

Court No. - 37

Case :- SECOND APPEAL No. - 319 of 2025

Appellant :- Shamsheer Singh Died And 7 Others

Respondent :- Sukhbeer Singh And 2 Others

Counsel for Appellant :- Ajay Singh Ruhela, Pramod Kumar Pandey

Counsel for Respondent :- Chetan Chatterjee

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. Pramod Kumar Pandey, learned counsel for the defendants/ appellants and Mr. Chetan Chatterjee for the plaintiff- respondent no.1.

2. Brief facts of the case are that defendant- Shamsheer was recorded tenure holder of khasra No. 192 area 0.749 hectare situated in Village- Tabar Ahatmal, Pargana- Sarsawa, Tehsil- Nakud, District Saharanpur. A registered agreement to sale dated 13.6.1994 was alleged to be executed between defendant- Shamsheer Singh and plaintiff- Sukhbeer Singh in respect to khasra No. 192 area 0.749 hectare for execution of sale deed for Rs. 100000/- in which 55000/- was alleged to be paid as earnest money and Rs. 45000/- was to be paid at the time of execution of sale deed. Plaintiff has issued notice dated 2.6.1995 and 25.6.1995 to defendants fixing date for execution of sale deed but defendants failed to appear before the Sub-Registrar. Defendant No.1 executed sale deed on 24.6.1995 in favour of defendant Nos. 2 to 4 in respect to khasra No. 192. Hence an original suit No. 408 of 1995 was filed by plaintiff/ Sukhbeer Singh impleading defendant nos. 1 to 6 for decree of specific performance and permanent injunction. The Trial Court vide judgement and decree dated 15.12.2022 dismissed the plaintiff's suit. A civil appeal No. 95 of 2022 filed by plaintiff was allowed by Additional District Judge, Saharanpur setting aside the judgement and decree of Trial Court dated 15.12.2022 and decreed the plaintiff suit. Hence this second appeal on behalf of defendants for following relief :-

"The relief sought by the Appellant through this Second Appeal that this Hon'ble Court may graciously be please to allow the appeal with cost and Set-a-side the Judgement and order dated 10.2.2025 and decree dated 17.02.2025 passed by Additional District Judge, Court No.9 Saharanpur in Civil Appeal No.95 of 2022 (CNR No.

UPSP0101755822022), (Sukhbeer Singh Vs. others), and otherwise Shamsher Singh appellants shall suffer irreparable loss.

And to pass such further relief which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case in favour of the appellant."

3. Following substantial question of law are framed in memo of instant second appeal:-

1. Whether, the impugned judgment and order dated 10.02.2025 and decree dated 17.02.2025 of the Lower appellate Court are patently illegal and bad in the eye of law hence the same is liable to be set aside by this Hon'ble Court in the interest of justice ?

2. Whether, thereafter, the evidence was led by the parties on the issues framed by the trial court, the suit of the the plaintiff/respondent was dismissed by its judgment and order dated 15.12.2022 and passed the decree dated 16.12.2022 by the lower court and as such the finding recorded by the lower court is just, legal, and sustainable in the eye of law.

3. Whether, feeling aggrieved by the judgment dated 15.12.2022 and the decree dated 16.12.2022, the Plaintiff/respondent challenged the same in the court of the Additional District Judge Court No.9 Saharanpur. Thereafter the Learned Lower Appellate Court without considering finding recorded by the Lower Court, illegally, and wrongly passed the judgment and order on 10.02.2025 and decree on 17.02.2025 against the defendant/appellants and set aside the order of the lower court and allow the appeal of the plaintiff which is illegal, arbitrary and cannot legally sustained?

4. Whether, the Lower appellate court, while passing the impugned judgment and decree, failed to appreciate the correct facts and circumstances of the case and the legal questions involved in the case hence the impugned judgment and decree passed by the Lower appellate court is illegal, arbitrary and unsustainable under law?

5. Whether, the Lower appellate Court passed the impugned judgment and decree on the basis of surmises and conjectures ignoring the material available on record hence the same cannot be sustained under law?

6. Whether, the learned Lower appellate court without considering the finding recorded by the lower court illegally and wrongly allow the appeal of the plaintiff on 10.02.2025 and set aside the order dated 15.12.2022 of the lower court and directed the appellants/defendants to execute the registered sale deed of the Arazi/Khasra No.192 Rakba 0.749 hectare, in favour of the Plaintiff/respondent after received the rest amounts Rs.45,000/-within a period of two months from the date of order and prepared the decree according to order and send the one copy of the aforesaid order to the lower court, thereafter the decree was passed on 17.2.2025 according to the aforesaid judgment and order, which are illegal arbitrary and unsustainable in the eye of law.

7. Whether according to section 68 of Evidence Act, that any evidence is necessary

to be proved by law and it cannot be utilized one witness is alive and give the statement at the time of evidence in the Court , the plaintiff said that two witnesses of Ikrarnama died and neither knowledge the name of the writer and as such the plaintiff is the unsuccessful to prove the Ikrarnama during the trial of the Ist Additional Civil Judge (S.D) Saharanpur, thus on account of the said facts, it is very much clear the defendant/Appellant No.1 was not made any Ikrarnama on 13.4.1994 and neither take any earnest/Bayana money of Rs.55,000/-from the plaintiff, nor made any Ikrarnama for the sale deed to the plaintiff after obtained Rs.1,00000/- of the disputed property and as such the aforesaid finding recorded by the Learned Ist Additional Civil Judge (S.D) Saharanpur in pursuance of the issue No.1 is just, legal and according to evidence on record?

8. Whether the P.W-2 Purshottam said that the Ikrarnama has executed in my presence but I was not made any signature on Ikrarnama and DW-2 Rajbal said that the aforesaid Ikrarnama made for borrow/loan and the aforesaid Ikrarnama was not made for the sale of the aforesaid land and the DW-1 Mohar Singh ignore the signature of the Shamsher Singh of the Ikrarnama because Shamsher is illiterate person and due to said facts, the learned lower court dismiss the suit which is just, proper and sustainable in the eye of law?

9. Whether, the plaintiff was neither issue any notice on 02.06.1995, for sale deed dated 15.06.1995, and 30.06.1995 to the Shamsher Singh and nor publish any notice according to Civil Provision and did not emphasize by the plaintiff in pursuance of the Section 52 of the T.P.Act, is barred and as such the issue No.1,2,3,4,5,6 & 7 have already decided by the Lower Court is just legal and issue No.1,2 & 4 decided against the plaintiff, which is just, proper and sustainable in the eye of law?

10. Whether, the Learned Lower Appellate Court without considering the finding recorded of the lower court and without setting aside the finding recorded of the lower court illegally and wrongly allow the appeal of the plaintiff and set aside the order dated 15.12.2022 of the lower court and directed the appellants/defendants for registered sale deed of the disputed property in favour of the plaintiff within a period of two months from the date of order, which is unjust, illegal and unsustainable in the eye of law?

11. Whether, the judgment and decree passed by the lower appellate court without considering the documentary evidence adduced by the appellants/defendants are maintainable?

12. Whether the lower appellate Court was justified in affirming the perverse finding recorded by the trial court and as such finding recorded by the lower appeallate court is illegal, arbitrary, and against the evidence on record?"

4. Learned counsel for the appellants pressed the substantial question of law as quoted above and submitted that judgement and decree passed by First Appellate Court should be set aside. He submitted that judgement and decree passed by Trial Court should be maintained as there is no illegality or infirmity in the judgement and decree of Trial Court by which the plaintiff's suit for specific performance has been dismissed. He placed the provision contained under Section 68 of the Indian Evidence Act in support of his

argument.

5. On the other hand, learned counsel for the plaintiff- respondent submitted that Trial Court has illegally dismissed the plaintiff's suit. He submitted that Trial Court has failed to consider the registered agreement to sale dated 13.6.1994 executed between plaintiff and defendant in proper manner but First Appellate Court has rightly consider the registered agreement to sale dated 13.6.1994 in holding that agreement to sale was executed on 13.6.1994 between plaintiff and defendants. He further submitted that point of determination was properly framed and decided by First Appellate Court as provided under Order 41 Rule 31 of Civil Procedure Code. He submitted that while deciding the point of determination no.2 finding on readiness and willingness has been recorded that plaintiff was always ready and willing to perform his part of contract in pursuance of agreement to sale dated 13.6.1994. He further submitted that while deciding the point of determination no.3 finding has been recorded that execution of sale deed by defendant during suit proceeding and after execution of agreement to sale dated 13.6.1994 will not give any right, title and interest to vendees. He submitted that in view of the finding of fact recorded by First Appellate Court, there is no scope of interference by this Court under Section 100 of Civil Procedure Code as no substantial question of law are involved in this second appeal.

6. I have considered the arguments advanced by learned counsel for the parties and perused the record.

7. There is no dispute about the fact that suit for specific performance of contract filed by plaintiff- respondent no.1 was dismissed by Trial Court but in appeal the suit was decreed by First Appellate Court.

8. In order to appreciate the controversy involved in the matter, the perusal of the issues framed in the suit will be relevant which are as under:-

"उभयपक्ष के अभिवचनों के आधार पर निम्नलिखित वाद बिन्दु विरचित किये

- 1 क्या प्रतिवादी नं. 1 द्वारा विवादित सम्पत्ति को बेचने का सौदा वादी के साथ अंकन 1,00,000/- रुपये में तय किया गया तथा 55,000/- रुपये बतौर ब्याना प्राप्त करके इकरारनामा मुहायदा बैय दिनांक 13.6.94 को तहरीर व तकमील करके पंजीकृत कराया गया है? यदि हाँ तो उसका प्रभाव ?*
- 2. क्या वादी इकरारनामा मुहायदा बय की शरायत अनुसार अपने पक्ष में बैनामा कराने के लिये तैयार व इच्छूक रहा है? यदि हाँ तो प्रभाव ?*
- 3. क्या प्रतिवादी नं. 1 के द्वारा प्रतिवादी नं0 2 ता 4 के हक में किये गये बैनामा धारा 52 टी.पी. एक्ट से बाधित है ? यदि हाँ तो प्रभाव ?*
- 4. क्या प्रतिवादीगण 5 व 6 के द्वारा दौरान वाद न्यायालय की निषेधाज्ञा आदेश दिनांकी 8.10.97*

का उल्लंघन करके बैनामा कराया गया है और वाद में वर्णित कारणों से शून्य दस्तावेज है? यदि हाँ तो प्रभाव?

5. क्या वादी का वाद अल्पमूल्यांकित है।

6. क्या वादी द्वारा प्रदत्त न्यायशुल्क अपर्याप्त है?

7. क्या वादी किसी अनुतोष को प्राप्त करने का अधिकारी हैं?"

9. The Trial Court vide judgement and decree dated 15.12.2022 decided the issues framed before him and dismissed the suit recording finding of fact that agreement to sale dated 13.6.1994 was not executed between plaintiff and defendant for execution of sale deed in respect to the plot in question. The issues relating to readiness and willingness has been decided against the plaintiff on the ground that issue relating to execution of agreement to sale has been decided against the plaintiff. The issue relating to subsequent execution sale deed by defendant no.1 in favour of defendant nos. 2 to 4 was decided saying that issue was not pressed by the parties.

10. In civil appeal filed by plaintiff, point of determination as provided under Order 41 Rule 31 of C.P.C. were framed which are as under:-

"1- क्या इकरारनामा दिनांकित 13.06.1994 वैध रूप से सुखबीर सिंह व शमशेर सिंह के मध्य निष्पादित किया गया है?

2- क्या अपीलार्थी इकरारनामा दिनांकित 13.06.1994 का अनुपालन करा पाने का विधिक रूप से अधिकारी है?

3- क्या इकरारनामा दिनांकित 13.06.1994 के पश्चात तथा वाद के दौरान निष्पादित विक्रय विलेख से विधिनुसार क्रेतागण को स्वत्व व अधिकार प्राप्त होते हैं?"

11. The First Appellate Court has decided all the three points of determination considering the oral and documentary evidence adduced by the parties.

12. On the point of determination No.1, the finding of fact has been recorded by the First Appellate Court that paper No.7Ka-1 (registered agreement to sale dated 13.6.1994) was properly executed between plaintiff- Sukhbeer Singh and defendant- Shamsher Singh for sale of the property in question and the finding recorded by the Trial Court that there was no agreement to sale for execution of sale deed has been set aside.

13. The First Appellate Court while deciding the point of determination No.2 has again considered the oral and documentary evidences adduced by the parties and recorded finding of fact that plaintiff was always ready and willing to perform the contract compliance of agreement dated 13.6.1994. The First Appellate Court while deciding the point of determination no.2 has properly considered the notices issued by plaintiff to the effect that

defendant will come before the Sub-Registrar for execution of sale deed but defendant has failed to appear before the Sub-Registrar.

14. The First Appellate Court while deciding the point of determination no.3 has taken into consideration the recent judgement of Hon'ble Apex Court reported in **AIR 2024 Supreme Court 3328 Maharaj Singh and Others Vs Karan Singh and Others** in which it has been held that in view of Clause (b) of Section 19, the defendants who are claiming under the sale deed executed after execution of suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona fide purchaser without notice of the original contract.

15. The relevant paragraph No. 23 and 24 of the judgement rendered by Hon'ble Apex Court in **Maharaj Singh (Supra)** will be relevant for perusal which are as under:-

"23. Clause (a) to (c) of Section 19 of the Specific Relief Act read thus:

"19. Relief against parties and persons claiming under them by subsequent title- Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against-

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;"

24. In view of clause (b) of Section 19, the defendants who are claiming under the sale deeds executed after the execution of the suit agreement can be subjected to a decree of specific performance as the suit agreement can be enforced specifically against such defendants unless they are bona fide purchasers without the notice of the original contract. When in a given case, the defendants, who are subsequent purchasers, fail to prove that they entered into the sale deed in good faith and without notice of the suit agreement, in view of Section 19(b), a decree for specific performance can be passed against such defendants. Therefore, in such a case where Section 19(b) is applicable, under the decree of specific performance, the subsequent purchasers can be directed to execute the sale deed along with the original vendor. There is no necessary to pray for the cancellation of the subsequent sale deeds."

16. The First Appellate Court considering each and every aspect of the matter has allowed the civil appeal filed by plaintiff setting aside the judgement and decree of Trial Court dated 15.12.2022 and decreed the plaintiff suit for execution of sale deed in respect to the khasra No. 192M

area 0.749 hectare.

17. The exercise of jurisdiction by the First Appellate Court is according to the ratio of law laid down by Hon'ble Apex Court in **Maharaj Singh (Supra)**. The Hon'ble Apex Court in the case of **Maharaj Singh (Supra)** has maintained the decree of specific performance in spite of the fact that one of the plaintiff has supported the case of the defendant as well as subsequent sale deed was executed by defendant. The exercise of first appellate jurisdiction is in accordance with the provisions of law which requires no interference in exercise of jurisdiction under Section 100 of Civil Procedure Code.

18. The scope of Section 16(c) of the Specific Relief Act, 1963 has been considered in the judgment of Hon'ble Apex Court reported in **2006 (2) JCLR 201 (SC) Aniglase Yohannan Versus Ramlatha & Ors.** Paragraph Nos. 9, 10, 11, 12, 13 & 14 of the judgment of Hon'ble Apex Court in which earlier judgment of Hon'ble Apex Court has been considered will be relevant for perusal which are as under :-

"9. In Ardeshir H. Mama v. Flora Sassoon, AIR 1928 PC 208, the Privy Council observed that where the injured party sued at law for a breach, going to the root of the contract, he thereby elected to treat the contract as at an end himself and as discharged from the obligations. No further performance by him was either contemplated or had to be tendered. In a suit for specific performance on the other hand, he treated and was required by the Court to treat the contract as still subsisting. He had in that suit to allege, and if the fact was traversed, he was required to prove a continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brings with it and leads to the inevitable dismissal of the suit. The observations were cited with approval in Prem Raj v. The D.L.F. Housing and Construction (Private) Ltd. and Anr., AIR (1968) SC 1355.

10. The requirements to be fulfilled for bringing in compliance of the Section 16(c) of the Act have been delineated by this Court in several judgments. Before dealing with the various judgments it is necessary to set out the factual position. The agreement for sale was executed on 15.2.1978 and the period during which the sale was to be completed was indicated to be six months. Undisputedly, immediately after the expiry of the six months period lawyer's notice was given calling upon the present appellant to execute the sale deed. It is also averred in the plaint that the plaintiff met the defendant several times and requested him to execute the sale deed. On finding inaction in his part, the suit was filed in September, 1978. This factual position has been highlighted in the plaint itself. Learned Single Judge after noticing the factual position as reflected in the averments in the plaint came to hold that the plaint contains essential facts which lead to inference to plaintiff's readiness and willingness. Para 3 of the plaint indicates that the plaintiff was always ready to get the sale deed prepared after paying necessary consideration. In para 4 of the plaint reference has been made to the lawyer's notice calling upon the defendant to execute the sale deed. In the said paragraph it has also been described as to how after the lawyer's notice was issued plaintiff met the defendant. In para 5 it is averred that defendant is bound to execute the sale deed on receiving the

balance amount and the plaintiff was entitled to get the document executed by the defendant. It is also not in dispute that the balance amount of the agreed consideration was deposited in Court simultaneously to the filing of the suit. While examining the requirement of [Section 16\(c\)](#) this Court in *Syed Dastagir v. T.R. Gopalakrishna Setty*, [1999] 6 SCC 337 noted as follows:

"So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. The same plea may be stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of "readiness and willingness" has to be in spirit and substance and not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."

11. Again in *Motilal Jain v. Ramdasi Devi (Smt.) and Ors.*, [2000] 6 SCC 420 it was noted as follows:

*The other contention which found favour with the High Court, is that plaint averments do not show that the plaintiff was ready and willing to perform his part of the contract and at any rate there is no evidence on record to prove it. Mr. Choudhary developed that contention placing reliance on the decision in *Varghese case* [1969] 2 SCC 539. In that case, the plaintiff pleaded an oral contract for sale of the suit property. The defendant denied the alleged oral agreement and pleaded a different agreement in regard to which the plaintiff neither amended his plaint nor filed subsequent pleading and it was in that context that this Court pointed out that the pleading in specific performance should conform to Forms 47 and 48 of the First Schedule of the Code of Civil*

Procedure. That view was followed in Abdul Khader case (JT 1989 (3) SC527)

However, a different note was struck by this Court in Chandiok case [1970] 3 SCC 140 : AIR [1971] SC 1238. In that case 'A' agreed to purchase from 'R' a leasehold plot. 'R' was not having lease of the land in his favour from the Government nor was he in possession of the same. 'R', however, received earnest money pursuant to the agreement for sale which provided that the balance of consideration would be paid within a month at the time of the execution of the registered sale deed. Under the agreement 'R' was under obligation to obtain permission and sanction from the Government before the transfer of leasehold plot. 'R' did not take any steps to apply for the sanction from the Government. 'A' filed the suit for specific performance of the contract for sale. One of the contentions of 'R' was that 'A' was not ready and willing to perform his part of the contract. This Court observed that readiness and willingness could not be treated as a straitjacket formula and that had to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. It was held that in the absence of any material to show that 'A' at any stage was not ready and willing to perform his part of the contract or that he did not have the necessary funds for payment when the sale deed would be executed after the sanction was obtained, 'A' was entitled to a decree for specific performance of contract.

That decision was relied upon by a three-Judge Bench of this Court in Syed Dastagir case [1999] 6 SCC 337 wherein it was held that in construing a plea in any pleading, courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. It is pointed out that in India most of the pleas are drafted by counsel and hence they inevitably differ from one to the other; thus, to gather the true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. It was observed :

"Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) of the Specific Relief Act, 1963 does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of 'readiness and willingness' has to be in spirit and substance and not in letter and form."

It is thus clear that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is the subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit for specific performance of contract for sale."

12. Lord Campbell in Cork v. Ambergate etc. and Railway Co., (1851) 117 ER 1229 observed that in common sense the meaning of such an averment of readiness and willingness must be that the non-completion of the contract was not the fault of the plaintiffs, and that they were disposed and able to complete it had it not been

renounced by the defendant.

13. The basic principle behind Section 16(c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

14. Section 16(c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. On considering almost identical fact situation it was held by this Court in Surya Narain Upadhyaya v. Ram Roop Pandey and Ors., AIR (1994) SC 105 that the plaintiff had substantiated his plea."

19. In view of ratio of law laid down by Hon'ble Apex Court on the scope of Section 16(c) of Specific Relief Act, 1963, there is no illegality in the judgment of first appellate Court granting relief of specific performance of contract in the instant matter.

20. The substantial question of law as quoted above and framed in the memorandum of second appeal are not involved in this second appeal, as such, second appeal is liable to be dismissed at admission stage.

21. Considering the entire facts and circumstances of the case, no interference is required against the judgement and decree dated 10.2.2025 passed by Additional District Judge Court No.9 Saharanpur in civil appeal No. 95 of 2022.

22. The second appeal is **dismissed** at admission stage.

Order Date :- 8.8.2025

Vandana Y.