



2026:GAU-AS:4027

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

RFA No.52 of 2023

Sri Sarudhan Ali @ Asirod Ali,
S/o- Late Abdul Ali
R/o- Ward No. 1, Nakari,
P.O. & P.S: North Lakhimpur,
District: Lakhimpur (Assam),
Pin- 787001.

.....Appellant

-Versus-

Smt. Padumi Phukan,
W/o- Sri Prahlad Kumar Phukan,
R/o- Village Solal Gaon,
P.O & P.S. Panigaon,
District: Lakhimpur (Assam),
PIN: 787052.

.....Respondent

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Advocate for the appellant : Mr. S.K. Ghosh.

Advocate for the respondent : Mr. S. Dutta.

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 17.03.2026

**Whether the pronouncement is of the
Operative part of the judgment : No**

**Whether the full judgment has been
Pronounced : Yes**

JUDGMENT & ORDER (ORAL)

Heard Mr. S.K. Ghosh, learned counsel for the appellant. Also heard Mr. S. Dutta, learned counsel appearing for the respondent.

2. The present Regular First Appeal is directed against the judgment and decree dated 15.05.2023, passed by the learned Court of Civil Judge, Lakhimpur, North Lakhimpur in Title Suit No. 12/2019, whereby the trial court decreed the suit in favour of the respondent.

3. The dispute arises out of a suit for specific performance of a contract dated 02.02.2017, relating to the sale of 2 Katha 7 Lecha of land for a consideration of Rs. 47,00,000/-. The trial court decreed the suit on 15.05.2023, holding that the plaintiff was ready and willing to perform his part of the contract, whereas the defendant failed to obtain the necessary sale permission and execute the sale deed.

4. During the pendency of the appeal, 5.45 Lecha of land was acquired by the Government, giving rise to the question as to whether specific performance can still be granted for the remaining portion. The central issue before this Court is whether part-specific performance is permissible under Section 12 of the Specific Relief Act, when a small portion of the suit land has been acquired.

Submissions on behalf of the Appellant

5. Mr. S.K. Ghosh, learned counsel for the appellant, contends:

- (i) that the contract has become incapable of performance due to partial acquisition of the land;
- (ii) that the agreement dated 15.02.2019 resulted in cancellation of the earlier agreement;
- (iii) that the plaintiff has failed to establish readiness and willingness under Section 16(c) of the Specific Relief Act;
- (iv) that the contract is indivisible and hence not capable of part performance; and
- (v) that, at best, compensation under Section 21 may be awarded.

6. In support of the aforesaid submissions, reliance is placed on the following decisions:

- i) ***Sangita Singha vs. Bhawana Bharadwaj***, reported in ***AIR 2025 (SC) 1806***
- ii) ***Ram Awadh vs. Achhaibar Dubey***, reported in ***(2000) 2 SCC 428***
- iii) ***Smt. Katta Sujatha Reddy vs. Siddamsetty Infra Project Pvt. Ltd.***, reported in ***(2023) 1 SCC 355***
- iv) ***Sunil Kumar Jain vs. Kishan & Ors.***, reported in ***(1995) 4 SCC 1995***
- v) ***Smt. Pillamma & Anr. vs. P. Rangaraju***, reported in ***AIR 1996 Kant 330***

vi) ***Vijay Prabhu vs. S.T. Lajapathi & Ors.***, reported in ***(2021) 6 SCC 54***

Submissions on behalf of the Respondent

7. Per contra, Mr. S. Dutta, learned counsel appearing for the respondent, submits:

- (i) that the subsequent agreement is conditional and does not cancel the original contract;
- (ii) that the plaintiff has proved readiness and willingness;
- (iii) that Section 12 of the Specific Relief Act permits part performance; and
- (iv) that the value of the acquired portion can be adjusted from the consideration.

8. In support of the aforesaid submissions, reliance is placed on the following decisions of the Apex Court:

- i) ***B. Santoshamma & Anr. vs. D. Sarala***, reported in ***(2020) 19 SCC 80***,
- ii) ***Dilip vs. Mohd. Azizul Haq & Anr.***, reported in ***(2000) 3 SCC 607***,
- iii) ***Shivanna vs. B.S. Puttamadaiah***, reported in ***2023 SCC OnLine SC 1969***,
- iv) ***Malluru Mallappa vs. Kuruvathappa & Ors.***, reported in ***(2020) 4 SCC 313***,
- v) ***M. Venkataramana Hebbar (D) vs. M. Rajagopal Hebbar***, reported in ***(2007) 6 SCC 401***,

Points for Determination

9. Upon hearing learned counsel for the parties and perusing the material available on record, the following points arise for determination:

- i) Whether the agreement dated 02.02.2017 stood cancelled by the subsequent agreement dated 15.02.2019?
- ii) Whether the plaintiff has established readiness and willingness under Section 16(c)?
- iii) Whether partial acquisition renders the contract incapable of performance?
- iv) Whether specific performance can be granted in part under Section 12?
- v) Whether the impugned decree warrants interference?

Point No. (i): Effect of Subsequent Agreement

10. The contention of the appellant that the agreement dated 15.02.2019 resulted in cancellation of the earlier agreement dated 02.02.2017 is misconceived.

11. A careful reading of the document dated 15.02.2019 reveals that it does not unconditionally cancel the earlier agreement. On the contrary, it records that the defendant had decided not to proceed with the sale and undertook to refund the amount of Rs. 31,00,000/- within the month of April, 2019, failing which the earlier agreement would remain operative and binding. Thus, the document clearly contemplates a conditional arrangement, whereby the earlier

agreement would revive and remain enforceable in the event the defendant failed to refund the amount within the stipulated time.

12. Admittedly, the amount was not refunded within the stipulated period. Consequently, the agreement dated 02.02.2017 continued to subsist and remain enforceable. Therefore, the contention of the appellant that the earlier agreement stood cancelled cannot be accepted.

Point No. (ii): Readiness and Willingness

13. It is well settled that in a suit for specific performance, the plaintiff is required to establish continuous readiness and willingness to perform his part of the contract in terms of Section 16(c) of the Specific Relief Act, 1963.

14. In the present case, the plaintiff/respondent has specifically pleaded readiness and willingness in the plaint and reiterated the same in his evidence. The materials on record further indicate that the plaintiff issued a legal notice dated 13.05.2019, calling upon the defendant to execute the sale deed after the defendant failed to return the advance amount in terms of the second agreement, which was not complied with.

15. The learned trial court, upon appreciation of the oral and documentary evidence, arrived at a finding that the plaintiff had successfully established his readiness and willingness to perform his obligations under the contract. Such a finding, being based on evidence, does not suffer from

any perversity. Accordingly, this Court finds no reason to interfere with the said finding.

Point Nos. (iii) & (iv): Partial Acquisition and Section 12

16. It is not in dispute that during the pendency of the appeal, a portion of the suit land measuring 5.45 Lechas has been acquired by the Government. The appellant contends that, due to such acquisition, the contract has become incapable of performance. However, the acquisition pertains only to a small fraction of the total land agreed to be sold, and a substantial portion of the contracted property remains available.

17. Apt at this stage to refer to Section 12 of the Specific Relief Act, which reads as under:

“12. Specific performance of part of contract —

(1) Except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

(2) Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed is only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

*(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—
(a) forms a considerable part of the whole, though admitting of compensation in money; or
(b) does not admit of compensation in money, he is not entitled to obtain a decree for specific*

performance; but the court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the other party— (i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and, in a case falling under clause (b), pays or has paid the consideration for the whole of the contract without any abatement; and (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.”

18. A reading of the aforesaid provision indicates that Section 12 permits the Court, in appropriate circumstances, to grant specific performance of a part of the contract, particularly where the unperformed portion bears only a small proportion to the whole and admits of compensation.

19. The Apex Court in ***B. Santoshamma (supra)*** has held as follows:

“87. Section 12 of the SRA is to be construed and interpreted in a purposive and meaningful manner to empower the Court to direct specific performance by the defaulting party, of so much of the contract, as can be performed, in a case like this. To hold otherwise would permit a party to a contract for sale of land, to deliberately frustrate the entire contract by transferring a part of the suit property and creating third party interests over the same.

88. *Section 12 has to be construed in a liberal, purposive manner that is fair and promotes justice. A contractee who frustrates a contract deliberately by his own wrongful acts cannot be permitted to escape scot free.”*

20. In the present case, the acquired portion constitutes only a minor part of the contracted property, and its value can be adjusted from the balance sale consideration payable by the plaintiff/respondent. It is also well settled that an appellate court may take note of subsequent events and mould the relief accordingly to do complete justice between the parties. Therefore, the subsequent acquisition does not render the contract wholly unenforceable.

Point No. (v): Interference

21. It is thus established that the agreement dated 02.02.2017 continues to subsist; the plaintiff has duly established readiness and willingness; and the acquisition of a small portion of the land does not defeat the contract. In such circumstances, the decree of specific performance granted by the learned trial court does not suffer from any legal infirmity. However, in view of the acquisition of a portion of the suit land, the decree requires appropriate modification so as to confine the relief to the remaining portion of the land, with a corresponding and equitable adjustment of the consideration payable.

Operative Directions

22. In the result, the appeal stands dismissed, subject to the following modifications:

i) The judgment and decree dated 15.05.2023 passed by the learned Trial Court in Title Suit No. 12/2019 are affirmed, subject to the modifications indicated herein.

ii) The value of the portion of land acquired shall stand proportionately deducted from the total sale consideration. Considering that the sale consideration for 2 Katha 7 Lecha (47 Lecha) was fixed at Rs. 47,00,000/-, the proportionate value of the remaining land measuring 41.55 Lecha (after deducting 5.45 Lecha acquired by the Government) is recalculated at Rs. 41,55,000/-. Out of the said amount, Rs. 31,00,000/- has already been paid by the respondent/plaintiff to the appellant/defendant. Accordingly, the balance amount payable is Rs. 10,55,000/-, which shall be paid by the respondent/plaintiff within a period of 60 days from the date of the decree to be drawn thereof.

iii) Upon receipt of the aforesaid balance amount, the appellant/defendant shall execute and register the sale deed in favour of the respondent/plaintiff in respect of the remaining portion of the suit land within a period of 60 days. In the event of failure to do so, the respondent/plaintiff shall be at liberty to have the sale deed executed through the process of the Court in terms of Order XXI Rule 34 of the Code of Civil Procedure.

iv) It is clarified that the respondent/plaintiff shall not be entitled to any relief in respect of the portion of land already acquired; however, the respondent/plaintiff shall be entitled

to proportionate adjustment of the sale consideration in terms of the directions contained hereinabove.

23. The parties shall bear their own costs. The decree shall be drawn accordingly.

24. The appeal stands disposed of.

JUDGE

Comparing Assistant