

JAYAKANTHAM & OTHERS

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v.

ABAYKUMAR

(Civil Appeal No. 3049 of 2017)

FEBRUARY 21, 2017

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**[ARUN MISHRA AND DR. D. Y. CHANDRACHUD, JJ.]**

*Specific Relief Act, 1963 – s. 20(1) – Discretion as to decreeing specific performance – Held: Court is not bound to grant the relief of specific performance merely because it is lawful to do so – s. 20(1) indicates that the jurisdiction to decree specific performance is discretionary – However, the discretion of the court is not arbitrary but is sound and reasonable, to be guided by judicial principles – On facts, decree for specific performance was passed by the courts below, in favour of respondent – However, material placed on record indicates that the terms of the contract, the conduct of parties at the time of entering into the agreement and circumstances gave the respondent an unfair advantage over appellants – Circumstances make it inequitable to enforce specific performance – To meet ends of justice, decree for the payment of compensation passed in lieu of specific performance – Decree for specific performance is set aside – Appellants to pay to the respondent Rs. 15 lakhs as just compensation in lieu of specific performance.*

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Appellant and father of the respondent entered into an agreement to sell the property for a consideration of Rs. 1,60,000/-. Rs. 60,000/- was paid as advance and the balance was to be paid on execution of the sale deed. The sale deed was not completed within the stipulated period. The respondent filed suit for specific performance. The appellant pleaded that agreement to sell was executed only as a security for a loan transaction. The trial court decreed the suit for specific performance in favour of the respondent. The appellants were directed to execute a sale agreement in favour of the respondent against receipt of the balance amount. The said order was upheld by the courts below. Thereafter, SLP was filed before this Court. In appeal, this Court observed that the findings of facts recorded by the courts below was correct and could not be set aside on merits. However, the appellants raised an alternative

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A submission that the suit property is the only property held by them and has an extremely high value; and that they are ready to pay Rs ten lakhs or more to retain it.

Allowing the appeal, the Court

B **HELD: 1.1** The court is not bound to grant the relief of specific performance merely because it is lawful to do so. Section 20(1) of the Specific Relief Act, 1963 indicates that the jurisdiction to decree specific performance is discretionary. Yet, the discretion of the court is not arbitrary but is “sound and reasonable”, to be “guided by judicial principles”. The exercise of discretion is capable of being corrected by a court of appeal in the hierarchy of appellate courts. Sub-section 2 of Section 20 contains a stipulation of those cases where the court may exercise its discretion not to grant specific performance. [Para 8] [359-C-E]

D **1.2** The material placed on record indicates that the terms of the contract, the conduct of parties at the time of entering into the agreement and circumstances under which the contract was entered into gave the plaintiff an unfair advantage over the defendants. These circumstances make it inequitable to enforce specific performance. [Para 11] [363-F-G]

E **1.3** A decree for the payment of compensation in lieu of specific performance would meet the ends of justice. The father of the respondent paid an amount of rupees sixty thousand to the appellants in June 1999 of the total agreed consideration of Rs. 1.60 lakhs. The appellants have voluntarily offered to pay an amount of rupees ten lakhs, as just compensation in lieu of specific performance. The ends of justice would be met by directing the appellants to pay to the respondent an amount of rupees fifteen lakhs in lieu of specific performance. The decree for specific performance is set aside and is substituted with a direction to the appellants to pay a sum of rupees fifteen lakhs to the respondent in lieu of specific performance. [Paras 12, 13] [363-G-H; 364-A-C]

*Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son and Ors.* AIR 1987 SC 2328; *Sardar Singh v. Smt. Krishna Devi and another* (1994) 4 SCC 18; *K. Narendra v. Riviera Apartments*

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*(P) Ltd. (1999) 5 SCC 77 : [1999] 3 SCR 777; A.C. Arulappan v. Smt. Ahalya Naik (2001) 6 SCC 600 : [2001] 1 Suppl. SCR 425; Nirmala Anand v. Advent Corporation (P) Ltd. and Ors. (2002) 8 SCC 146 : [2002] 2 Suppl. SCR 706 – referred to.* A

Case Law Reference B

AIR 1987 SC 2328	referred to	Para 9	
(1994) 4 SCC 18	referred to	Para 9	
[1999] 3 SCR 777	referred to	Para 9	
[2001] 1 Suppl. SCR 425	referred to	Para 9	C
[2002] 2 Suppl. SCR 706	referred to	Para 9	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3049 of 2017.

From the Judgment and Order dated 11.06.2015 of the High Court of Judicature at Madras in S. A. No. 436 of 2009. D

K.V. Mohan, Adv. for the Appellants.

S. Aravindh, A. Lakshminarayanan, Advs. for the Respondent.

The Judgment of the Court was delivered by E

**DR. D. Y. CHANDRACHUD, J.** 1. Leave granted.

2. This appeal arises from a judgment rendered by a learned Single Judge of the Madras High Court on 11 June 2015 in a second appeal under Section 100 of the Code of Civil Procedure, 1908. Dismissing the second appeal, the learned Single Judge confirmed the judgment of the Principal District Judge, Villupuram by which an appeal against the judgment of the sub-Judge, Kallakurichi was dismissed. The trial court decreed the suit for specific performance instituted by the respondent against the appellants. F

3. The subject matter of the suit for specific performance is a property bearing survey No. 314/1A at Kallakurichi village admeasuring 735 square feet upon which a residential house is situated. An agreement to sell was entered into between the appellants and the father of the respondent on 2 June 1999. The consideration agreed upon was rupees one lakh sixty thousand of which an amount of rupees sixty thousand G

A was received as advance. The balance was to be paid when the sale deed was executed. Time for completion of the sale transaction was reserved until 2 June 2002. A legal notice seeking performance of the agreement was issued on 7 May 2002. In response, the defence that was set up was *inter alia* that the agreement to sell was executed only as a security for a loan transaction.

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4. In support of the plea for specific performance, the father of the respondent was examined as PW1. Evidence on behalf of the appellants was adduced by DW1 and DW2. The trial court by a judgment and order dated 5 January 2007 decreed the suit for specific performance and directed the appellants to execute a sale agreement in favour of the respondent against receipt of the balance consideration of rupees one lakh. The trial court noted that the agreement to sell had been registered and rejected the defence that it is merely a document executed by way of security for a loan transaction. In the view of the trial court, there was nothing in the agreement to indicate that it was executed merely by way of a security. A finding of fact was arrived at to the effect that the respondent was ready and willing to perform the agreement. The suit was decreed. The judgment of the trial court was confirmed in appeal on 26 August 2008 by the Principal District Judge, Villupuram.

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5. A second appeal was initially admitted on a substantial question of law but was eventually dismissed by a learned Single Judge of the Madras High Court on 11 June 2015.

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6. When the Special Leave Petition came up on 29 January 2016, this Court observed that there was no error in the finding of facts recorded by three courts concurrently and hence those findings could not be reversed on merits. However, the alternative submission which was urged on behalf of the appellants was that the suit property is the only property held by them and has an extremely high value. The appellants stated that they are ready to pay a sum of rupees ten lakhs or even more to retain it. Notice was issued to the respondent limited to the above contention.

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7. On behalf of the appellants, it has been submitted that this is a fit and proper case where specific performance ought not to be ordered and a decree for compensation in lieu thereof would meet the ends of justice. It was urged that specific performance of an agreement need not necessarily be ordered merely because it is lawful to do so and the

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matter lies in the judicious exercise of discretion of the court. In support of this plea, reliance was placed on several circumstances; primary among them being the fact that it is not in dispute that the father of the respondent who entered into the transaction and deposed as PW1 (the respondent being about sixteen years of age at the time of execution of the agreement) carried on money lending business. Opposing this submission, it was urged on behalf of the respondent that while it is true that his father is a money lender, this by itself would not disable the respondent from seeking specific performance. Moreover, it was urged that the mere fact that there has been an escalation of land prices would not be a justification to refuse specific performance.

8. While evaluating whether specific performance ought to have been decreed in the present case, it would be necessary to bear in mind the fundamental principles of law. The court is not bound to grant the relief of specific performance merely because it is lawful to do so. Section 20(1) of the Specific Relief Act, 1963 indicates that the jurisdiction to decree specific performance is discretionary. Yet, the discretion of the court is not arbitrary but is "sound and reasonable", to be "guided by judicial principles". The exercise of discretion is capable of being corrected by a court of appeal in the hierarchy of appellate courts. Sub-section 2 of Section 20 contains a stipulation of those cases where the court may exercise its discretion not to grant specific performance. Sub-Section 2 of Section 20 is in the following terms :

"Section 20 (2). The following are cases in which the court may properly exercise discretion not to decree specific performance-

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance."

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A            However, explanation 1 stipulates that the mere inadequacy of  
 consideration, or the mere fact that the contract is onerous to the  
 defendant or improvident in its nature, will not constitute an unfair  
 advantage within the meaning of clause (a) or hardship within the meaning  
 of clause (b). Moreover, explanation 2 requires that the issue as to  
 B whether the performance of a contract involves hardship on the defendant  
 has to be determined with reference to the circumstances existing at the  
 time of the contract, except where the hardship has been caused from  
 an act of the plaintiff subsequent to the contract.

9. The precedent on the subject is elucidated below :

C            (i) In **Parakunnan Veetill Joseph's Son Mathew v. Nedumbara Kuruvila's Son and Ors**<sup>1</sup>, this Court held that :

D            "...14. Section 20 of the Specific Relief Act, 1963 preserves  
 judicial discretion of Courts as to decreeing specific performance.  
 The Court should meticulously consider all facts and  
 circumstances of the case. The Court is not bound to grant specific  
 performance merely because it is lawful to do so. The motive  
 behind the litigation should also enter into the judicial verdict.  
 The Court should take care to see that it is not used as an  
 instrument of oppression to have an unfair advantage to the  
 plaintiff..."

E            (ii) A similar view was adopted by this Court in **Sardar Singh v. Smt. Krishna Devi and another**<sup>2</sup> :

F            "...14. Section 20(1) of the Specific Relief Act, 1963 provides  
 that the jurisdiction to decree specific performance is  
 discretionary, and the court is not bound to grant such relief,  
 merely because it is lawful to do so; but the discretion of the  
 court is not arbitrary but sound and reasonable, guided by judicial  
 principles and capable of correction by a court of appeal. The  
 grant of relief of specific performance is discretionary. The  
 circumstances specified in Section 20 are only illustrative and  
 not exhaustive. The court would take into consideration the  
 G circumstances in each case, the conduct of the parties and the  
 respective interest under the contract."

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<sup>1</sup> AIR 1987 SC 2328

<sup>2</sup> (1994) 4 SCC 18

(iii) Reiterating the position in **K. Narendra v. Riviera Apartments (P) Ltd**<sup>3</sup>, this Court held thus : A

“...29. Performance of the contract involving some hardship on the defendant which he did not foresee while non-performance involving no such hardship on the plaintiff, is one of the circumstances in which the court may properly exercise discretion not to decree specific performance. The doctrine of comparative hardship has been thus statutorily recognized in India. However, mere inadequacy of consideration or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not constitute an unfair advantage to the plaintiff over the defendant or unforeseeable hardship on the defendant. The principle underlying Section 20 has been summed up by this Court in *Lourdu Mari David v. Louis Chinnaya Arogiaswamy* by stating that the decree for specific performance is in the discretion of the Court but the discretion should not be used arbitrarily; the discretion should be exercised on sound principles of law capable of correction by an appellate court.” B C D

(iv) These principles were followed by this Court in **A.C. Arulappan v. Smt. Ahalya Naik**<sup>4</sup>, with the following observations :

“.....7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.” E F G

<sup>3</sup>(1999) 5 SCC 77

<sup>4</sup>(2001) 6 SCC 600

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“.....15. Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court.....”

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(v) A Bench of three Judges of this Court considered the position in **Nirmala Anand Vs. Advent Corporation (P) Ltd. and Ors.**<sup>5</sup>, and held thus :

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“.....6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.”

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10. In the present case, the material on the record contains several

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<sup>5</sup>(2002) 8 SCC 146

aspects which will have to weigh in the balance. There is no dispute about the fact that the father of the respondent who entered into an agreement on his behalf (and deposed in evidence) carried on moneylending business. The consistent case of the appellants in reply to the legal notice, in the written statement as well as in the course of evidence was that there was a transaction of a loan with the father of the respondent. The evidence of DW2 was to the following effect :

“The defendant was having a relationship with plaintiff’s father, Babu Dhanaraj in respect of loan transaction. Already the Defendant No. 2 has taken loan from Babu Dhanapathy Raj and bought a lorry and was driving it. In this case, in order to return the loan of Rs. 1,00,000/- as per the instruction of Babu Dhanapathy Raj only on the basis of trust, the Exhibit P1 agreement to sell was executed. In the said document, I have put my signature as a witness.”

During the course of the evidence, the appellants produced material (Exhibit D3) indicating that the value of the property was six lakhs thirty thousand on 20 November 2006. The agreed consideration between the parties was rupees one lakh sixty thousand of which an amount of rupees sixty thousand was paid at the time of the execution of the agreement. The sale transaction was to be completed within three years against the payment of the balance of rupees one lakh. The appellants also relied upon Exhibit D2 which indicated that the value of the property as on 1 April 1999. These aspects were adverted to in the judgment of the trial court and the first appellate court while setting out the evidence, but have evidently not been borne in mind in determining as to whether a decree for specific performance could judiciously have been passed.

11. In our view the material which has been placed on record indicates that the terms of the contract, the conduct of parties at the time of entering into the agreement and circumstances under which the contract was entered into gave the plaintiff an unfair advantage over the defendants. These circumstances make it inequitable to enforce specific performance.

12. For the above reasons a decree for the payment of compensation in lieu of specific performance would meet the ends of justice. As we have noted earlier the father of the respondent paid an

A amount of rupees sixty thousand to the appellants in June 1999 of the total agreed consideration of Rs. 1.60 lakhs. The appellants have voluntarily offered to pay an amount of rupees ten lakhs, as just compensation in lieu of specific performance. In our view, the ends of justice would be met by directing the appellants to pay to the respondent an amount of rupees fifteen lakhs in lieu of specific performance.

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13. The decree for specific performance shall accordingly stand set aside and shall stand substituted with a direction to the appellants to pay a sum of rupees fifteen lakhs to the respondent in lieu of specific performance. The amount shall be paid within two months from the date of receipt of a copy of this judgment. Upon the expiry of the period of two months, the amount shall carry interest at the rate of 9 per cent per annum, till payment or realization.

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14. The appeal shall stand allowed in these terms. There shall be no order as to costs.

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Nidhi Jain

Appeal allowed.