

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

DATED THIS THE 08<sup>th</sup> DAY OF APRIL, 2024

PRESENT

**THE HON'BLE MR JUSTICE E.S.INDIRESH**

AND

**THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR**

REGULAR FIRST APPEAL NO.100383 OF 2017

BETWEEN:

1. SRI. NAGENDRA S/O. LAXMANSA KABADI  
AGE: 57 YEARS, OCC: BUSINESS,  
R/O: GYANBA BAR AND RESTAURANT,  
CBT, DHARWAD.
2. SRI. MEGHARAJ S/O. LAXMANSA KABADI  
AGE: 52 YEARS, OCC: BUSINESS,  
R/O: MAHALAXMI BAR AND RESTAURANT,  
JAKANABAVI, DHARWAD.
3. SRI. RATAN S/O. LAXMANSA KABADI  
AGE: 50 YEARS, OCC: BUSINESS,  
R/O: HOUSE NO.61, 2<sup>ND</sup> CROSS,  
SANMATI MARG, NEAR DASANAKOPPA, DHARWAD.
4. SMT. GEETA W/O. SANJAY PETANKAR  
AGE: 42 YEARS, OCC: BUSINESS,  
R/O: RATNAKAR AUTOMOBILE,  
OPP. LAXMI TALKIES, P.B.ROAD, DHARWAD.
5. SMT. ANUPAMA W/O. RATAN KABADI  
AGE: 49 YEARS, OCC: BUSINESS,  
R/O: HOUSE NO.61, 2<sup>ND</sup> CROSS,  
SANMATI MARG, NEAR DASANAKOPPA,  
DHARWAD.
6. SRI. LAXMAN S/O. ASHOK KABADI  
AGE: 35 YEARS, OCC: BUSINESS,  
R/O: ASHOK BAR AND RESTAURANT,  
NEAR CBT, DHARWAD.



7. SRI. AJAY S/O. ASHOK KABADI  
AGE: 33 YEARS, OCC: BUSINESS,  
R/O: ASHOK BAR AND RESTAURANT,  
NEAR CBT, DHARWAD.
8. SRI. ASHWIN S/O. ASHOK KABADI  
AGE: 28 YEARS, OCC: BUSINESS,  
R/O: ASHOK BAR AND RESTAURANT,  
NEAR CBT, DHARWAD.

...APPELLANTS

(BY SMT.N.DINESH RAO AND  
SRI.V.S.KALASURMATH, ADVOCATES)

AND:

1. SHRI. CHANDRAKANT  
S/O. CHUNNILAL JAIN,  
AGE: 54 YEARS, OCC: BUSINESS,  
R/O: KESHWAPUR, HUBLI.
2. SHRI. AKSHAY S/O. CHANDRAKANT JAIN  
AGE: 30 YEARS, OCC: BUSINESS,  
R/O: KESHWAPUR, HUBLI.

...RESPONDENTS

(BY SRI.GURUDAS S.KHANNUR SENIOR COUNSEL FOR  
SRI.SHARANABASAVARAJ C., ADVOCATE FOR R1 AND R2)

THIS RFA IS FILED UNDER ORDER 41 RULE 1 READ WITH  
96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED  
08.08.2017 PASSED IN O.S.NO.157/2012 ON THE FILE OF THE III  
ADDITIONAL SENIOR CIVIL JUDGE AND CHIEF JUDICIAL  
MAGISTRATE, DHARWAD, DECREERING THE SUIT FILED FOR  
SPECIFIC PERFORMANCE OF CONTRACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON  
20.03.2024 COMING ON FOR PRONOUNCEMENT OF JUDGMENT  
THIS DAY, ***E.S.INDIRESH, J.***, DELIVERED THE FOLLOWING:

**JUDGMENT**

This First Appeal is preferred by defendant Nos.1 to 8, challenging the judgment and decree dated 08.08.2017 passed in Original Suit No.157/2012 on the file of the III Additional Senior Civil Judge and CJM, Dharwad, (for short, hereinafter referred to as 'Trial Court'), decreeing the suit of the plaintiffs.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

3. The facts in brief are that, the father of the defendant Nos.6 to 8 (Ashok) along with defendant Nos.1 to 4, have purchased the land bearing survey No.2A/1+2+3, measuring 4 acres 20 guntas and 20 square yards near German Hospital, Dharwad, as per the registered sale deed dated 22.02.2002. Thereafter, the schedule property was converted for non-agricultural purpose and new number was assigned as CTS No.4B/NL. It is further averred that, the defendant Nos.1 to 8 constitute joint family and as such, registered partition deed dated 17.03.2010 has been entered into between the members of the joint family. It is further stated in the plaint that, the defendants, on account of their legal necessity, offered to sell the suit schedule property in favour of the plaintiffs and as

such, after negotiation between the parties, defendants agreed to sell the suit schedule property for a sum of Rs.87,90,500/- in favour of the plaintiffs and as such, the plaintiffs have paid Rs.18,00,000/- towards earnest money and accordingly the parties have reduced the terms and conditions of their negotiation as per the Registered Agreement of sale dated 09.08.2010. Pursuant to the same, the defendants have executed Registered Confirmation deed on 12.08.2010, agreeing to execute the registered sale deed in favour of the plaintiffs. It is also stated that, the defendants have handed over the original title deeds in favour of the plaintiffs. It is the case of the plaintiffs that, the plaintiffs were ready and willing to perform their contractual obligation in terms of the agreement of sale dated 09.08.2010, however, the defendants have not shown any interest to complete the transactions and accordingly, the plaintiffs have issued legal notice dated 21.05.2012 calling upon the defendants to complete the sale transaction in respect of the schedule property. The defendants have not responded to the legal notice issued by the plaintiffs and as such, the plaintiffs filed O.S.No.157/2012 on the file of the trial Court seeking relief of specific performance of the contract.

4. After service of notice, the defendants entered appearance and written statement was filed by defendant No.3, denying the averments made in the plaint. The defendants denied the execution of the agreement of sale. It is the specific contention of the defendants that, the defendants had no intention to sell the suit schedule property and further stated that, the defendants always intended to retain the suit schedule properties for their own use and enjoyment. It is further stated in the written statement that, the defendants had received a legal notice issued by the plaintiffs on 21.05.2012 and responded through reply dated 28.05.2012 / 08.06.2012. It is further contended by the defendants that, the defendants owning sugar factory and due to financial difficulties the sugar factory became sick and as such, the defendants requested the plaintiffs for financial assistance and as such, the plaintiffs have agreed to pay Rs.18,00,000/- as loan and in the guise of the same in order to provide security for the loan, the defendants had executed the agreement of sale. It is also stated by the defendants that, on 09.08.2010, agreement of sale was executed by the defendants and in security of the said loan, the plaintiffs had received the original documents relating to schedule properties. It is further stated in the written

statement that, the schedule property worth more than Rs.20 crores and the defendants have no intention to sell the suit schedule property which is situate in heart of the city and as such, denied the claim made by the plaintiffs regarding execution of the registered sale deed. Hence, the defendants sought for dismissal of the suit.

5. The Trial Court, based on the pleadings on record, has formulated following issues for its consideration:

*(i) Whether the plaintiffs prove that the defendants have agreed to sell the suit property in their favour under registered agreement of sale dated 09.08.2010 for a sum of Rs.87,90,500/- and they have received earnest amount of Rs.18,00,000/- under the said agreement of sale?*

*(ii) Whether the defendants prove that they have executed an agreement of sale dated 09.08.2010 in favour of the plaintiffs as security for the loan amount of Rs.18,00,000/- availed from the plaintiff?*

*(iii) Whether the plaintiffs were/are ready and willing to perform their part of the contract ?*

*(iv) Whether the plaintiffs are entitle for their relief specific performance of contract ?*

*(v) What order or decree?*

6. In order to establish their case, plaintiff No.1 was examined as P.W.1 and produced 129 documents, which were

marked as Exhibits P.1 to P.129. On the other hand, defendants have examined two witnesses as D.W.1 and D.W.2 and marked one document as Ex.D.1.

7. The Trial Court, after considering the material on record, by its judgment and decree dated 08.08.2017, decreed the suit and further directed the defendants to execute the registered sale deed in respect of the suit schedule property in favour of the plaintiffs by receiving balance sale consideration of Rs.69,90,500/- within one month and further held that, in the event defendants failed to execute the registered sale deed within the stipulated period, plaintiffs are at liberty to get execute the registered sale deed at the instance of the Court. Being aggrieved by the Judgment and decree passed by the trial Court, defendants have preferred this Regular First Appeal.

8. We have heard Sri. N.Dinesh Rao, learned counsel appearing for appellants; Sri. Gurudas S. Khannur, learned Senior Counsel on behalf of Sri. Sharanabasavaraj C., appearing for respondents 1 and 2.

9. Sri N. Dinesh Rao, learned counsel appearing for appellants contended that the transaction between the parties is related to loan transaction, however, despite the defendants

proved before the trial Court that the defendants have availed loan from the plaintiffs and the said aspect has not been properly appreciated by the trial Court. He further contended that, the finding recorded by the trial Court on Exhibit P5 is incorrect as the Exhibit P5 was issued on the letter head of Gyanba Sugar and Developers Limited and therefore he contended that, the trial Court ought to have appreciated the same in the right perspective. Emphasizing on these aspects, he submitted that, the trial Court ought to have taken note of the fact that the different cheques were issued by the plaintiffs during the time of execution of agreement of sale and same has been credited to the account of Gyanba Developers Private Company as per Exhibit D1 and as such it is contended that the finding recorded by the trial Court decreeing the suit of the plaintiffs is incorrect.

10. Nextly, it is contended by the learned counsel appearing for the appellants that the plaintiff admits that they had real estate business and are purchasing the immovable properties frequently and resale such properties and in this regard, he submitted that, the account extracts produced by the plaintiffs never reflects the fact that the plaintiffs had balance consideration of Rs.69,90,500/- required for execution



of the registered sale deed, in terms of the agreement of sale dated 09.08.2010. He also submitted that, the schedule mentioned in the suit is different from the schedule mentioned in the agreement of sale and the said aspect has not been properly appreciated by the trial Court and accordingly he sought for dismissal of the suit.

11. Nextly, it is contended by the learned counsel appearing for the appellants that, the plaintiffs ought to have completed the entire transaction within one year from the date of the agreement of sale however, the obligation mentioned in the agreement of sale was not complied with by the plaintiffs and accordingly sought for interference of this Court.

12. Lastly it is contended by the learned counsel appearing for the appellants that, the finding recorded by the trial Court regarding comparative hardship is incorrect and the entire circumstances of the facts was misconstrued by the trial Court and accordingly sought for setting aside the judgment and decree passed by the trial Court. In order to buttress his arguments he refers to the judgment of the Hon'ble Supreme Court in the case of **Jayakantham and others vs. Abaykumar** reported in **(2017) 5 SCC 178** and in the case of **Prabhat Zarda Factory Limited vs. Commissioner of**

***Central Excise and Another*** reported in **(2016) 1 SCC 652**.

He also relied upon the judgment of this court in the case of Ravindra Shantinath Chougale vs. Sri Mahesh Arjuna Kalpavruksha in RFA No.100220 of 2015 disposed of on 06.04.2022 and argued that, the impugned judgment and decree passed by the trial Court is contrary to law and accordingly sought for interference of this Court.

13. Per contra, Sri Kannur, learned Senior counsel appearing for respondents supported the impugned judgment and decree passed by the Trial Court and argued that, the defendants have agreed to sell the schedule property to repay the loan availed by them is not correct and they intend to sell the property owing to loss in the sugar factory business and same was reflected in the agreement of sale produced at Exhibit P1. He also refers to letter dated 23.05.2011 issued by the defendants and argued that, the agreement of sale was confirmed through the said letter. Referring to the contents of the legal notice dated 21.05.2012, learned senior counsel contended that, the plaintiffs were ready and willing to perform their contract in terms of the agreement of sale dated 09.08.2010 which was subsequently confirmed by consent agreement dated 12.08.2010 and further argued that, the trial

Court after considering entire material on record decreed the suit of the plaintiffs, after appreciating the entire material on record and therefore, contended that, the appeal preferred by the defendants is liable to be dismissed. He also refers to the documents marked before the trial Court and argued that, the plaintiffs had sufficient means to meet the balance consideration as set out in the agreement of sale and as such, sought for dismissal of the appeal. In order to buttress his arguments, he refers to the judgment of the Hon'ble Supreme Court in the case of ***Narinderjit Singh vs. North Star Estate Promoters Limited*** reported in ***(2012) 5 SCC 712*** and in the case of ***Sunkara vs. Sagi Subba Raju and others*** reported in ***(2019) 11 SCC 787***.

14. Having heard the learned counsel appearing for the parties and taking into consideration the grounds urged in the memorandum of appeal, the following points arise for consideration:

- a) *Whether the finding recorded by the trial Court on Issue Nos.1 and 2 is just and proper?*
- b) *Whether the judgment and decree passed by the trial Court requires interference?*
- c) *What order?*

15. In the light of the submission made by the learned counsel appearing for the parties, we have given our anxious consideration to the finding recorded by the trial Court. Perused the original records. The schedule property is the non-agricultural land situate at Gyanba Golden Glades Layout, behind Canara Bank, Narayanapura, Dharwad. Perusal of the records would indicate that the defendants 1 to 8 are the owners of the schedule property and the defendants 1 to 8 executed registered agreement of sale dated 09.08.2010, agreeing to sell the schedule property for total consideration of Rs. 87,90,500/- and defendants as per agreement of sale dated 09.08.2010 received Rs.18,00,000/- as advance and plaintiff agreed to pay the remaining amount during the execution of the registered sale deed. The grievance of the plaintiffs is that, the defendants failed to abide by the terms and conditions stipulated in the agreement of sale. On the other hand, it is the case of the defendants that, the defendants approached the plaintiffs to avail loan for their legal necessity and in this connection, parties have executed the agreement of sale as security of the loan. In the backdrop of these aspects, perusal of the Exhibit P1-agreement of sale dated 09.08.2010, stipulates as follows:

“ಶೆಡ್ಯೂಲ್ ಆಸ್ತಿಯಿಂದ ಕಾಯ್ದೆಬದ್ಧ ಸಾಲದ ಪೇಡ ದೆಶೆಯಿಂದ ಅವುಗಳನ್ನು ಮರುಪಾವತಿಸಲು ಅಗತ್ಯವಾದ ಹಣದ ಸಲುವಾಗಿ ಮತ್ತು ಈ ಬಗ್ಗೆ ಮಾರಾಟದ ಹಣ ಬೇಕಾಗಿದ್ದು ಆ ನಿಮಿತ್ತ ನೀವುಗಳು ಮಾರಾಟ ರಕಮು ರೂ.ಎಂಭತ್ತೇಳು ಲಕ್ಷ ತೊಂಭತ್ತು ಸಾವಿರದ ಐದು ನೂರು (87,90,500-00) ಗಳ ಪ್ರಕಾರ ಬೇಡಿದ್ದು ಅದು ಯೋಗ್ಯ ವ ಘಾಯಿದೆ ಅನ್ನಿಸಿ ಮಾರಾಟಕ್ಕೆ ಒಪ್ಪಿದ್ದು ಅದೆ.”

(Emphasis supplied)

16. At this juncture, it is relevant to extract the observation made by the High Court of Delhi in the case of **Vipen Kumar Parwanda Vs. Gunjan Kumar and another**, reported in **2023 SCC Online Delhi 2448**, at paragraph No.43, it is held as follows:

“43. Further, it is settled law that written instruments are entitled to a much higher degree of credit than oral evidence. When the parties deliberately put their agreement into writing, it is conclusively presumed between themselves and their privies, that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith and treacherous memory. Ergo, the court can only look at the writing alone in order to construe what the terms of the contract are and what the intention/objective/purpose of the instrument. In the present case, the sale deed dated 15.01.2010 does not by any stretch of imagination through any of the recitals show that the instrument was only executed to secure a loan. Arguendo, even if assuming without conceding that the sale deed dated 15.01.2010 was to secure a loan, the Appellant could have executed a mortgage deed instead of executing a

*sale deed, which has already been registered as well. Hence, the contention of the learned counsel for the defendants that the whole transaction was a loan transaction and not an intended sale does not find any sustenance."*

17. Applying the aforementioned principle to the case on hand, if at all the defendants are of the view that, they have availed loan from the plaintiffs and have not entered into sale agreement and if such being the case, there was no impediment for the defendants to execute the mortgage deed instead of executing a sale agreement and therefore, the finding recorded by the trial Court is just and proper.

18. It is also stated in the said agreement of sale that, the parties are directed to conclude the agreement within one year from the date of the agreement. Undoubtedly, the agreement of sale is registered document and both the parties are capable of understanding the contents of the agreement of sale. Thereafter, parties had executed supplementary document namely Deed of confirmation dated 12.08.2010 (Ex.P.2) referring to agreement of sale produced at Ex.P.1. Though the learned counsel appearing for the appellant submitted about the discrepancy in the schedule, however, same cannot be accepted as the parties are abide by the agreement of sale dated

09.08.2010 (Ex.P.1), in respect of registration of the property in question as mentioned in the schedule to the agreement of sale. Even if there is discrepancy, boundaries prevail as mentioned in the agreement of sale. Perusal of Ex.P.5 would indicate that, the defendant addressed a letter, agreeing to abide by the agreement of sale dated 09.08.2010 and also handed over the original mother deed dated 22.02.2022 in favour of the plaintiffs. This would categorically demonstrate that, the defendants intend to sell the schedule property for their financial difficulties. The plaintiffs in their legal notice dated 21.05.2012 (Ex.P.22) directed the defendants to comply with the terms and conditions in the agreement of sale dated 09.08.2020, expressing their readiness and willingness to perform their part of obligation and further, calling upon the defendants to execute the registered sale deed. The plaintiffs filed suit on 11.06.2012. In reply to the legal notice, the defendants issued reply notice dated 08.06.2012 (Ex.P.31). In the said reply notice, at paragraph No.3, the defendants admit the receipt of Rs.18,00,000/- from the plaintiffs, however, it is the contention of the defendants that, the said amount is being received as a hand loan and accordingly denied the execution of the agreement of sale produced at Annexure-A. At paragraph

No.7 of the reply notice (Ex.P.13), the defendants expressed their financial difficulties and further stated that, their sugar factory was sick and the same was under the control of Government of Karnataka. At paragraph No.8 of the reply notice envisages for need of immediate private finance by the defendants and therefore, it could be safely arrived at a conclusion that the defendants were in need of financial assistance for revival of their business. On the other hand, the plaintiffs have proved before the trial Court that, they were capable of purchasing the suit schedule property and in order to establish their financial ability, the plaintiffs have produced the Certificate of Balance at Ex.P.95 to Ex.P.113 issued by their banker. The said aspect makes it clear that, the plaintiffs had sufficient balance in the Bank account to meet the balance consideration amount as per the agreement of sale dated 09.08.2010. In addition to this, D.W.2 in his cross-examination dated 18.07.2017 depose as follows:

"ವಾದಿಯರು ಹಣಕಾಸಿನ ವಿಷಯದಲ್ಲಿ ಪ್ರಬಲವಾಗಿರುತ್ತಾರೆ ಎಂದರೆ ನಿಜ. ಅವರಿಗೆ ೨-ರಿಂದ ೩-ಕೋಟಿ ಹಣ ದೊಡ್ಡ ಮೊತ್ತವಾಗಿರುವುದಿಲ್ಲ ಎಂದರೆ ನಿಜ. ಖರೀದಿ ಕರಾರುಪತ್ರದಂತೆ ವಾದಿಯರಿಗೆ ರೂ:87,90,500/- ಹಣವನ್ನು ನೀಡುವ ಸಾಮರ್ಥ್ಯ ಇರುತ್ತದೆ ಎಂದರೆ ನಿಜ."

*(Emphasis supplied)*



19. Having arrived at a conclusion regarding the financial soundness of the plaintiffs to purchase the schedule property and also the financial difficulties faced by the defendants at the relevant point of time on account of their factory being declared as sick, execution of the registered agreement of sale dated 09.08.2010 (Ex.P.1) cannot be ruled out and being the businessman owning factory, cannot raise plea that the agreement of sale has to be read as loan document. In this regard, the finding recorded by the trial Court on issue Nos.1 and 2 is just and proper and the same cannot be interfered with in this appeal.

20. Suffice to say that, on careful examination of the confirmation deed produced at Ex.P.2 and the legal notice dated 21.05.2012 (Ex.P.22), the plaintiffs called upon the defendants to execute the registered sale deed by receiving balance sale consideration amount. In order to establish their financial capability Certificate of Balance issued by the Bank has been produced by the plaintiffs and therefore, the said aspect would makes it clear that the plaintiffs were always ready and willing to purchase the suit schedule property and as such, complied with the requirement under Section 16(c) of the Specific Relief Act.

21. We have also gone through the averments in the plaint and the evidence of P.W.1 and on considering the same, we are of the opinion that, the trial Court was justified in holding the issue of readiness and willingness in favour of the plaintiffs and further the plaintiffs had proved that they were always ready and willing to purchase the property in question and/or get the sale deed executed in respect of the property in question. On appreciation of the evidence on record, it is found that, the plaintiffs have proved readiness and willingness on their part to purchase the suit schedule property and therefore, entitled to the decree for specific performance. Hence, the Judgments referred to by the learned counsel appearing for the appellant cannot be made applicable to the facts of the present case as the plaintiffs with cogent evidence on record proved that the parties had entered into an agreement of sale on 09.08.2010, that too, a registered document, confirmed by the defendants in subsequent supplementary document produced at Ex.P.2. Though granting of specific performance is discretionary in nature, however, conduct of parties is also to be noted and in this regard perusal of Ex.P.5 makes it clear that, the defendants agreed for execution of the registered sale deed. The recitals in the agreement of sale has been understood and acted upon by

the parties by executing confirmation deed. Be that as it may be, D.W.1 admits his evidence that the plaintiffs are financially sound enough to repay the balance amount and are in land business. The said aspect would makes it clear that, the defendants failed to establish that the agreement of sale dated 09.08.2010 is not a document for sale of property in question and on the other hand, defendants received the hand loan from the plaintiffs. Apart from this, the defendants have handed over the original mother deed to the plaintiffs in respect of the schedule property and the same would substantiate the finding recorded by the trial Court on issue Nos.1 and 2.

22. At this juncture, it is relevant to cite the Judgment of the Hon'ble Supreme Court in the case of ***Vijaykumar and others Vs. Omparkash***, reported in ***AIR 2018 SC 5098***, wherein it is held that, in a contract for sale of immoveable property, the intending purchaser has to prove his readiness and willingness to perform his part of contract throughout from the date of execution of the agreement of sale till the date of filing of the suit and in the present case, the plaintiffs have produced the cogent material to establish that they were financially sound enough to meet the balance consideration amount by producing the bank balance sheet and therefore, the

trial Court has rightly decreed the suit in favour of the plaintiffs. In this connection, it is also relevant to follow the declaration of law made by the Hon'ble Supreme Court in the case of ***Sukhwinder Singh Vs. Jagroop Singh and another***, reported in ***AIR 2020 SC 4865***, wherein, Hon'ble Supreme Court, held that it is the duty of the plaintiff to show availability of balance sale consideration as on date of execution of agreement of sale or on the date of filing of the suit and the said declaration of law is aptly applicable to the case on hand as the plaintiffs have produced Certificate of Balance issued by the Bank to substantiate that they were capable of meeting the balance sale consideration amount. At this juncture, it is also relevant to cite the Judgment of the Hon'ble Supreme Court in the case of ***C.S.Venkatesh Vs. A.S.C. Murthy***, reported in ***(2020) 3 SCC 280***, paragraph No.15 to 20 reads as under:

*"15. The next question for consideration is in relation to compliance of Section 16(c) of the Act by the plaintiff. Though a question was raised before the trial court that there are no pleadings as regards the plaintiff's readiness and willingness to perform the contract, the trial court has rightly held that there is sufficient compliance of Section 16(c) of the Act to the extent of pleadings. Therefore, the question to be considered is whether the plaintiff was ready and willing to perform his part of the contract.*

*16. The words "ready and willing" imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on*

*the part of the plaintiff is a condition precedent to grant the relief of performance. 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 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 which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.*

*17. In N.P. Thirugnanam v. R. Jagan Mohan Rao, it was held that continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant of 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 to 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 necessarily be proved to be available.*

*18. In Pushparani S. Sundaram v. Pauline Manomani James, this Court has held that inference of readiness and willingness could be drawn from the conduct of the plaintiff and the totality of circumstances in a particular case. It was held thus: (SCC p. 584, para 5)*

*"5. ... So far these being a plea that they were ready and willing to perform their part of the contract is there in the pleading, we have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining the first of the two circumstances, how could mere filing of this suit, after exemption was granted be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire*

*of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved."*

19. *Similar view has been taken by this Court in Manjunath Anandappa v. Tammanasa and Pukhraj D. Jain v. G. Gopalakrishna.*

20. *The judgment of this Court in Umabai v. Nilkanth Dhondiba Chavan is almost similar to the case at hand where the plaintiff had filed a suit for specific performance of the agreement to re-convey property. The plea of the plaintiff was that the transaction was one of mortgage and the sale stood redeemed and the plaintiff was discharged from the debt and he was ready to pay the defendant the amount for the property only in the alternative that the plea of mortgage was not accepted by the Court, would show that his readiness was conditional. The plaintiff did not have any income and could not raise the amount required for repurchase of the property. In the totality of the circumstances, it was held that the plaintiff was not ready and willing to perform the contract. The conditions laid for the specific performance of the contract are in para 30, which is as under: (SCC p. 256)*

*"30. It is now well settled that the conduct of the parties, with a view to arrive at a finding as to whether the respondent-plaintiffs were all along and still are ready and willing to perform their part of contract as is mandatorily required under Section 16(c) of the Specific Relief Act must be determined having regard to the entire attending circumstances. A bare averment in the plaint or a statement made in the examination-in-chief would not suffice. The conduct of the respondent-plaintiffs must be judged having regard to the entirety of the pleadings as also the evidences brought on record".*

23. Taking an overall view of the matter, the trial Court has rightly held that, the plaintiffs were ready and willing to perform their part of the contract and a well reasoned Judgment of the trial Court is to be confirmed in this appeal.

24. Insofar as the arguments advanced by the learned counsel appearing for the appellants relating to fact that, schedule property fetch more value than the amount specified in the agreement of sale and also pleaded about the escalation of price, it is relevant to mention the Judgment of Hon'ble Supreme Court in the case of **Narinderjit Singh Vs. North Star Estate Promoters Limited**, reported in **(2012) 5 SCC 712**, wherein it is held that, escalation of price is not a ground to deny specific performance of agreement to sell.

25. It is relevant to extract paragraph Nos.25 and 26 of the Judgment which reads as under:

*"25. We are also inclined to agree with the lower appellate court that escalation in the price of the land cannot, by itself, be a ground for denying relief of specific performance. In K. Narendra v. Riviera Apartments (P) Ltd. this Court interpreted Section 20 of the Act and laid down the following propositions: (SCC p.91, para 29)*

*"29. Section 20 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; 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. 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 recognised 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."*

*(emphasis supplied)*

**26.** *In the present case, the appellant had neither pleaded hardship nor produced any evidence to show that it will be inequitable to order specific performance of the agreement. Rather, the important plea taken by the appellant was that the agreement was fictitious and fabricated and his father had neither executed the same nor received the earnest money and, as mentioned above, all the courts have found this plea to be wholly untenable."*

26. Recently, Hon'ble Supreme Court in the case of **C. Haridasan Vs. Anappath Parakattu Vasudeva Kurup and others** reported in **2023 (1) Ker L.J. 532**, held that if the intending purchaser proves the transaction relating to the execution of the agreement of sale and also if he establish through cogent evidence that, he was ready to perform his part of contract, then it is the bounden duty of the Court to grant relief of specific performance of agreement.

27. Therefore, the point for determination referred to above favour the plaintiffs as the plaintiffs, on oral and documentary evidence, proved the execution of the registered agreement of sale dated 09.08.2010 and their obligation to complete the terms and conditions stipulated thereunder and the trial Court after appreciating the material on record, rightly



arrived at a conclusion, decreeing the suit of the plaintiffs with a direction to the defendants to execute the registered sale deed in respect of the suit schedule property by receiving balance sale consideration of Rs.69,90,500/-.

28. In the result, we do not find any perversity or infirmity in the Judgment and decree passed by the trial Court and as such, the appeal ***fails.***

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

SB/-Svh/-