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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.09.2026

PRONOUNCED ON : 13.11.2026

CORAM

THE HON'BLE MR. JUSTICE M. DHANDAPANI

AND

THE HON'BLE MR. JUSTICE N. DILIP KUMAR

AS(MD) No. 265 of 2008

CNR:{HCMD010000282008}

Case QR

1. M/s.Amarkantak Orchards Pvt.Ltd., & Amarkantak Farms Pvt Ltd., through its Director Sri.Sundeep Maheswari,

2. Mr.Sundeep Maheswari

3. Ravi Dhivedi (died)

4. A.V.Balan (died)

5.R.Selvakumar

6.R.Revathi

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7.T.Ramasethu

8.M/S.Jenisan Prop Care Private Limited,

Reg.No.70846, Door No.43P/2, G3 Subam Envlave,

Thiruvananthapuram Road,

Palayamkottai, Tirunelveli District. ..Appellants

(Appellants 5 to 8 are impleaded vide Court order

dated 13.11.2026)

Vs

1. P.A. Joseph (died)

2. J.Jameer

3. S.Ahamed Mansoor

4. J.Noor Nisha

5. Achyuth Tony Joseph,

6. Twinkle Joseph .. Respondents
   (Respondents 5 and 6 are brought on record as Lrs of the deceased first respondent vide Court order dated 11.11.2025)

   (sixth respondent is represented by her brother, namely, Achyuth Tony Joseph/the fifth respondent, vide Court order dated 13.11.2026)

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For Appellant(s) : Mr.Vikram Veerasamy for
Mr.Muthukamatchi V

Mr.S.Parthasaathy Senior Counsel for
Mr.M.P.Senthil – impleadedappellant

For Respondents(s) :Mr.V.Raghavachari
Senior Counsel for
Mr.R. Suriya Narayanan for R5 & R6

JUDGMENT

N. DILIP KUMAR J.

The present first appeal is filed by the defendants 1 to 4 against the judgment and decree dated 29.04.2008 passed by the learned Additional District Judge, Theni, thereby granting the relief of specific performance in favour of the original plaintiff, Mr. P.A. Joseph along with costs.

2. The following are the limited facts: -

2.1. The suit schedule properties originally belonged to the first defendant. Through their authorised power agent, namely, A.V. Balan, the land owner entered into an agreement of sale with the original plaintiff, P.A. Joseph, on 21.04.2005.

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2.2. The Tamil version of the agreement of sale was marked as Exhibit A1, while its English version was marked as Exhibit A2.

2.3. The execution of the agreement as well as the signatures and contents thereof are admitted by both the parties. The properties described in the agreement of sale are situated across five villages, comprising a total extent of more than 300 acres. The agreed sale consideration was calculated at the rate of Rs.16,250/- per acre. The time stipulated for completion of the sale was 22.07.2005.

2.4. On the date of execution of the agreement of sale, i.e., 21.04.2005, the plaintiff paid an advance amount of Rs.10,00,001/- in accordance with the terms of the agreement; subsequently, a second instalment of Rs.20,00,000/- was paid in cash to the fourth defendant on 05.05.2005. An endorsement acknowledging the receipt of the said amount was also made in the agreement of sale, which was marked as Exhibit A3; upon receipt of the second instalment, the fourth defendant handed over copies of all the documents relating to the suit schedule properties.

3. Following the above-mentioned admitted facts, the plaintiff further

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contended the following:

3.1. The plaintiff took possession of the suit properties on 05.05.2005 and made arrangements to survey the properties at his own expense; during the survey, the plaintiff found that only an extent of 205.15 acres of land was available, as against the total extent of more than 300 acres mentioned in the agreement of sale; thus, there was a vast discrepancy between the extent of the properties described in the agreement and the actual extent available on the ground.

3.2. The plaintiff contended that such a substantial shortage in the extent of the properties made it impossible to complete the sale transaction in respect of the entire extent originally agreed upon; the survey and measurement were completed on 23.06.2005; despite repeated requests, the landowners did not come forward to resolve the discrepancy regarding the extent of the properties or to complete the sale transaction; when the sale consideration is calculated at the agreed rate of Rs.16,250/- per acre for the available extent of 205.15 acres, the total sale consideration will be Rs.33,33,688/- and it would be substantially lower than the consideration originally agreed upon for the entire extent; and after giving credit to the amounts already paid i.e., a sum of Rs.30,00,001/- only a smaller amount

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remains, which the plaintiff was always ready and willing to pay.

3.3. The plaintiff asserted that he was always ready and willing to pay the balance amount and complete the sale transaction; the fourth defendant taking advantage of the recitals contained in the agreement of sale, attempted to measure and demarcate the suit properties.

3.4. Plaintiff had issued a notice dated 08.02.2006, calling upon the fourth defendant to complete the sale transaction.

3.5. Since the fourth defendant did not come forward to execute the sale deed, a legal notice was issued (delivered on 01.07.2006). The fourth defendant sent a reply denying the plaintiff's entitlement to seek specific performance primarily on the ground that the time stipulated under the agreement had already lapsed; the plaintiff also came to know that the landowners had sold portions of the suit properties in favour of defendants 5 to 7, even during the subsistence of the agreement of sale.

3.6. The plaintiff claimed that he had taken possession of the properties and had made improvements therein by planting several hundred trees; contending that the subsequent sale in favour of defendants 5 to 7 was not binding upon him, the plaintiff instituted the suit seeking specific

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performance of the agreement of sale by expressing his readiness and willingness to purchase the available extent of 205.15 acres by paying the proportionate balance sale consideration.

4. The defendants 1 to 4 admitted the execution of the agreement of sale and the receipt of Rs.10,00,001/- on 21.04.2005 and Rs.20,00,000/- on 05.05.2005. They did not dispute the execution of Exhibits A1, A2 and A3.

4.1. The defendants 1 to 4 however, specifically disputed the plaintiff's claim that a survey had been conducted.

4.2. The defendants specifically denied the allegation that the plaintiff had ever requested them to execute the sale deed. They also disputed the amount of balance i.e., Rs.3,33,688/- or Rs.3,39,375/- as had been claimed by the plaintiff. They also disputed the alleged shortage of 94.5 acres and contended that the plaintiff's claim regarding the actual extent available was false.

4.3. The defendants further disputed the alleged notice dated 08.02.2006 and denied the claim that the plaintiff had called upon them to complete the sale transaction. They contended that the plaintiff was never

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ready and willing to perform his part of the contract and since time was the essence of the contract and the stipulated date for completion of the sale transaction, viz., 22.07.2005, had long expired, the agreement of sale had become unenforceable and stood automatically cancelled.

4.4. The defendants further contended that the suit properties had already been sold to defendants 5 to 7 under various sale deeds and that possession had also been handed over to the subsequent purchasers. They specifically denied that possession had ever been handed over to the plaintiff and that he had made improvements in the suit properties. They also contended that the plaintiff had not approached the Court with clean hands.

4.5. According to them, the plaintiff had failed to establish his readiness and willingness to pay the entire sale consideration of Rs.48,75,000/- stipulated for the total extent of more than 300 acres.

4.6. They further contended that the plaintiff could not seek specific performance in respect of some portion of the properties covered under the agreement of sale, particularly when he had failed to perform his contractual obligations within the stipulated period.

4.7. On these grounds, the defendants sought dismissal of the suit.

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5. The defendants 5 to 7, being purchasers subsequent to the sale agreement, disputed the agreement of sale between the plaintiff and defendants 1 to 4 and also denied that possession had been handed over to the plaintiff.

5.1. They specifically pleaded that they had purchased the properties for valuable consideration and that at the time of purchase, they were not aware of the existence of the agreement of sale in favour of the plaintiff and thus, they were *bona fide* purchasers for value of the property and had taken possession of the properties, pursuant to their respective purchase deeds. They relied upon the mutation of the revenue records in their names and the payment of applicable taxes to the revenue authorities to establish their possession and enjoyment.

5.2. They further contended that portions of the properties had subsequently been sold to another third party, namely, RRB Energy India Private Limited.The said purchaser had taken possession of the properties for the purpose of installing wind turbines in the properties.

5.3. On these grounds, defendants 5 to 7 contended that they were

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bona fide purchasers for value and that the plaintiff was not entitled to the discretionary relief of specific performance against them.

6. Before the trial Court, the original plaintiff, P.A. Joseph, examined himself as P.W.1. He also examined the author of the survey list, namely, P.S.M. Murugan, as P.W.2. On the side of the plaintiff, as many as eight documents were marked as exhibits. The Tamil and English versions of the agreement of sale dated 21.04.2005 were marked as Exhibits A1 and A2 respectively. The endorsement evidencing payment of the second instalment of Rs.20,00,000/- was marked as Exhibit A3. The encumbrance certificate and Chitta copy were marked as Exhibits A4 and A5. The list containing the particulars of the lands was marked as Exhibit A6. The legal notice issued by the plaintiff and the reply notice issued by the fourth defendant were also marked as exhibits A7 and A8 respectively.

7. On the side of defendants 1 to 4, the fourth defendant, Balan was examined as D.W.1. On the side of the subsequent purchasers, the fifth defendant, was examined as D.W.2. The sale deeds executed in favour of

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defendants 5 to 7 were marked as Exhibits B1 to B6. The patta and other revenue records standing in their names were marked as Exhibits B7 to B9. The tax receipts and other documents evidencing payment of taxes by the defendants 5 to 7 were marked as Exhibits B.10 to B.12 respectively.

8. Accordingly, the parties went to trial and the learned trial Judge framed the following issues:

(i) Whether possession of the suit properties was handed over to the plaintiff pursuant to the agreement of sale executed between the plaintiff and the authorised agent of the first defendant in respect of the suit properties?

(ii) Whether only a lesser extent of land was available in the suit properties upon survey, as claimed by the plaintiff?

(iii) Whether time was the essence of the contract, having regard to the date stipulated in the agreement of sale executed between the parties?

(iv) Whether the plaintiff did not come forward to get the sale deed executed?

(v) Whether the subsequent sale of portions of the suit properties by defendants 1 to 3 in favour of defendants 5 to 7 was valid and whether defendants 5 to 7 were bona fide purchasers for value?

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(vi) Whether the plaintiff was entitled to the relief of specific performance?

(vii) What other relief, the plaintiff is entitled to?

9. The learned trial Judge concluded that as per the terms of the agreement of sale, upon payment of the second instalment of Rs.20,00,000/- on 05.05.2005, the agreement holder was entitled to take possession of the properties; without taking possession, the agreement holder could not have undertaken the survey and measurement of the properties to ascertain the actual extent available; no separate endorsement acknowledging the handing over of possession was necessary.

10. The learned Judge also concluded that the physical possession was handed over to the plaintiff. The learned trial Judge further took note of the fact that the landowners had handed over the encumbrance certificates and other relevant documents, which according to the Court supported the plaintiff's case, that possession had been handed over for the purpose of surveying and measuring the properties.

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11. In respect of the second issue, the learned trial Judge relied upon the evidence of P.W.2 and concluded that as against the total extent of more than 300 acres mentioned in Exhibits A1 and A2, only a lesser extent than that mentioned in the agreement of sale, i.e., approximately 205.15 acres was alone actually available for alienation and answered the second issue.

12. With regard to the third issue, the learned trial Judge held that the plaintiff had repeatedly requested the defendants to complete the sale transaction, as evidenced by the legal notice marked in the suit. The learned Judge also considered the reply notice, Exhibit A8, wherein reference was made to the repeated requests made by the plaintiff seeking extension of time for registration of the sale deed. Such a recital, according to the Trial Judge would indicate that the defendants themselves had not treated the stipulated date as binding and so time was not the essence of the contract.

13. The learned trial Judge further observed that the fourth defendant had not issued any notice terminating the agreement of sale or intimating the forfeiture of the advance amount. In the absence of any such

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communication, the learned Judge concluded that time was not the essence of the contract.

14. With regard to the fifth issue regarding the claim of the defendants 5 to 7 that they are the bona fide purchasers of the property for value, the learned trial Judge noted that the original landowners, namely, defendants 1 to 4, were involved in an exchange of legal notices with the plaintiff and were aware of the agreement of sale. He did not test as to whether the defendants 5 to 7 are the bona fide purchasers of the property for the value and held that the alienation was made by D1 to D4 in favour of D5 to D7 is not bona fide.

15. With regard to the fourth and sixth issues as to whether defendant did not come forward and is the plaintiff entitled for the relief of specific performance, the learned trial Judge concluded that the plaintiff had already paid a substantial portion of the sale consideration, viz., Rs.30,00,000/-, and that only the proportionate balance sale consideration i.e., a sum of Rs.3,33,687/-, remained payable in respect of the available extent of land.

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15.1. The learned Judge also relied upon the plaintiff's legal notice, wherein he had expressed his willingness to pay the balance sale consideration and complete the sale transaction and further averment of the plaintiff that he would be available before the Sub-Registrar on 10.06.2006 for the purpose of completing the registration.

15.2 The learned trial Judge therefore held that the plaintiff was willing to purchase the available extent of approximately 205.15 acres by paying the proportionate balance sale consideration and was consequently entitled to specific performance of the agreement of sale to that extent.

15.3. The learned Judge further held that the plaintiff had approached the Court with clean hands and had established his continuous readiness and willingness to perform his part of the contract.

16. Accordingly, the suit was decreed by granting the relief of specific performance.

17. Challenging the above judgment and decree, the present Appeal Suit is filed. During the pendency of the appeal, the original plaintiff, P.A.

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Joseph, died and his son and daughter were brought on record as his legal representatives as respondents 5 and 6. The subsequent purchasers, namely, defendants 5 to 7, have been arrayed as respondents 2 to 4 in the present appeal. It is stated that the appellants 3 and 4 died and because of the surviving legal right to sue, available with the appellants 1 and 2, the appeal is being continued only by the appellants 1 and 2.

18. The purchasers pending this appeal suit have also been allowed to be brought on record in this appeal suit and they are arrayed as appellants 5 to 7.

19. For the sake of brevity and convenience the parties are referred by their rank in the trial court.

20. After the filing of this appeal suit on 25th July 2008, under Ex.A9, brought on record as an additional document in this Appeal Suit, both M/s.Amarkantak Orchards Pvt. Ltd., and Amarkantak Farms Pvt. Ltd., have been struck off from the Register of Companies and these companies' stand

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dissolved.

21. Ex. A.9 is the final Form STK-7 intimating the striking off/dissolution issued by the Registrar of Companies, Madhya Pradesh, Gwalior under the Ministry of Corporate Affairs of the Government of India vide proceedings dated 9th June 2017 in ROC-G248(5)/2017/2915, issued under Section 248 (5) of the Companies Act (18 of 2013) read with Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 is produced before this Court as Ex. A.9. It is a public document. It is not disputed by the defendants 1 & 2.

22. In the said document at Sl.No.233, the name of M/s.Amarkantak Farms Pvt. Ltd., finds place and similarly in Sl.No.235, the name of M/s.Amarkantak Orchards Pvt. Ltd., finds place. Thus, it is demonstrated beyond doubt that both these companies' have been struck off by the Registrar of Companies in exercise of his powers under Section 248 (5) of the Companies Act, 18 of 2013.

23. At the outset, on the above admitted legal and factual position, the

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plaintiff has raised a preliminary objection to the continuation of the Appeal Suit filed by the first defendant, M/s.Amarkantak Orchards Pvt. Ltd., and Amarkantak Farms Pvt. Ltd.

24. Mr. V. Raghavachari, learned Senior Counsel appearing for the plaintiff, argues that once a company is struck off and dissolved by the Registrar of Companies, its legal existence terminates. Having lost its status as an independent juridical personality, the first defendant ceases to exist in the eyes of the law and cannot continue to maintain this Appeal Suit.

25. He would also point out that the second defendant is only impleaded in his capacity as the Director of the first defendant company. The second defendant is having no independent legal right to contest the present Appeal Suit and therefore, he cannot independently continue with this Appeal Suit.

26. He would also argue that the defendants 3 and 4 are only the authorized representatives and authorized signatories, who were impleaded only in their capacity as representatives of the first defendant and they have

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also died. Thus it is only the first defendant that could continue the litigation and once it is struck off and dissolved, the present Appeal Suit cannot be continued and it is liable to be dismissed. The interest of the newly impleaded appellants in this Appeal Suit cannot survive beyond what is available to the 1st defendant.

27. He would contend that the Appeal Suit is no longer maintainable and in this regard he seeks to place reliance upon the Division Bench Judgment of the Madras High Court in ***Income Tax Officer vs Pandian Anbalagan in*** WA No. 2506 of 2024 dated 5th November 2024 wherein, it is held that it is not open to a Director of the defaulted company whose name is struck off from the Registrar of companies to seek any relief and it can be maintained only after revival of the said company.

28. He would also place reliance on the judgment of National Company Law Tribunal in ***Panthera Developers Pvt. Ltd., vs. Sankalp Buildwell Pvt. Ltd., & others*** in company appeal (AT) 55 of 2023 dated 15th May 2023 to contend that the scope of Section 245 does not cover oppression and mismanagement and they cannot be brought within the

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purview of a 'discharge of obligations' as mentioned under Section 250 of the Act 18 of 2013.

29. The learned Senior Counsel would also argue that upon the dissolution of the companies, the non-disposed properties will be vested with the Government and seeks reference to the "***Doctrine of Bona Vacantia***'. In this regard, he refers to the judgment of the Supreme Court of India in ***AIR 1969 Supreme Court 843*** in the case of ***Peirce Leslie Vs Miss Violet***.

30. He would also contend that only after the revival of the company, by initiating the proceeding under Section 252 of Act 18 of 2013, can the Appeal Suit be continued; without such efforts, the dissolved and struck off company cannot continue with the Appeal Suit. He would therefore primarily contend that this Appeal Suit has to be dismissed on this preliminary plea itself.

31. In reply, Mr.Vikram Veerasamy learned counsel appearing for the first defendant would argue that before passing an order striking off the first defendant from the Register of Companies, the Registrar should have

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recorded specification that sufficient provision has been made for the realisation of all the amounts due to the Companies and for the payment or discharge of the liability and obligation, within a reasonable time. He would contend that the pendency of this Appeal Suit had not been brought to the notice of the Registrar, while he passed the proceedings marked as Ex.A9 and therefore this cannot prevent the first defendant from continuing with the Appeal Suit.

32.He would try to draw inference from Section 250 of the Act 18 of 2013 and argued that the provision was not available in the old Companies Act, 1956 and this new Section 250 would establish that the striking off may only terminate the ability of Register/incorporated Company to carry on as a going concern, but such striking off/dissolution does not operate to extinguish the subsisting rights, assets, liabilities and obligations which require realisation, enforcement or discharge.

33. He would further argue that the striking off a company does not mean a civil death and unlike the abatement of the proceedings upon the death of the natural person, the striking off a company will not amount to

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absolute death and it is always permissible for the company to be resurrected by initiating proceeding under 252 and even otherwise this striking off, will have no impairment on the ***liabilities and obligations*** of the dissolved company.

34. He would thus argue that it is only the ordinary business operations of the company that this prohibited and it does not make the company ineligible to proceed with a litigation or claim qua its rights or civil liabilities.

35. The learned counsel would further submit that the liabilities or obligations mentioned under Section 250 does not merely indicate monetary liabilities, but also subsisting legal and contractual obligations incurred by the company; and obligation in its general sense is synonymous to duty and he would therefore contend that there are duties and responsibilities in existence with the first defendant company towards the original defendants 5 to 7, to whom the first defendant company had subsequently alienated the suit schedule properties and therefore the companies are bound to protect the interest of the subsequent purchasers as the rights and liabilities of the first defendant companies as a seller, is codified under Section 55 of Transfer of

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Property Act.

36. The preliminary issue, therefore, is whether the present Appeal Suit can be continued by the first defendant, despite the proceedings of the Registrar of Companies of Madhya Pradesh, striking off/dissolving the first defendant companies?

37. We shall proceed to determine the preliminary issues first, as they go to the root of the matter. The Tamil and English version of the sale agreement, which is the subject matter of this Appeal Suit are marked as Ex.A1 and Ex.A2.

38. The Tamil version shows that it is executed by A.V.Balan as the authorized power agent of M/s.Amarkantak Farms Private Ltd., through its director Mr. Sundeep Maheswari on 21st April 2005 in favour of the original plaintiff P.A. Joseph. The English version shows it is executed by A.V.Balan as the authorized power agent as M/s.Amarkantak Farms Private Ltd., and M/s. Amarkantak Archards Ltd through its director Mr. Sundeep Maheswari on 21st April 2005 in favour of the original plaintiff P.A. Joseph.

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39. The plaintiff has strangely impleaded, these two different private limited companies as a single first defendant. He had not even indicated, which of the schedule of properties, belong to which of these private limited companies and he had also not explained the discrepancy between the English and Tamil version of the sale agreement, regarding the mentioning of one private limited company in the Tamil version and the mentioning of two private limited companies in the English version.

40. The sale agreement is executed by A.V.Balan as the authorized power agent of the first defendant companies. The suit schedule properties belong to the first defendant companies is not in dispute. This assertion made in the plaint is not even controverted in the written statement filed by the defendants 1 to 4. We can therefore, at least, safely conclude that either one of these defendant companies shown as the first defendant is the original owner of the property and it had entered into an agreement of sale with the original plaintiff through its authorised power of attorney holder.

41. As the owner of the property, it is only the first defendant, which

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is entitled to contest this Appeal Suit and in the absence of the first defendant, there is no independent right or liability or in a sense "any obligation" with the second defendant to be discharged in the subject suit.

42. With regard to the preliminary issue, it is necessary to consider the impact of the striking off/dissolvingof a Registered/incorporated company under the proceedings of the Registrar of companies.

43. The Companies Act (18 of 2013) recognises the requirement of incorporation of the company which leads to the registration of the company in the register maintained by the Registrar of companies. Incorporation and effect of registration are codified under Sections 7 and 9 of the Companies Act (18 of 2013). They are extracted here under:-

> ***"Incorporation of company*** *(1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:-*
>
> *(a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in*

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such manner as may be prescribed;

(b) a declaration in the prescribed from by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is in the formation of the company, that all the person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

(c) [1][a declaration] from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

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(d) the address for correspondence till its registered office is established;

(e) the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity, as may be prescribed, and in the case of a subscriber being a body corporate, such particulars as may be prescribed;

(f) the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed; and

(g) the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in such form and manner as may be prescribed.

(2) The Registrar on the basis of documents and information filed under sub-section (1) shall register all

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the documents and information referred to in that sub-section in the register and issue a certificate of incorporation in the prescribed form to the effect that the proposed company is incorporated under this Act.

(3) On and from the date mentioned in the certificate of incorporation issued under sub-section (2), the Registrar shall allot to the company a corporate identity number, which shall be a distinct identity for the company and which shall also be included in the certificate."

*"**9. Effect of registration.**-From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession [4][***] with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name."*

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44. Any company has an independent juristic personality. The suit schedule properties vest with the first defendant. The availability of title with the first defendant is also evident from Ex.B1 to B6 that had been executed by the first defendant through their registered power of attorney holder in favour of defendant 5, 6 and 7.

45. Under the Central Act 18 of 2013, a Registered/incorporated company, for certain infirmities can be struck off / dissolved by the proceedings of the Registrar of companies. This is provided under Chapter XVIII Section 248 of the Central Act 18 of 2013 and it is extracted here under:

CHAPTER XVIII

REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

Power of Registrar to remove name of company from register of companies.- *(1) Where the Registrar has reasonable cause to believe that-*

(a) a company has failed to commence its

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business within one year of its incorporation; [1][or]

[2][***]

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under [3][section 455; or]

[(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10-A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12,] he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

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(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

3) Nothing in sub-section (2) shall apply to a company registered under Section 8.

(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

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(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

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(7) The liability, if any, of every director, manager and other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

46. It is necessary to notice that Sections 248 to 252 which form the Chapter XVIII regarding the Removal of names of companies from the Register of Companies, was notified vide notification No. S.O. 4167 (E) dated 26th December 2016 and they have been enforced with effect from the said date, i.e., 26th December 2016.

47. Of course, there are statutory procedures to be complied with before the final act of striking off/dissolution, under Section 248(5). It is not our look out in this appeal suit, whether those procedures have been complied with or not. As on date, admittedly, the first defendant is struck

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off/dissolvedand are no longer incorporated Companies.

48. Upon compliance of the mandatory procedures prescribed under Section 248 coupled with the Companies (Removal of Names of Companies from the Register of Companies) Rules of 2016, the final Official Gazette notification will be published and once it is published the action of the Registrar in striking off the company from the Register of Companies thereby dissolving company attains finality.

49. Once there is a declaration that a company is struck off/dissolved by making publication in the Official Gazette, by issuing a mandatory Form No.STK-7, the company is struck off.

50. Once the Registrar of Companies had made publications in the Official Gazette declaring the striking off/dissolving of any company, even if there is any lapse in the said action, the remedy is only to initiate proceedings under Section 252 of the Companies Act, 2013 and not to contend that the action of the Registrar is not binding. All official Acts are presumed to have been regularly performed as provided in illustration (e) of

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the Indian Evidence Act, 1872. It is based on the Latin maxim ***"Omnia praesumuntur rite et solemniter esse acta"***, i.e., "All things are presumed to have been done rightly and with due formality".

51. Once a company is dissolved in terms of Section 248 of Companies Act, 2013, any such company shall cease to operate as a Company. Thus, it is beyond any doubt that the first defendant companies, viz., M/s.Amarkantak Orchards Pvt. Ltd., and Amarkantak Farms Pvt. Ltd., are no longer incorporated registered companies.

52. We are therefore unable to accept the argument of Mr. V.Vikram Veerasamy for the first defendant that the Registrar failed to take note of the obligations of the first defendant companies, while passing orders dissolving the first defendant companies and since the pendency of this Appeal Suit was not brought to the notice of the Registrar of Companies, the act of the Registrar in striking off the companies is not valid and will not bind the first defendant company and therefore the Appeal Suit can survive. However, the dispute does not get concluded there.

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53. We have to necessarily consider whether the striking off the company from the Register of Companies will render it impermissible for the first defendant company to continue with this Appeal Suit. Reference can be made to Section 250 of the Companies Act which is extracted here under:-

> ***"250. Effect of company notified as dissolved-*** *Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or* ***discharge of the liabilities*** *or* ***obligations of the company****."* *(emphasis supplied)*

54.Despite the dissolution of the company / striking off, Section 250 specifically provides that such cancellation shall not be given effect to, for the purpose of realising the amount due to the company or for the payment of dues of the company or for the discharge of the liabilities or the discharge of the obligations of the company.

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55. A careful perusal of Section 250 demonstrates that a company that stands dissolved under Section 248 of The Companies Act, 18 of 2013, shall cease to operate as a company from the date mentioned in notice under sub-section 5 of Section 248. Further the certificate of incorporation issued to the company shall be deemed to have been cancelled from such date. This is the general rule laid in the first part of Section 250. The later part creates certain exceptions.

56. The first exception provided is that such deemed cancellation of the incorporation of the company and ceasing of operation as a company shall not apply, if there is a purpose of realising any amount due to the company. Illustratively, we can state that, if during its lawful existence, the Company was successful in securing an award before the arbitrator or the court of law, because of its subsequent ceasing of operation, pursuant to action under Section 248, it will not lack the locus standi to initiate

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proceedings to realize the award/decree granted in its favor.

57. A second kind of exception is when the company is liable to make payments. Illustratively, it can be stated that if the company had suffered an arbitral or a money decree, in its time of valid incorporation, even after the striking off of the company under section 248, execution proceedings against the company can still be continued.

58. The third kind of exception is when the company has to 'discharge certain liabilities' or 'discharge certain obligations'. The lawmakers had consciously used both the words 'liabilities' and 'obligations'. It is necessary to consider these three words ***"discharge" "liability" and "obligation"*** occurring in the later part of Section 250 of Act 18 of 2013.

59. Liability is distinct from obligation. In a broader sense, in the context of the Companies Act, 2013, generally, liabilities will refer to the financial debt, quantifiable monetary owed to another party. Whereas obligation is generally a legal duty, commitment or statutory burden to do burden to do or refrain from doing something. As an example, it can be

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stated that the outstanding loans, bank overdrafts, trade payables, unpaid taxes and liquidation claims will fall under the term 'liabilities'. Whereas the term 'obligation' will include the duty to file annual returns, hold board meetings, comply with court orders and honour non-compete classes. While the responsibility of discharging a liability may arise out of transactions, past defaults or legal judgments requiring a payout, the responsibility of discharging an obligation may directly from the statutory provisions or from executed contracts.

60. Under the Indian Contract Act, 1872 and the Specific Relief Act, 1973, the terms liability and obligation have always been treated distinctly and not synonymously. While an obligation is the primary duty, a liability is the secondary consequence that arises when the duty is broken. An obligation is a legal tie - ***"vinculum juris"*** that binds a person to do or not to do something and it represents an active, ongoing duty. Rather a liability is the state of being legally responsible or exposed to a sanction, penalty or an order for damages, because an obligation was breached or a debt was incurred.

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61. Obligations under the Contract Act can be seen to have been provided under Chapter IV from Sections 37 – 67, where it talks about the performance of contracts. Whereas the liabilities under the Contract Act, i.e., the "***breach and remedy***" is spoken to under Chapter VI from Sections 73 to 75. Thus under the Contract Act, while an obligation arises the moment, a valid contract is signed or a legal duty is cast, the liability arises when the contract is breached or when an obligation is left unfulfilled.

62. The term ' discharge of obligations of the company' occurring in Section 250 of Central Act 18 of 2013, assumes greater significance in this context.

63. The word ***"discharge"*** is defined in the "Black's Law Dictionary – Tenth Edition" as "***Any method by which a duty is extinguished***; especially the payment of a debt or satisfaction of some other obligation."

64. P. Ramanatha Aiyar's Advance Law Lexicon - 5th Edition defines "***discharge in the context of the law of contract"*** as "to discharge is to cancel or unloose the obligation of a contract; to make an agreement or

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contract null and inoperative. Discharge the act or instrument by which the binding force of a contract is terminated, irrespective of whether the contract is carried out to the full extent contemplated or is broken before complete execution." In another place it defines "***discharge of a contract***" as the end of the contract and it defines it as follows: - "The termination of a contractual obligation. Discharge may take place by: (1) performance of a contract; (2) express agreement, which may involve either bilateral discharge or unilateral discharge; (3) breach of contract; and (4) Frustration of a contract.

65. Thus discharge of an obligation does not mean, only discharge by performance, but also discharge by frustration or termination. Therefore it is not only the scenario where the Company has to discharge the obligation by performance, that is protected under Section 250 of the Companies Act, but also where it is defending the correctness of its action, in refusing performance of the contract or in justifying its actions leading to the frustration of the contract or its termination.

66. The word 'obligation' is not defined anywhere under the Central

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Act 18 of 2013. Rather the Specific Relief Act, 1963 defines 'obligation' under Section 2 (a). It states that 'obligation' includes every duty enforceable by law. The Specific Relief Act is designed more to enforce obligations

67. In the present Appeal Suit concerning the specific performance of a sale agreement, the import of the definition provided to an obligation under the Specific Relief Act 1963 is more appropriate and relevant.

68. The Specific Relief Act defines ***'obligation' to include every duty enforceable by law***. The law makers having employed the terminology 'includes' had revealed that it is only enumerative and not exhaustive, as the word "includes" has an extending force and does not limit the meaning of the term to the substance of the definition.

69. It is now necessary to consider what is the obligation that is sought to be protected in the present Appeal Suit by the first defendant.

70. In fact, the definition of the word 'obligation' in the Specific

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Relief Act 1963 is the same as it was in the Specific Relief Act of 1877. Thus, the definition of 'obligation' had remained constant for nearly 150 years.

71. The definition of the word obligation contemplates duties that are enforceable by law. Of course, all duties are conceived and spoken of as obligation, but duty is not an obligation in the legal sense to which the legal sanction is attached. A duty to be enforced by a Court must be a legal obligation and not merely moral or social or a religious obligation.

72. An obligation may be a tie or a bond which constrains a person to do or suffer something. It implies a right in another person to which it is correlated and restricts the freedom of the obligee with reference to definite acts and forbearance. An obligation in the language of jurisprudence is a legal tie or '*vinculum juris*' which connects two definite persons, namely A and B of whom A has a right that B shall do or refrain from doing something to, or on behalf of A, while B is under a corresponding duty to do or refrain from doing the same thing too, for or on behalf of A's end of the tie. We call it a right or more strictly a right in persona in contrast to the right

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'obligation' is popularly used as a mere equivalent of duty. All duties are conceived and spoken of obligations, but a duty cannot become an obligation in the legal sense, as the law imposes a special burden upon a particular entity by reason of some special reason in which the beneficiaries stand and the obligee is bound to discharge.

73. In India the term 'obligation' as defined is used in its proper juridical sense. It is a condition of being subject to a legal duty, or liability, or forbearance of something and every legal command involves a corresponding legal duty; for command and duty are necessarily correlative terms. Duties enforceable under the Special Relief Act can arise out of contract as well.

74. An agreement of sale is a contract which performance is sought under this subject suit. Thus, a duty arises from any and every branch of law, and the word "obligation" as its etymology denotes mean a tie or bond, signified in its wider sense, any duty enforceable by law. In this suit, the plaintiff who is the agreement holder is only seeking to enforce the obligation that rests upon the land owner, under the agreement of sale, and

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he is asking for specific performance of the sale agreement.

75. An obligation may arise either out of express contract between parties or may arise out of a tort. In the present case, the obligation has arisen out of a contract and it is enforceable under the provisions of the Specific Relief Act of 1963 and thus it is a valid obligation that is to be enforced against the first defendant and to be discharged by them.

76. Useful reference can be made to the celebrated book of "Pollock and Mulla" on the Indian Contracts and Specific Relief Act. In its 17th edition, it is stated as under:

> ***"Section 2 Clause (a): Obligation***
>
> *Although obligation and enforceable duty are synonymous, the former is used, though it is less accurate. Roman law confines "obligations" to duties between definite persons: old English law confined it to one special kind of instrument, though modern scientific writers for the most part use it in the Roman sense.*
>
> *An obligation is a bond or tie, which constrains a person to do or suffer something: it implies a right in*

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another person to which it is correlated, and it restricts the freedom of the obligeee with reference to definite acts and forbearances; but in order to be enforceable, it must be an obligation recognised by law, and not merely a moral, social or religious one An obligation may not be a legal one, where it cannot be reduced to a money value; legal obligation includes every duty enforceable by law so that when a legal duty is imposed on the person in respect to another, the other is invested with a corresponding legal right. This definition is used in its wider juristic sense as covering duties arising ***ex contractu*** *or ex delicto, and may cover any other enforceable duty under any statute It has been held, for instance, that a person is under an obligation to refrain from proclaiming falsely to be a spouse of the plaintiff and the word also includes conjugal obligation, like that of a husband not to contract another marriage during the subsistence of the first.*

While a contract of sale (agreement to sell) does not of itself create any interest in, or charge on, property the fiduciary character of the personal obligation created by the contract of sale is recognised in section 91 of the Trusts Act and the second

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paragraph of section 40 of the Transfer of Property Act taken with the illustration establishes that the contract though not creating an interest in property is annexed to the ownership of land and the obligation can be enforced against a subsequent gratuitous transferee from the vendor or a transferee for value but with notice. It is by application of this principle that courts invoke section 21 of this Act when specific performance becomes impossible on account of acquisition of the land, to substitute the decree for specific performance into one for compensation equivalent to the land acquisition compensation awarded for suit lands together with solatium and interest less the amounts spent in pursuing the legal claims for compensation.

The work 'obligation' has been used in sections 38 and 39 of Specific Relief Act, 1963. "

77. The above text makes it evident that obligations arisen out of a contract of agreement of sale, is very much covered under the specification mentioned under Section 250 of the Companies Acts (18 of 2013). In fact the suit is decreed in this case and a right stands crystallised in favour of the

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agreement holder and the first defendants' is bound to discharge this obligation. Thus, it becomes an obligation mentioned in Section 250. Even if the company stands dissolved under Section 248 and hence, ceases to operate as a company and its Certificate of Incorporation is deemed to have been cancelled, it will not be given effect to and the litigation in defending the correctness of the implied termination of the Contract of sale agreement, can be continued de hors such dissolution / striking off.

78. We will consider the judgments relied upon by the respondent/plaintiffs. They do not concern a scenario as specific and as arising in the present case. Every ratio laid down by the Court has to be applied only upon noticing the specific facts and circumstances of the case. In ***Income Tax Officer vs Pandian Anbalagan in*** WA No. 2506 of 2024 dated 5th November 2024, the Court was dealing with the right of a director of a company that is already struck off to agitate the correctness of an order of assessment.

79. The Hon'ble Supreme Court in the case of ***CIT Vs. Gopal Shri Scrips*** reported in ***(2020) 7 SCC 654*** has held as follows:- "10. In our view,

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the High Court was wrong in dismissing the appeal as having rendered infructuous. The High Court failed to notice Section 506(5) proviso (a) of the Companies Act and further failed to notice Chapter XV of the Income Tax Act which deals with liability in special cases and its clause (L) which deals with discontinuance of business or dissolution. The aforementioned two provisions, namely, one under the Companies Act and the other under the Income Tax Act specifically deal with the cases of companies, whose names has been struck off under Section 506 (5) of the Companies Act. These provisions provide as to how and in what manner the liability against such company arising under the Companies Act and under the Income Tax Act is required to be dealt with. Since the High Court did not decide the appeal keeping in view the aforementioned two relevant provisions, the impugned order is not legally sustainable and has to be set aside."

80.Thus it is held by the Apex Court held that the Striking off a company will not bring all legal proceedings to an end, and it will depend upon the nature of obligation that is sought to be enforced.

81. The other judgement relied by the Learned Senior Counsel for the

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plaintiff is that of the of National Company Law Appellate Tribunal in ***Panthera Developers Pvt. Ltd., vs. Sankalp Buildwell Pvt. Ltd., & others*** in Company Appeal (AT) 55 of 2023 dated 15th May 2023. It concerns the oppression and mismanagement of a company, with which we are not concerned at all.

82. None of the cases cited by the respondent exposit any of the legal considerations that we have discussed supra, in reference to the continuation of an appeal suit by a Struck off Company, in which it challenges a decree granting enforcement/specific performance of a sale agreement.

83. It is a legal obligation that is sought to be enforced against the dissolve / strike off company, in the present case. Because of dissolution of striking off, a company is not rendered dead. It loses its registration / incorporation. The Companies Act 18 of 2013 recognises the power of the Tribunal to continue with winding up proceedings, despite the striking off the company. This is provided under Section 249 (8) of the said Act. This indicates an inference to be drawn that not all has ended for a company, upon its striking off or dissolution.

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84. The '***doctrine of bona vacantia***' is primarily based on escheat principle and it recognises the right of the crown in England and the right of the Government in India to take the property by escheat for want of an heir or successor or as bona vacantia for want of a right Owner. It is recognised under Article 296 of the Constitution of India. However, there is no statutory provision under the Central Act 18 of 2013 providing for the invocation of this doctrine to a company that is struck off. The question of invoking the 'doctrine of bona vacantia' does not arise at all in the present case, as in the facts of the present case, we have concluded that the obligations of the dissolved company continues to subsist.

85. In the light of the above derived legal proposition, we are of the firm conclusion that the present Appeal Suit can be continued by the first defendant despite the striking off/dissolution of the first defendant under Ex.A9 vide the action of the Registrar of Companies invoking Section 248 (5) of the Companies Acts (18 of 2013). We thus answer the first preliminary issue in favor of the first defendant and hold that despite the dissolution / striking off the first defendant, the present appeal suit can be

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continued. Further the subsequent purchasers have already been brought on record as and they are very much available to continue with the appeal suit.

86. We shall now proceed to deal with the merits of the appeal suit. The following issues arise for consideration in this appeal suit:

(i) Whether the original plaintiff, P.A. Joseph, had established his readiness and willingness to perform his part of the contract marked as Exhibits A1 and A2?

(ii) Whether time was the essence of the contract, having regard to the terms of the agreement of sale dated 21.04.2005 executed between the parties and the subsequent conduct of the parties?

(iii) Whether the plaintiff can compel the land owners to execute the sale deed in respect of 205.15 acres alone as against the total extent of more than 300 acres mentioned in the agreement on the ground that only such a lesser extent was found available upon survey?

(iv) Whether defendants 5 to 7 were bona fide purchasers for value without notice of the earlier agreement of sale?

(v) Whether the plaintiff had approached the Court with clean hands and is he entitled to the discretionary relief of specific performance?

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87. **SUBMISSIONS ON BEHALF OF THE APPELLANTS:**

87.1. Mr. Parthasarathy, learned senior counsel and Mr. Vikram Veerasamy would contend that the plaintiff has not substantiated his readiness and willingness to perform his part of the contract; having pleaded that the survey was completed on 23.06.2005, the plaintiff had failed to establish that he had taken steps to have the sale deed executed within the stipulated period i.e., on 22.07.2005. They would also argue that Exhibit A6, alleged survey report, was subsequently created for the purpose of instituting the present suit; in the absence of any communication regarding the survey, there was no consensus ad idem between the parties as to the actual extent of the properties available for conveyance pursuant to such a survey; the plaintiff had neither pleaded nor proved that the original owners of the properties were put on notice regarding the survey or that the survey was conducted in their presence or in the presence of their representatives; the results of the alleged survey were never communicated to or accepted by the original owners of the land; it was only the unilateral assertion of the plaintiff that the available extent of land was only 205.15 acres; it is evident that the plaintiff himself was not ready and willing to perform the contract in its entirety; in other words, he was not ready and willing to purchase the

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entire extent of more than 300 acres mentioned in the available 4 villages, but was seeking to purchase only the reduced extent of 205.15 acres on the basis of the alleged survey.

87.2. They would also submit that the evidence of P.W.2 is wholly unreliable. Even in his deposition, he admitted that he was an employee of the plaintiff and was acting at his instance and under the instructions of the plaintiff. It was further contended that if the plaintiff had actually entrusted the survey to P.W.2, he could not have been unaware of the date on which the survey was completed. This is also contrary to the specific pleading in the plaint that the survey was completed on 23.06.2005.

87.3 They would further argue that serious exception must be taken to the issuance of the legal notice only in the first week of July 2006, particularly when, according to the plaintiff, the survey commenced on 05.05.2005 and was completed on 23.06.2005, revealing a shortage of nearly 94 acres and the availability of only 205.15 acres. If it is so, the very same facts ought to have been specifically mentioned in the legal notice marked as Exhibit A7. They would also contend that the plaint is absolutely silent about the alleged shortage of land and the circumstances in which the plaintiff came to know that only a lesser extent was available. This

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unexplained omission exposes the lack of readiness and willingness on the part of the plaintiff.

87.4. The learned Senior Counsel drew our attention to a comparative reading of the schedules of properties mentioned in the agreement of sale, the legal notice marked as Exhibit A7, the survey list marked as Exhibit A6 and the plaint. It was contended that the schedules of properties mentioned in the agreement of sale, the legal notice and the plaint are substantially identical, whereas the schedule of properties in Exhibit A6 does not contain several survey numbers found in the agreement of sale. On the other hand, Exhibit A6 contains different survey numbers which do not form part of the agreement of sale. Therefore, they would submit that Exhibit A6 is not a genuine survey report but merely a self-serving document created for the purpose of the present litigation. The very document relied upon by the plaintiff to contend that the extent of land had been reduced from more than 300 acres to 205.15 acres does not correspond to the properties actually agreed to be sold. This discrepancy assumes considerable significance. Mr. Vikram Veerasamy circulated a chart prepared on comparative analysis of the schedule of properties mentioned in the sale agreement (Ex. A6).

87.5 With regard to the issue as to whether the time is essence of the

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contract, the learned Senior Counsel and the other Counsel would submit that the time was always the essence of the contract and that the parties had specifically stipulated 22.07.2005 as the last date for completion of the sale transaction. It was contended that there could not be any unilateral extension of time at the convenience of the plaintiff and that, upon expiry of the stipulated period, the agreement of sale stood automatically terminated. He drew our attention to the reply notice issued on behalf of the landowners, marked as Exhibit A8, to contend that the landowners had specifically asserted that time was the essence of the contract.

87.6 They had relied upon the following precedents in support of their submissions:

"1. N.P. Thirugnanam Vs. Dr. R. Jagan Mohan Rao

(1995) 5 SCC 115.

2. Pushparani S. Sundaram and Ors. Vs. Pauline Manomani James and Ors. (2002) 9 SCC 582.

3. Zarina Siddiqui Vs. A. Ramalingam Alias R. Amarnathan (2015) 1 SCC 705.

4. Surinder Kaur Vs. Bahadur Singh

(2019) 8 SCC 575.

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5. C.S. Vekatesh Vs. A.S.C. Murthy (2020) 3 SCC 280.

6. U.N. Krishnamurthy (Since Deceased) Through Legal Representatives Vs. A.M. Krishnamurthy

(2023) 11 SCC 775.

7. Selvaaraaj Vs. Pappathi (2025) 2 CTC 79.

8. Vasanthi Vs. Venugopal (On S. 53A TP Act and S. 16, SPR Act (2017) 4 SCC 723."

88. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

88.1.*Per contra*, the learned Senior Counsel, Mr. V. Ragavachari appearing for the plaintiff would submit that the landowners had admitted the execution of the agreement of sale and the receipt of the first instalment of Rs.10,00,001/- on 21.04.2005 and the second instalment of Rs.20,00,000/- on 05.05.2005. However, they had never insisted that time was the essence of the contract, as is evident from a reading of the reply notice issued on their behalf, marked as Exhibit A8.

88.2. He would further contend that the landowners themselves were not certain about the actual availability of the total extent of more than 300 acres in the four revenue villages and the additional extent of 20 cents in

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Palarapatty village and that is why the agreement contained a Clause providing that the actual extent would be ascertained upon measurement and that the sale deed would be executed in respect of the extent found available. Therefore, it was never the case of the parties that the plaintiff had agreed to purchase the extent of 300 acres.

88.3. According to him, what was agreed under Exhibits A1 and A2 was that the plaintiff would purchase the available extent of land in the specified survey numbers, which were collectively stated to comprise more than 300 acres, at the rate of Rs.16,250/- per acre. The manner of payment was also specifically stipulated. The first instalment of Rs.10,00,001/- was paid on the date of execution of the agreement of sale, namely, 21.04.2005. The second instalment was payable on 05.05.2005, while the last and final instalment was to be paid upon completion of the survey and identification of the actual extent of land available for sale.

88.4.This, according to the Learned Senior counsel demonstrates that even the land owners were not certain about the availability of the entire extent of more than 300 acres and that the final instalment was deliberately left to be determined after completion of the survey and therefore, there is no lack of consensus- ad-idem.

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88.5. According to him and the parties had a clear understanding that the extent of lands that are available will be sold for a specified rate. He would further contend that there was no dispute on the part of the landowners that the plaintiff was entitled to have the actual extent determined through a survey. The agreement itself contemplated such an exercise.

88.6. He would also submit that the time was never treated as the essence of the contract. The absence of any forfeiture Clause or a specific Clause providing for automatic cancellation of the agreement of sale under Exhibits A1 and A2 would demonstrate the same. The relevant Clause in the agreement contemplated that in the event of default the defaulting party would be liable for the loss and expenses incurred by the other party and that appropriate legal proceedings would have to be initiated before a Court of law. This would indicate that the agreement contemplated enforcement of the contract and not its automatic termination.

88.7. He would further submit that more than 95% of the sale consideration had been paid within a fortnight from the date of execution of the agreement of sale. If time had been treated as the essence of the contract, the plaintiff would have proceeded to pay the balance sale consideration and

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complete the registration.

88.8. The reason for entering into the agreement and making the substantial payment at the initial stage was that the actual extent of land available for sale was required to be ascertained. By referring to Exhibit A8, he would submit that the landowners had continued to entertain the plaintiff and had participated in several meetings and discussions even beyond the stipulated date of 22.07.2005. This conduct would demonstrate that they had repeatedly extended the time for completion of the sale transaction. Therefore, time was never treated as the essence of the contract.

88.9. He would also submit that readiness and willingness can be gathered from the conduct of the plaintiff and that Section 16(C) of the Specific Relief Act does not prescribe any particular form in which readiness and willingness must be expressed. By arranging for the survey, obtaining the report marked as Exhibit A6 and intimating the landowners through the legal notice that he would be available before the Sub-Registrar on 10.07.2006, the plaintiff had sufficiently demonstrated his readiness, willingness and capacity to perform his part of the contract.

88.10. He argued that the availability or non-availability of physical

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possession, or the absence of independent proof of possession, was not a condition precedent for the plaintiff's entitlement to seek a decree for specific performance. He would submit that D.W.1 had not specifically denied the handing over of possession and that the survey could not have been conducted without obtaining physical access to the properties.

88.11. The learned Senior Counsel would further submit that the defendants 5 to 7 were not bona fide purchasers of the property and they ought to have been aware of the existence of the earlier agreement of sale. It was further submitted that the discretion under Section 20 of the Specific Relief Act ought to be exercised in favour of the agreement holder and that the mere passage of time could not be held against the plaintiff. He accordingly prays for dismissal of this appeal suit.

88.12. The Learned Senior Counsel relied on the following judgments in support of his arguments:-

"1. Ardeshir Mama Vs. Flora Sassoon

(1928) SCC Online PC 43

2. R.C. Chandiok and another Vs. Chuni Lal Sabharwal and others (1970) 3 SCC 140

3. Chand Rani (Smt) (Dead) by Lrs Vs. Kamal Rani (Smt)(Dead)

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by Lrs. (1993) 1 SCC 519

4. K.M.Madhavakrishnan Vs. S.R.Swami and another

(1995) 1 LW 716 = AIR 1995 Mad 318

5. Sukhbir Singh and others Vs. Brij Pal Singh and others (1997) 2 SCC 200

6. Pandurang Ganpat Tanawade Vs. Ganpat Bhairu Kadam and others (1996) 10 SCC 51

7. Syed Dastagir Vs. T.R.Gopalakrishnan Setty

(1999) 6 SCC 337

8. Motilal Jain Vs. Ramdasi Devi (Smt) and others

(2000) 6 SCC 420

9. Surjit Kaur Vs. Naurata Singh and another

(2000) 7 SCC 379

10. P.D'souza Vs. Shondrilo Naidu (2004) 6 SCC 649

11. Janki Vashdeo Bhojawani and another Vs. IndusInd Bank Ltd and others (2005) 2 SCC 217

12. Surinder Singh Vs. Kapo0or Singh (dead) through Lrs and others (2005) 5 SCC 142

13. Aniglase Yohannan Vs. Ramlatha and others

(2005) 7 SCC 534

14. Azhar Sultana Vs. B.Rajamani and others

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(2009) 17 SCC 27

15. Man Kaur (Dead) by Lrs. Vs. Hartar Singh Sangha (2010) 10 SCC 512

16. Saradamani Kandappan Vs. S.Rajalakshmi and others (2011) 12 SCC 18

17. Narinderjit Singh Vs. North Star Estaet Promoters Limited (2012) 5 SCC 712

18. Lal Chand Vs. Tek Chand 2012 SCC OnLine P&H 24572

19. Rathnavathi and another Vs. Kavita Ganashamdas

(2015) 5 SCC 223

20. A.Kanthamani Vs. Nasreen Ahmed (2017) 4 SCC 654

21. R.Lakshmikantham Vs. Devaraji (2019) 8 SCC 62

22. Madhukar Nivrutti Jagtap and others Vs. pramilabai Chandulal Parandekar (Dead) through Lrs. And others (2020) 15 SCC 731

23. A.R.Madana Gopal and others Vs. Ramnath Publications Private Limited and another (2021) 11 SCC 200

24. K.P.Shanmugam Vs. Mylathal (S.A.No.54 of 2020, decided on 30.06.2022)

25. P.Daivasigamani Vs. S.Sambandan (2022) 14 SCC 793

26. Basavaraj Vs. Padmavathi and another (Civil Appeal Nos.8962-8963 of 2022, decided on 05.01.2023)

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27. R.Hemalatha Vs. Kashthuri (2023) 10 SCC 725

28. Rajesh Kumar Vs. Anand Kumar and others

(2024) 13 SCC 80 = 2024 INSC 444

29. Parswanath Saha Vs. Bandhana Modak (Das) and another 2024 INSC 1022

30. Vijay Prabhu Vs. S.T.Lajapathie and others

2025 INSC 52 (order in SLP (C) No.25246 of 2023)

31. Russi Fisheries P.Ltd and another Vs. Bhavna Seth and others

2026 INSC 339

32. A.Shahul Hameed Vs. N.Malligarjuna and others

2026 INSC 573"

Accordingly, he prayed for the dismissal of the appeal suit.

89. Analysis, Reasoning and Findings:

89.1.We shall take up the second issue for consideration first, namely, ***whether time was the essence of the contract***.

89.2.Admittedly, the agreement of sale was executed on 21.04.2005. The agreement stipulates 22.07.2005 as the date for completion of the sale

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transaction. At the time of execution of the agreement, an advance amount of Rs.10,00,001/- was paid. Subsequently, the second instalment of Rs.20,00,000/- was paid in cash to the fourth defendant on 05.05.2005, and an acknowledgment of the said payment was also made in the agreement itself (Ex.A.3).

89.3. While the Tamil version of the agreement stipulates that upon receipt of the second instalment, the representative of the landowners, namely, the fourth defendant, shall hand over the documents to the agreement holder, the English version provides for the handing over of copies of the documents relating to the properties. It is not the case of the plaintiff that the original title deeds were handed over to him. This is also evident from Exhibits A4 and A5, which are the encumbrance certificates, and the other revenue records relied upon by the plaintiff. Therefore, it is evident that the parties had contemplated the handing over of copies of the documents and not the original title deeds.

89.4. The sale agreement further stipulates that, thereafter, the agreement holder shall arrange for the survey of the lands at his own cost. Upon completion of the survey and measurement, the agreement holder would be in a position to ascertain the actual extent of the lands available

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and accordingly prepare the necessary sale deeds for execution by the landowners on 22.07.2005.

89.5. The plaintiff's case is that the survey was completed on 23.06.2005. However, only after a period of more than one year, he had issued a legal notice marked as Exhibit A7 in July 2006. The reply notice marked as Exhibit A8 along with the oral testimony indicates that the landowners had not treated 22.07.2005 as the stipulated date for completion of the sale transaction. Ex. A.8, issued in July 2006, explicitly mentioned the cut-off date and asserted that the agreement stood terminated upon the expiry of the said date. Significantly, the reply notice recordsthe repeated requests made by the agreement holder seeking extension of time for registration.

89.6. According to the reply notice (Ex. A.8), the plaintiff had repeatedly approached the landowners and requested them to extend the time for registration. It is further stated that the plaintiff had visited Chennai and met the landowners at different places and on different dates, seeking extension of time for completing the registration.

89.7. The reply notice also refers to the visits made by the plaintiff or

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his assistant to the office of the landowners on several occasions, requesting extension of time for registration. It is further stated therein that the plaintiff had requested the landowners to come to Tamil Nadu with the original documents and had proposed to complete the registration either at Madurai or at Chennai. The reply notice also refers to a meeting at Kumili, where, after discussions, the plaintiff requested the landowners to fix another date for registration. Notably, the reply notice omits the precise dateson which all these meetings took place and the requests by the Plaintiff was entertained. It does not state that all these meetings and requests were made and entertained within the cut-off date. Therefore it has to be only inferred that the land owner had entertained the agreement holders requests for extension of time, without treating 'time as the essence of the contract'

89.8. A reading of the reply notice, Exhibit A8, together with the oral testimony of D.W.1, therefore, becomes relevant as the subsequent conduct of the land owner, in determining whether the parties had treated the date mentioned in the agreement as an inflexible deadline or whether extensions were contemplated and sought by the agreement holder and agreed by the land owner.

89.9. The Honorable Supreme Court of India in the judgment

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delivered ***N. Srinivasa Vs. Kuttakaran Machine Tools Limited reported (2009) 5 SCC 182*** has held that in a contract for sale of immovable property, normally it is presumed that time is not the essence of the contract and even if there is an express stipulation to that effect, the said presumption can be rebutted.

89.10. It is a settled law that the burden to prove that time is the essence of the contract is always upon the person alleging it. In cases where a plea is set up by a party that time is the essence of the contract, it is the duty of the court to examine the real intention looking to the surrounding facts and circumstances of the said case. It cannot be considered exclusively with reference to the contract alone or with reference to a particular term or condition of the contract which is breached, but by a cumulative verification of terms of the contract along with the intention of the parties and as well the manner in which the parties had approached the Contract as exhibited from their conduct, subsequent to the entering of the sale agreement, till the filing of the suit.

89.11. In the facts and circumstances of the present case, the subsequent conduct of the parties assumes significance, in determining whether time was treated as the essence of contract of sale agreement. If the

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landowners had strictly treated the stipulated date, namely, 22.07.2005, as the cut-off date for completion of the sale transaction, they would not have agreed to meet the agreement holder on several occasions, after the expiry of the stipulated period. They could have simply issued a notice stating that, since time was the essence of the contract and the stipulated period had already expired, they were not inclined to entertain any further request for extension. Admittedly there is no single communication from the land owner repudiating the Contract on the premise that time had lapsed.

89.12. The fact that the landowners or their representatives met the plaintiff on several occasions, even after the stipulated date, indicates that they had not treated time as an essence of the contract. It is fortified with the lack of any communication in writing brought on record by the land owner indicating the termination of the agreement.

89.13. We therefore hold that though time was stipulated in the sale agreement, for completion of the sale, the landowner by his subsequent conduct had not treated time as the essence of the contract.

89.14. Though time is held as not the essence of the subject contract, it is necessary that there should be performance of the contract within a

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reasonable time and this question will assume significance while testing the readiness and willingness of the agreement holder, in performing his part of the contract. This part is dealt with under the relevant paragraph in the later part of this judgment.

89.15. We uphold the arguments of the agreement holder in this regard. The second issue is thus answered in favour of the original plaintiff.

90. We shall now take up issues 1, 3 and 5 together for consideration, as they are interconnected and arise out of the same set of facts.

91. The execution of the agreement of sale under Exhibits A1 and A2; the payment of the advance amount of Rs.10,00,001/- on the date of execution of the agreement, namely, 21.04.2005; and the payment of the second instalment of Rs.20,00,000/- on 05.05.2005 are not in dispute. The requirement on the part of the agreement holder to conduct a survey at his own cost and ascertain the actual extent of land available for alienation, in accordance with the terms of the agreement of sale, is also not in dispute.

91.1. According to the plaintiff, as stated in paragraph 8 of the plaint,

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the entire survey and measurement of the properties were completed on 23.06.2005. However, no material has been produced before the Court to establish that, immediately after the completion of the survey and measurement on 23.06.2005, the plaintiff communicated the alleged shortage in the extent of the properties to the landowners.

91.2. The plaintiff's earliest written communication, according to him, was the notice dated 08.02.2006, referred to in paragraph 13 of the plaint. However, the said letter dated 08.02.2006 has not been produced before the Court. Though the plaintiff claims that he had repeatedly met the representatives of the landowners and expressed his willingness to have the sale deed executed in respect of the available extent of 205.15 acres, there is no contemporaneous written communication or document to substantiate the same regarding the availability of lesser extent.

91.3. It is the case of the landowners that the plaintiff was never ready and willing to perform his part of the contract and that he was asking one excuse or another during the alleged meetings, repeatedly, seeking only an extension of time.

91.4. Therefore, the question as to whether the survey was actually

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completed on 23.06.2005 and whether any communication was sent by the agreement holder, namely, the plaintiff, to the landowners, calling upon them to execute the sale deed in respect of the allegedly available extent of 205.15 acres is of relevance.

91.5. The first and last (available) written communication between the parties is the legal notice marked as Exhibit A7 and reply to it marked as Ex. A.8. Though A.7 is undated, the evidence indicates that it was received by the fourth defendant on 01.07.2006.

91.6. A perusal of Exhibit A7, namely, the legal notice issued by the plaintiff, is significant. In the said notice, the plaintiff has stated that he had intimated the landowners during the second week of July 2005 about his readiness and willingness to have the sale deed executed. He further claimed that the fourth defendant was acting with an ulterior motive and in collusion with others. The plaintiff asserted that he was always ready and willing to perform his part of the contract as a purchaser, as contemplated under the agreement of sale dated 21.04.2005. He called upon the landowners to be present before the office of the Sub-Registrar to receive the balance sale consideration and execute the sale deed in his favour.

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91.7. However, surprisingly, to the detriment of the agreement holder, the legal notice is absolutely silent about the alleged survey and measurement of the suit properties; the existence of Exhibit A6; the alleged availability of only a lesser extent of 205.15 acres; and the alleged act of taking physical possession of the properties. In fact, the legal notice does not contain any reference to the alleged taking of physical possession or the survey and measurement of the properties. The legal notice calls upon the landowners to execute the sale deed in respect of the total extent of more than 300 acres situated across five villages.

91.8. The schedule of properties described in the legal notice, Exhibit A7, is the same as the schedule of properties mentioned in the agreement of sale under Exhibits A1 and A2.

91.9. If the survey and measurement had already been completed and the results thereof had been reduced into a list, namely, Exhibit A6, the agreement holder would not have issued a legal notice calling upon the landowners to execute the sale deed in respect of the entire extent of more than 300 acres. Instead, he would have specifically referred to the reduced extent of 205.15 acres and expressed his readiness and willingness to pay the proportionate balance sale consideration.

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91.10. It is also pertinent to note that the agreement of sale stipulates 22.07.2005 as the cut-off date for completion of the sale transaction. According to the plaintiff, the survey and measurement of the properties were completed on 23.06.2005. However, there is no satisfactory explanation forthcoming from the agreement holder as to why he took more than a year to issue the legal notice, in the first week of July 2006. This shows the lack of readiness and willingness on his part.

91.11. Apart from his own self-serving testimony and the bald assertion that, despite repeated requests, the landowners were not willing to execute the sale deed, there is no other substantial material or evidence available on record to establish his readiness and willingness, at least from the date of completion of the alleged survey on 23.06.2005.

91.12. The deposition of the fourth defendant examined as D.W1 is of relevance to ascertain the conduct of the respective parties. During his cross-examination, he had stated that he had been working in the first defendant company since 1995 and that the company owned several properties in and around the concerned area, to an extent of approximately 514 acres. He further stated that, apart from the property situated in one of the villages,no other property in the villages mentioned in the agreement of sale had ever

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been sold.

91.13. The first defendant company owned 360 acres of land and these properties are owned under registered sale deeds and not by way of power of attorney sale. This statement was obtained by the plaintiff during his cross-examination of D.W1. When the plaintiff claims to have entered into an agreement of sale with the intention of purchasing more than 300 acres of land, it is surprising that no material has been placed on record to establish that the plaintiff had undertaken any due diligence with regard to the title and ownership of the properties and the plaintiff called upon D.W2 to produce the relevant title deeds and indicate whether they were ready and willing to produce such documents. This should have been done first and the foremost verification undertaken by the plaintiff even before entering into the sale agreement dated 21.04.2005 or atleast before paying a substantial amount of Rs.30,00,000 towards the sale consideration.

91.14. D.W1 had admitted that for the purpose of facilitating the transaction, the plaintiff was permitted to enter into possession of the property. Permitting the agreement holder to enter into the property for a limited period of carrying out a survey and measurement is entirely distinct from delivering possession of the property pursuant to the conclusion of the

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sale.

91.15. There is no material to substantiate that the plaintiff had brought to the notice of the landowners that only an extent of 205.15 acres was available for alienation and that he was ready and willing to pay the balance sale consideration, proportionate to the said available extent.

91.16. The evidence of P.W.1, in his cross-examination, is relevant in this regard. His testimony appears to be inconsistent with the specific pleadings in the plaint regarding the completion of the survey. The plaintiff himself admitted that the survey had to be carried out across five different villages and that considerable time was required for completing the same. His oral testimony is also silent about the date on which the survey was completed. He further stated that, upon preparation of the list marked as Exhibit A6, he called upon the landowners to complete the sale transaction. However, he admitted that, on 05.05.2005, he had received photocopies of the documents relating to the properties. He also stated that he could not complete the entire survey before 22.07.2005 and that he did not remember the exact date on which the survey was completed. He merely expressed his belief that the list marked as Exhibit A6 was correct. He also admitted that Exhibit A6 did not contain the survey details or the extent of land available

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in each survey number.

91.17. It is further relevant to note that, in the legal notice (Ex. A7), the plaintiff had not stated that he had surveyed the properties. He had merely referred to the properties as comprising a total extent of more than 300 acres across five villages. He had not mentioned that only an extent of 205.15 acres was available and nor had he referred to the alleged shortage of land or specified the proportionate balance sale consideration payable in respect of the reduced extent.

91.18. The plaintiff also admitted that he had not sent any written communication to the landowners regarding the alleged shortage in the extent of the properties and also the fact that the agreement was entered into after going through the parent document. He also claimed that Exhibit A5 was not given to him upon payment of Rs.20,00,000/-. In his oral testimony, he claimed that his written demand seeking performance of the contract was made only in July 2006. This raises serious doubt on the plaintiff's assertion that he had earlier issued a letter dated 08.02.2006. The plaintiff was also unable to clearly state the date of commencement or the date of completion of the survey or even if there was a survey at all.

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91.19. P.W.2, who is a signatory to Exhibits A1 and A2 and informed the availability of the property for sale to the plaintiff, claimed that the survey was carried out under his supervision on the basis of the field measurement books and other particulars obtained from the Village Administrative Officers. He further stated that the survey took approximately 24 days to complete and that he and his team had encountered serious difficulties and disturbances during the exercise.

91.20. It is not mentioned anywhere in Exhibit A6 that any of the lands had actually been subjected to a survey or that any remarks had been made regarding the survey of those lands. He had merely subscribed his signature on the last page of the document. There are also discrepancies between the survey numbers mentioned in the agreement of sale and those found in Exhibit A6. Some of the survey numbers mentioned in the agreement of sale under Exhibits A1 and A2 are not reflected in Exhibit A6.

91.21. The villages of Sankarapuramand Palarapatty are not mentioned in the said document. Further, Exhibit A6 does not contain any date. It is also seen that the document contains certain lands which do not form part of the schedule of properties mentioned in the sale agreement. How this survey list contains lands which do not form part of the sale

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agreement is not explained by the plaintiff.

91.22. Thus Exhibit A6 contains several pages, with the signature of P.W.2 appearing only on the last page. The date of the survey, the manner in which the survey was conducted, the method adopted for identifying the extent and survey numbers, the persons who participated in the survey and the persons who witnessed the exercise are not disclosed in Exhibit A6. The document does not contain any comparative statement with reference to the survey numbers mentioned in the agreement of sale. It does not specify which lands mentioned in the agreement of sale were not available or which lands, though not forming part of the agreement, were found available on the ground. In the absence of these essential particulars, the document cannot be relied upon as a survey report.

92. Our discussions substantially demonstrate that Exhibit A6 is not a survey report leave alone the same being genuine. It is subsequently created for the purpose of the suit.

93. Thus, it is evident that the plaintiff has not discharged his

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obligation of completing the survey and informing the landowners of the actual extent of land available for sale. There was no communication from the plaintiff to the original owners of the land regarding the alleged survey and measurement or the alleged availability of only a lesser extent of land. In the absence of any such communication, we are left with no option, but to conclude that the plaintiff failed to establish his continuous readiness and willingness to perform his part of the contract.

94.Though several number of judgments were relied by either side, we have not individually dealt with each one of those judgments, as they predominantly deal with the broader propositions. It will be useful to refer the following limited judgments of the Honorable Supreme Court of India to appreciate issues that are under discussion.

94.1.In ***N.Thirugnanam (Dead) by legal heirs Vs. R.Jagan Mohan Rao and others***, reported in ***(1995) 5 SCC 115***, it is held as follows:

> *"5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law*

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and not arbitrarily as adumbrated under s.20 of the Specific Relief Act 1963 (for short, 'the Act'). Under s.20, the court is not bound to grant the relief just because there was valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be 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 and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been

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willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of contract."

94.2. In ***Zarina Siddiqui Vs. A Ramalingam @ R.Amarnathan*** reported in ***(2015) 1 SCC 705***, it is held as follows:

"25. It is well settled that remedy for specific performance is an equitable remedy. The Court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that Court's discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles."

94.3. In ***Surinder Kaur (Dead) through legal representative***

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Jasinderjit Singh (Dead) through legal representatives Vs. Bahadur Singh (Dead) through legal representatives reported in ***(2019) 8 SCC 575***, it is held as follows:

> *"**6.** The aforesaid provisions have to be read along with Section 16(c) of the Specific Relief Act, 1963 which clearly lays down that the specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or was always ready and willing to perform the essential terms of the contract which were to be performed by him.*
>
> ***7.** We shall also have to take into consideration that the specific performance of contract of an immovable property is a discretionary relief in terms of Section 20 of the Specific Relief Act as it stood at the time of filing of the suit.*
>
> *8.**8.** Section 20 of the Specific Relief Act lays down that the jurisdiction to decree a suit for specific performance is a discretionary jurisdiction and the court is not bound to grant such relief merely because it is lawful."*

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94.4. In ***C.S. Venkatesh v. A.S.C. Murthy***, reported in ***(2020) 3 SCC 280,*** it is held as follows:

> *"**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*

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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."

94.5. In ***U.N. Krishnamurthy v. A.M. Krishnamurthy***, reported in ***(2023) 11 SCC 775,***it is held as follows:

*"**32.** In a suit for specific performance of a contract, the Court is required to pose unto itself the following questions, namely:*

***32.1.** Whether there is a valid agreement of sale binding on both the vendor and the vendee.*

***32.2.** Whether the plaintiff has all along been and still is ready and willing to perform his part of the contract as envisaged under Section 16(c) of the Specific Relief Act, 1963.*

***33.** There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of specific performance. In Acharya Swami Ganesh Dassji v.*

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Sita Ram Thapar [Acharya Swami Ganesh Dassji v. Sita Ram Thapar, (1996) 4 SCC 526] cited by Mr Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff. The same view was taken by this Court in Kalawati v. Rakesh Kumar [Kalawati v. Rakesh Kumar,

34. *Even in a first appeal, the first appellate court is duty-bound to examine whether there was continuous readiness and willingness on the part of the plaintiff to perform the contract. This proposition finds support from Balraj Taneja v. Sunil Madan [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] and H.P. Pyarejan v. Dasappa [H.P. Pyarejan v. Dasappa, (2006) 2 SCC 496] where this Court approved the views taken by the Privy Council in Ardeshir Mama v. Flora Sassoon [Ardeshir Mama v. Flora Sassoon.*

35. *In Malluru Mallappa v. Kuruvathappa [Malluru Mallappa v. Kuruvathappa, (2020) 4 SCC 313 : (2020) 2 SCC (Civ) 686] , this Court observed and held :*

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"13. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a rehearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions (see : Santosh Hazari v. Purushottam Tiwari [Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179] , Madhukar v. Sangram [Madhukar v. Sangram, (2001) 4 SCC 756] , B.M. Narayana Gowda v. Shanthamma [B.M. Narayana Gowda v. Shanthamma, (2011) 15 SCC 476 : (2014) 2 SCC (Civ) 619] , H.K.N. Swami v. Irshad Basith [H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 243] and Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar

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14. A first appeal under Section 96CPC is entirely different from a second appeal under Section 100. Section 100 expressly bars second appeal unless a question of law is involved in a case and the question of law so involved is substantial in nature.

***

18. It is clear from the above provisions and the decisions of this Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order 41 Rule 31 and non-observance of this requirement leads to infirmity in the judgment of the first appellate court. No doubt, when the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court. Expression of a general agreement with the reasons given by the trial court would ordinarily suffice.

36. *In H.P. Pyarejan v. Dasappa [H.P. Pyarejan v. Dasappa, (2006) 2 SCC 496], Arijit Pasayat, J. speaking for this Court reversed the judgment of the High Court holding that the High Court did not*

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provide reasoning for its conclusion that the plaintiff was ready and willing to perform his part of contract. To arrive at such conclusion the Court had relied upon Cort v. Ambergate, Nottingham, Boston & Eastern Junction Rly. Co. [Cort v. Ambergate, Nottingham, Boston & Eastern Junction Rly. Co., where Lord Campbell observed that in common sense, the meaning of such an averment of readiness and willingness must be that the non-completion of contract was not the fault of the plaintiff."

95. The conduct of the plaintiff is highly doubtful and does not appear to be that of a genuine purchaser interested in acquiring a property measuring more than 300 acres. Having paid a substantial sale consideration of Rs.10,00,001/- on 21.04.2005, followed by another sum of Rs.20,00,000/- on 05.05.2005, and having claimed that the entire survey and measurement were completed on 23.06.2005, the plaintiff issued the legal notice only in the first week of July 2006. Even in the said legal notice, he has not made any reference to the alleged handing over of physical possession of the properties, the survey and measurement allegedly conducted through P.W.2, the preparation of Exhibit A6, or the alleged availability of only 205.15

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acres as against the total extent of more than 300 acres agreed to be sold. Further, he had filed the suit only on 24.11.2006 after the execution of the sale deeds in favour of the defendants 5 to 7 by the original owner of the properties, namely, first defendant. He does not even say which of the scheduled properties belong to which of the Companies mentioned as the first defendant.

96. All these circumstances categorically demonstrate that the plaintiff has not approached the Court with clean hands and has failed to substantiate his assertion that he was always ready and willing to perform his part of the contract.

97. The Trial Judge completely overlooked these critical factors and misdirected himself in accepting the testimony of P.W.1 and P.W.2 as substantially true. He had not considered the implication of the material documents brought on record.

98. It is further necessary to note that defendants 5 to 7 have not only

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produced their title documents but have also produced the pattas and revenue records standing in their respective names in respect of the suit schedule properties. The availability of revenue records in favour of defendants 5 to 7 in respect of a major portion of the suit schedule properties coupled with the payment of taxes by them, substantially establishes their claim of possession and enjoyment. The plaintiff's claim of possession therefore appears to be without any merit. Except for the self-serving oral testimony of the plaintiff and his witness, P.W.2, there is no other material to establish that possession had actually been handed over to the plaintiff.

99. The Learned Judged erred in holding that the possession should have been handed over to the Plaintiff. The mere statements in Exhibits A1 and A2 that, upon payment of the second instalment of Rs.20,00,000/- on 05.05.2005, it would be the responsibility of the agreement holder to arrange for a survey of the lands at his own cost and take possession thereof after completing the survey and measurement does not establish that vacant possession of the properties had actually been handed over to the plaintiff. There must be some further material, apart from the recital in the agreement of sale, to substantiate the alleged handing over of possession. There is no

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material on record to establish that the plaintiff had not only taken possession of the properties but had also made improvements therein by planting trees. We accordingly answer the issues 1,3 & 5 against the original plaintiff.

100. One another point canvassed on the side of the appellants is that the plaintiff cannot compel the landowners to agree to a part performance of the contract. In other words, they claim that the landowners cannot be compelled to execute a sale deed in respect of 205.15 acres alone, when the agreement of sale relates to more than 300 acres of land situated across five villages, including an additional extent of 20 cents in Palarapatty village. We are able to see that, though the schedule of property in the sale agreement denotes 300 plus acres of land, the terms of the agreement specifically provide that upon completion of survey, only for the identified lands the sale consideration shall be finally determined and the last instalment of the payments shall be made. In fact, the quantum of the last payment is left undetermined in the sale agreement only for the said purpose. We are therefore unable to accept this contention canvassed by the landowner that the suit is bad for seeking part performance of the contract. Section 12 of the

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Specific Relief Act or the exceptions carved there under are not attracted to the facts and circumstances of the present case.

101. With regard to the 4th issue as to whether the defendants 5 to 7 are bona fide purchase of the value of the property without the knowledge of the sale agreement, the trial Court had come to a conclusion that the defendants 1 to 4 are not the bona fide sellers of the property, because there had been an exchange of legal notices between defendants 1 to 4 and the plaintiff, at the time of execution of the sale deeds in favour of defendants 4 to 7. In our opinion, the trial Court, had misconstrued the principles governing the determination of bona fide purchase and whether a purchaser of immovable property had notice of an earlier agreement of sale. It has not been established to the satisfaction of this Court that defendants 5 to 7 had any knowledge of the agreement of sale that existed between the plaintiff and defendants 1 to 4.

102. It is admitted by P.W.1 during his cross-examination that the agreement of sale was not registered. It is also admitted that no paper publication or public notice was issued regarding the existence of the agreement of sale. When defendants 5 to 7 have categorically stated that they were unaware of the existence of any earlier agreement of sale, and

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when their sale deeds are specific and supported by the relevant title documents, including particulars of the parent documents, registration numbers and dates under which the properties had originally been purchased by the respective companies, their claim requires consideration.

102.1. The subsequent purchasers have also obtained mutation of the revenue records in their respective names. In the absence of any other contra material, we are unable to attribute knowledge of the earlier agreement of sale to defendants 5 to 7.

102.2. It is not the case of the plaintiff that the defendants 5 to 7 were not purchasers for value. His contention is only that the properties were sold for a consideration lower than the amount agreed to be paid by him. Merely because the properties were subsequently sold for a lesser consideration of Rs.14,000, it cannot be concluded that the subsequent purchasers were not bona fide purchasers for value.

102.3. The materials on record demonstrate that defendants 5 to 7 are bona fide purchasers for value and that they have not been shown to have had knowledge of the existence of the earlier agreement of sale.

103. We, therefore, set aside the finding of the learned trial Judge that

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defendants 5 to 7 were not bona fide purchasers for value and hold that they are bona fide purchasers for value without notice of the earlier agreement.

104. Accordingly this Appeal Suit is allowed. The judgment and decree passed by the Learned Additional District Judge (Fast Track Court), Periyakulam dated 29th April 2008 in Original Suit No.52 of 2006 is set aside and it stands dismissed. No other alternative or additional relief is sought by the plaintiff and because of the embargo under Section 22 (2) of the Specific Relief Act, 1963, no other claim can be entertained by this Court. No costs.

(M.D.I.,J.) (N.D.K.,J.)
13-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MM

To

The Section Officer
VR Section
Madurai Bench of Madras High Court
Madurai

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M.DHANDAPANI, J.
AND
N.DILIP KUMAR, J.

A.S. (MD) NO.265 OF 2008

13.11.2026

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