapproved plots and layouts consequently, some restrictions are mentioned. The defendants since have not been filed any document before the court to show that they were attempted to get the clearance from the Hill Area Conservation Authority. However, they stated since because Government Order is being issued, the Government of Tamil Nadu passed more stringent provisions to get regularization. Therefore, the Town and Country Planning Authority might have been refused to give approval for the layout in respect of suit property. Since the defendants have not been obtained any regularisation for the layout in respect of suit property from Town and Country Planning Authority, the agreement for sale becomes impossibility to perform the contract. The plaintiff has not been proved on preponderance of probabilities that he was always continuously ready and willing to perform his part of the contract so that he is not entitled to get extraordinary relief of specific performance in respect of agreement for sale deed dated: 18.04.2018 from the court of law. Issue Nos. (iv) and (v) are answered accordingly.

54. **Issue No. vi :-**

During pendency of the suit, the plaintiff deposited the balance sale consideration before the Court. The defendants have not been filed any document to show that they had been attempted to get clearance from Hill Area Conservation Authority and approval from the Town and Country Planning Authority from the date of agreement till the date of filing of the suit. The power agents of the defendant kept advance amount of Rs.3,00,000/- from the date of agreement for sale till the date of their notice so that they would have been unjustly enriched during the said interregnum period for which this court considered view that the plaintiff is entitled to get interest at the rate of 12% for those period. Issue No.(vi) is answered accordingly.

61. Deleted as per order in submission dated 09.07.2026.

P.D.J.

55. **In the result,**

i) The Original Suit is dismissed.

ii) The defendant and his power agents are directed to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) together with interest at the rate of 12% per annum from the date of execution of agreement for sale till the date of realisation to the plaintiff.

iii) The plaintiff is entitled to get back the amount which is deposited before this court as balance sale consideration.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, this the 25th day of June, 2026.

Sd/- K. Dhanasekaran,
Principal District Judge,
Kanniyakumari at Nagercoil.

Witnesses examined on the side of the plaintiff:-

P.W.1.	Thiru G. William Combaiyan (Plaintiff)
P.W.2.	Thiru Rajakumar

Witness examined on the side of the defendants:

D.W.1.	Thiru V.P. Babu (Power agent of the defendant)

Exhibits marked on the side of the plaintiff :-

Ext.A.1.	18.04.2018	Agreement for sale executed between plaintiff and the power agents of defendant.
Ext.A.2.	02.02.2022	Copy of legal notice issued by plaintiff to the defendant.
Ext.A.3.	05.02.2022	Reply sent on behalf of the power agents of defendant to the plaintiff's counsel.
Ext.A.4.	10.02.2022	Returned postal cover which was sent to the plaintiff.

Ext.A.5.	12.02.2022	Copy of encumbrance certificate for survey Nos.24/4, 24/6 of KaniyakulamVillage.
Ext.A.6.	04.05.2017	Copy of GO (Ms.) No.78 Housing and Urban Development [UD4 (3)] Department.
Ext.A.7.	30.03.2020	Copy of GO (Ms.) No.66 Housing and Urban Development [UD4 (3)] Department.

Exhibits marked on the side of the defendants:-

Ext.B.1.	01.12.2021	Copy of legal notice issued on behalf of the power agents of defendant to the plaintiff.
Ext.B.2.	06.12.2021	Returned postal cover with acknowledgement card which was sent to the plaintiff.
Ext.B.3.	02.02.2022	Copy of legal notice sent on behalf of the plaintiff to the defendant and his power agents.
Ext.B.4.	05.02.2022	Reply sent on behalf of the power agents of defendant to the plaintiff's counsel.
Ext.B.5.	07.02.2022	Acknowledgment card signed by the plaintiff's counsel.
Ext.B.6.	16.02.2022	Returned postal cover which was sent to the plaintiff as unclaimed.

Sd/-
P.D.J.

Principal District Court,
Nagercoil.
Fair Judgment in
O.S.No. 66/2022
Dt.: 25.06 .2026