

APPEAL UNDER SECTION 100 CPC DOES NOT PERMIT REAPPRECIATION OF EVIDENCE OR INTERFERENCE WITH CONCURRENT FINDINGS ABSENT PERVERSITY; READINESS AND WILLINGNESS UNDER SECTION 16(C) OF THE SPECIFIC RELIEF ACT TO BE ASSESSED FROM TOTALITY OF CONDUCT

I. BACKGROUND AND CONTEXT

The Hon'ble Supreme Court, in *A. Shahul Hameed v. N. Malligarjuna & Ors.*, examined the scope of the High Court's jurisdiction under Section 100 of the Code of Civil Procedure, 1908 ("CPC"), particularly its power to interfere with concurrent findings of fact in a second appeal. The Court also considered the requirements for establishing "readiness and willingness" under Section 16(c) of the Specific Relief Act, 1963 ("Specific Relief Act") in a suit seeking specific performance of an agreement for sale.

The dispute arose from a sale agreement dated March 19, 2010, executed between A. Shahul Hameed (hereinafter referred to as the "**Plaintiff**") and N. Malligarjuna and others (hereinafter collectively referred to as the "**Defendants**"), whereby the Defendants agreed to sell the suit property for a total consideration of Rs. 9,30,000/-. Under the agreement, the Plaintiff paid Rs. 9,00,000/- as advance sale consideration, leaving only Rs. 30,000/- to be paid at the time of execution and registration of the sale deed, which was to take place within four months.

According to the Plaintiff, he remained ready and willing to perform his obligations under the agreement and repeatedly called upon the Defendants to complete the transaction. Upon the Defendants allegedly seeking further time, demanding additional consideration and ultimately refusing to execute the sale deed, the Plaintiff issued a legal notice dated February 01, 2011 calling upon them to receive the balance consideration and execute the conveyance. Since no reply was furnished, the Plaintiff instituted a suit for specific performance.

The Defendants resisted the suit by contending that the agreement was never intended to operate as a genuine agreement for sale but had merely been executed as a nominal or security document in connection with an earlier transaction involving certain purchasers from Bengaluru. They also relied upon an alleged reconveyance deed, disputed receipt of the advance sale consideration and denied that the Plaintiff had established the continuous readiness and willingness required under Section 16(c) of the Specific Relief Act.

Upon appreciation of the oral and documentary evidence, the Trial Court rejected the defence and decreed the suit for specific performance, holding that the agreement was genuine, valid and enforceable. The Trial Court found that the Defendants had admitted execution of the agreement and their signatures thereon, had never alleged forgery, and had failed to substantiate their plea that the agreement merely constituted a security arrangement. The First Appellate Court concurred with these findings regarding the genuineness and enforceability of the agreement. However, it declined to grant specific performance solely on the ground that the Plaintiff had failed to establish continuous readiness and willingness under Section 16(c) of the Specific Relief Act and instead directed refund of the advance sale consideration with interest.

In the second appeal preferred by the Plaintiff, the High Court departed from the concurrent findings recorded by both the subordinate Courts and held that the agreement itself had only been executed as a security for the earlier Bengaluru transaction. While affirming the denial of specific performance, the High Court modified the decree by directing refund of Rs. 9,30,000/- with enhanced interest and creation of a charge over the suit property.

Aggrieved thereby, the Plaintiff approached the Supreme Court.

II. ISSUES BEFORE THE COURT

The Supreme Court considered the following principal question:

1. Whether the High Court, while exercising jurisdiction under Section 100 of the CPC, 1908, was justified in interfering with the concurrent findings of fact recorded by the Trial Court and the First Appellate Court holding the sale agreement dated March 19, 2010 to be genuine, valid and enforceable.
2. Whether the Plaintiff had established continuous readiness and willingness to perform his part of the contract in terms of Section 16(c) of the Specific Relief Act, so as to be entitled to the relief of specific performance.

III. JUDICIAL ANALYSIS

A. Limited Scope of the High Court's Jurisdiction under Section 100 of the CPC

The Supreme Court reiterated that the High Court's jurisdiction under Section 100 CPC is confined to substantial questions of law. It cannot reappreciate evidence or reassess the concurrent findings of fact merely because another view is possible. Interference is permissible only where such findings are perverse, unsupported by evidence, based upon a material misreading of evidence or otherwise vitiated by illegality. Referring to *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar*, *C. Doddanarayana Reddy v. C. Jayarama Reddy*, *State of Rajasthan v. Shiv Dayal and Ramachandra Reddy v. Ramulu Ammal*, the Court reaffirmed this settled principle.

Applying these principles, the Supreme Court held that the High Court had plainly exceeded its jurisdiction. While the subordinate courts had concurrently found the agreement genuine after appreciating the evidence, the High Court identified no perversity, omission of material evidence, or error of law. Instead, it reassessed the evidentiary record and arrived at a different factual conclusion, an exercise impermissible under Section 100 CPC.

B. Failure of the Defendants to establish that the Sale Agreement was merely a Security Arrangement

The Supreme Court also affirmed the concurrent findings rejecting the Defendants' principal defence that the sale agreement was merely a security document for an earlier transaction involving purchasers from Bengaluru.

The Court found this explanation improbable. It observed that if the Bengaluru purchasers intended to secure title over the remaining portion of land, there was no plausible reason for the agreement to be executed in favour of the Plaintiff's name simply because he was related to them.

The Court further noted that the Defendants failed to produce evidence to establish supporting the alleged security arrangement. They neither examined the Bengaluru purchasers nor demonstrated that the earlier transaction had gone through. They also failed to revoke the sale agreement or seek enforcement of the alleged reconveyance deed after expiry of the contractual period.

In these circumstances, the Supreme Court held that the subordinate courts had rightly treated the agreement as a genuine contract for sale.

C. Readiness and Willingness under Section 16(c) of the Specific Relief Act must be assessed from the Plaintiff's overall conduct

Turning to the second issue, the Supreme Court held that both the First Appellate Court and the High Court had adopted an unduly narrow approach while evaluating the Plaintiff's readiness and willingness under Section 16(c) of the Specific Relief Act.

The Court reiterated that readiness and willingness is a continuous requirement from the date of the agreement until the passing of the decree. However, it must be assessed from the Plaintiff's overall conduct and the surrounding circumstances, rather than any isolated actor omission. Referring to Syed Dastagir v. T.R. Gopalakrishna Setty, Sughar Singh v. Hari Singh, Janardan Das v. Durga Prasad Agarwalla, C.S. Venkatesh v. A.S.C. Murthy and Madhukar Nivrutti Jagtap v. Pramila Bai Chandulal Parandekar, the Court reaffirmed that Section 16(c) requires both pleading and proof of readiness and willingness, it does not require a purchaser to repeatedly approach the vendor throughout the contractual period.

Applying these principles, the Court found that the Plaintiff had consistently demonstrated his readiness and willingness by approaching the Defendants within the stipulated period for completion of the transaction, paying Rs. 9,30,000, issuing the legal notice after the Defendants refused to execute the sale deed, and filing the suit well within the prescribed limitation period.

The Court held that the legal notice represented a consequence of the Defendants' refusal to perform the contract, and that the delay in issuing the legal notice could not, by itself, negate the Plaintiff's readiness and willingness. The Defendants' failure to reply to the legal notice despite receiving it further weakened their defence.

The Supreme Court accordingly allowed the appeal, set aside the judgments of the High Court and the First Appellate Court insofar as they denied the relief of specific performance, and restored the Trial Court's decree dated December 21, 2012 granting specific performance. The Court held that the High Court had exceeded the limited jurisdiction conferred under Section 100 of the CPC by reappreciating evidence and disturbing concurrent findings of fact in the absence of perversity, and that the Plaintiff had established continuous readiness and willingness under Section 16(c) of the Specific Relief Act based on his overall conduct and the surrounding circumstances.

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