



2026:AHC:191413

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 702 of 2026

Yudhishtir Yadav

.....Appellant(s)

Versus

Abhishek Kumar And Another

.....Respondent(s)

Counsel for Appellant(s)	:	Saurabh Srivastava
Counsel for Respondent(s)	:	Sarthak Verma, Varad Nath

AND

FIRST APPEAL No. - 703 of 2026

Yudhishtir Yadav

.....Appellant(s)

Versus

Abhishek Kumar And Another

.....Respondent(s)

Counsel for Appellant(s)	:	Saurabh Srivastava
Counsel for Respondent(s)	:	Sarthak Verma, Varad Nath

Court No. - 34

Judgement Reserved on 31.08.2026

Judgement Delivered on 14.09.2026

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Saurabh Srivastava, learned counsel for the appellant and Sri Anurag Khanna, learned Senior Advocate assisted by Sri Sarthak Verma and Sri Varad Nath, learned counsel for the respondents in both the above appeals.
2. Both the aforesaid appeals are arising out of a common judgment and order dated 19.05.2026, whereby the Original Suit No. 784 of 2024 filed by the respondents herein for specific performance of an agreement to sell was decreed and against the appellant herein and the Original Suit No.

713 of 2024 filed by the appellant herein for cancellation of the agreement to sell was dismissed. In view of the aforesaid common impugned judgment, both the aforesaid appeals have been heard together and are being decided by this common judgment.

3. Briefly stated facts of the case are that the dispute in the instant case pertains to a two-storey house situated at Gata No. 103/1 Village-Manjurpur, Block and Tehsil- Sikandrabad, District- Bulandshahr. The measurement of the said gata number is East and West 150 ft., North and South 237.88 ft. i.e., total area being 3964.74 square yards i.e., 3315 sq. mtr., 1/2 portion of the same is 1627.50 sq. mtr., wherein the area of 362.80 sq. mtr. is constructed which contains eight rooms in the ground floor, latrine, bathroom, kitchen, staircase and four rooms, in the first floor and the remaining is open land.

4. The said house was offered by the appellant herein to the respondents for sale and after negotiation the price of the said plot /house was settled at Rs. 40,00,000/-. Thereupon, Rs. 10,00,000/- were paid by the respondents by way of a Cheque No. 000114 drawn on HDFC Bank, Dadri, dated 06.03.2024 and thereupon a registered agreement to sell dated 06.03.2024 was executed between the parties, which was duly registered and the time limit for execution of the sale deed was fixed as 05.06.2024.

5. According, in the suit for specific performance i.e., the plaintiffs / respondents herein has alleged that they were always ready and willing to get the sale deed executed and they were having the balance consideration with them to be paid at the time of the execution of the sale deed and were also having the sufficient money to spend the necessary amount with regard to registration of the sale deed as well.

6. The respondents herein had approached the appellant on 04.06.2024. Then, the appellant herein had assured and asked the respondents herein to approach the office of the Sub-Registrar on 05.06.2024 and thereupon, they will execute the sale deed after receiving the balance consideration of Rs. 30,00,000/-. On the aforesaid assurance, the respondents herein reached to the office of the Sub-Registrar, Sikandrabad, District-

Bulandshahr on 05.06.2024. When they tried to contact the appellant herein, the appellant did not receive the phone call and the respondents herein waited since morning till evening in the office of the Sub-Registrar. However, the appellant herein did not turn up before the office of the Sub-Registrar for execution of the sale deed and the respondents have got recorded their presence in the office of the Sub-Registrar. Thereupon, the respondents herein came to know that the appellant herein is trying to sell the said property to someone else at the higher rate. Thereafter, they have tried to conciliate through the respectable members of the village. When the conciliation efforts had failed, the respondents herein had issued a written notice through their counsel on 07.06.2024, which was duly served and again in the said notice the date for execution of the sale deed was fixed as 08.07.2024. After the issuance of the said notice again the respondents approached the office of the Sub-Registrar, Sikandrabad District, Bulandshahr along with the cheques of the balance consideration, but the appellant herein did not reach the Sub-Registrar office for execution of the sale deed and did not execute the sale deed in favour of the respondents and the appellant has refused to execute the sale deed after receiving the balance consideration and has threatened that he will sell out the said property to someone else. In such circumstances, the respondents herein filed the Civil Suit No. 784 of 2024 for the specific performance of the contract.

7. In the said suit, the appellant herein filed the written statement alleging that the appellant herein has never offered to sell the property in question. However, he has admitted that he has received Rs. 10,00,000/- from the respondents herein and pleaded that the said document dated 06.03.2024 was executed only for the purpose of security of the loan amount of Rs. 10,00,000/- received by the appellant herein and the date of 05.06.2024 was fixed not for the execution of the sale deed but for return of the loan amount. Thus, he submitted that the appellant has never intended to sell the property in question to the respondents and the said agreement to sell was nothing but a security document and it was agreed between the parties after the return of the loan amount, the said agreement to sell would be got cancelled by the parties. Therefore, by way of the aforesaid agreement to sell, no rights accrued in favour of the respondents. Thus,

from the aforesaid written statement the appellant has never denied the execution of the said agreement to sell. However, it has been pleaded that the said agreement to sell was executed as a guarantee/security of the loan amount received by the appellant herein from the respondents, which was to be returned within three months on the date already fixed on 05.06.2024.

8. In another suit, which has been filed by the appellant herein, the appellant has claimed that the appellant herein has received the aforesaid property through the registered gift deed executed by his father in his favour and on the basis of the aforesaid gift deed he became owner in possession of the said property. Subsequent thereto, when the appellant herein required an amount of Rs.10,00,000/- to fulfill the needs of his family and business, he came to know that the respondents herein are lending the money on interest, thereafter, he had approached the respondents and the respondents had agreed to advance the loan for three months at 12% annual interest with certain conditions, and the respondents asked the appellant herein to execute the documents in this regard in the office of the Registry and thereupon the appellant herein had agreed to get the necessary documents executed in the office of the Registrar. The respondents had asked the appellant to mortgage his property against the loan and to pay the interest at least for six months.

9. Since the appellant was in dire need of the amount he agreed to all the conditions put by the respondents and in such circumstances, the said agreement to sell was executed as a security/guarantee of the aforesaid loan advanced. Thus, on the basis of the aforesaid agreement dated 06.03.2024, no rights accrued in favour of the respondents. The said document was got prepared by the respondents and without reading it over to the appellant, the signatures of the appellant were obtained and the same was executed. None of the witnesses have signed or put in their thumb impression in presence of the appellant herein and the stamp duty paid on the said agreement was already received by the respondents on 06.03.2024 itself from the appellant herein.

10. Thereafter, he further stated in the suit that the value of the property in question is more than Rs. 2,00,00,000/-. Therefore, there was no occasion

for the appellant herein to execute the sale deed for Rs. 40,00,000/-. After receipt of the notice dated 07.06.2024, the appellant herein had replied the same and has offered that he is ready and willing to return the loan amount of Rs. 10,00,000/- along with interest amount of Rs. 60,000/- and get the said agreement cancelled, but the respondents did not agree. Thereupon, he has filed the Suit No. 713 of 2024 for cancellation of the aforesaid agreement to sell.

11. Vide judgment and decree dated 12.11.2024, the suit filed by the respondents being Original Suit No. 784 of 2024 was decreed *ex parte* against the appellant herein. Being aggrieved thereby the appellant herein had filed an application under Order 9 Rule 13 CPC, which was rejected vide order dated 20.02.2025, against which a First Appeal From Order No. 531 of 2025 was filed by the appellant herein and the said First Appeal From Order was allowed vide order dated 23.07.2025 and the Original Suit No. 784 of 2024 was restored to its original number. Thereupon, the appellant herein had filed the written statement and contested the suit on merits and thereafter, both the suits so filed by the appellant and the respondents were clubbed together and suit filed by the respondents for the specific performance was decreed vide impugned judgment and order dated 19.05.2026 and the suit filed by the appellant herein for cancellation of the agreement to sell was dismissed. Being aggrieved, both the aforesaid appeals have been filed by the appellant herein.

12. With the consent of the learned counsel for the parties, the instant appeal has been heard finally at the admission stage and is being decided under Order 41 Rule 11 CPC.

13. Learned counsel for the appellant submits that the respondents herein had led no evidence with regard to their readiness and willingness to get the sale deed executed in terms of Section 16(c) of the Specific Relief Act, 1963.

14. In support of their readiness with the balance sale consideration, the respondents have not produced any bank statement to establish that they had the sufficient money to discharge their part of the agreement by

paying the sale consideration or to establish that they had the financial capacity to pay the balance consideration and he submits that merely on the basis of the bank statement of their father, which was produced the respondents had claimed their readiness and financial capacity to pay the balance consideration.

15. Relying upon the judgment of the Apex Court in ***Ritu Saxena vs. J.S. Grover and Another : (2019) 9 SCC 132***, learned counsel for the appellant submits that merely because the amount was there in the accounts of the father of the respondents would not be sufficient to establish the readiness on the part of the respondents herein. In the like circumstances, learned counsel for the appellant submits that in ***Ritu Saxena (supra)***, the Apex Court has held that merely because the bank has already sanctioned the loan by which the plaintiff therein had shown his capacity to pay was denied, has been held that the same is not sufficient proof of readiness on the part of the plaintiffs in a suit for specific performance.

16. Learned counsel for the appellant further submits that in ***Vijay Kumar and Others vs. Om Parkash : (2019) 17 SCC 429***, the Apex Court had denied the relief of specific performance of the contract on the basis of the pleadings that plaintiff has borrowed the amount from his friends and kept the money to pay balance sale consideration as the plaintiff has failed to establish by way of any document to show that he had the balance sale consideration to be paid at the time of the execution of the sale deed to establish his readiness and in those circumstances the Apex Court has denied the relief of specific performance.

17. Learned counsel for the appellant further submits that the readiness and willingness as required under Section 16(c) of the Specific Performance are two different things. 'Readiness' means the capacity of the plaintiff to perform the contract, which includes financial capacity, whereas the 'willingness' relates to the conduct of the plaintiff, and since in the instant case, though the respondents herein have submitted the statement of the father having the sufficient money but that doesn't mean that father has agreed to pay the said amount for the purposes of execution of the sale deed specifically when the father of the respondents

has not been examined in the suit and the respondents have failed to establish that they had the financial capacity themselves to pay the balance consideration. In such view of the matter, the findings recorded by the trial court with regard to the readiness on the part of the respondents is erroneous and therefore, the decree for specific performance ought not to have been passed. Thus, the suit for specific performance was liable to be dismissed.

18. With regard to the other appeal, whereby the suit for declaration of the agreement to sell dated 06.03.2024 was dismissed, learned counsel for the appellant submits that the aforesaid document was got executed by the respondents without reading over the said document to the appellant herein and as the said document was got executed under the pretext of execution of a security document for the purpose of grant of loan to the appellant and under the garb of the said security document, the respondents have got executed the agreement to sell. Thus, the said agreement was not a valid agreement and did not confer any right in favour of the respondents. Therefore, the very basis for suit for specific performance was not sustainable and the said agreement was liable to be cancelled.

19. *Per contra*, Sri Anurag Khanna, learned Senior Counsel appearing for the respondents submits that appellant herein is not an illiterate person. He has offered the property for sale and the said offer was accepted and an earnest money of Rs.10,00,000/- was paid by the respondents, which was accepted by the appellant and thereupon a registered agreement to sell dated 06.03.2024 was executed between the parties. Even if all the contentions raised by the appellant herein are accepted, once the said agreement to sell was executed he had sufficient time to go through the same and object within a reasonable period, which the appellant has failed to do. It is only after a legal notice was issued by the respondents herein for execution of the sale deed pursuant to the aforesaid registered agreement to sell, the appellant herein had filed the suit for declaration that the said agreement to sell dated 06.03.2024 is null and void with ulterior motive being greedy to sell the said property for higher sale consideration to someone else.

20. Once a registered document is executed there is a presumption in favour of its validity and the appellant herein has failed to rebut the said presumption. Thus, the said document has been held to be a valid agreement to sell executed by the appellant by the trial court. Therefore, there is no illegality in the aforesaid findings recorded by the trial court. In the aforesaid agreement to sell itself, the date for execution of the sale deed was fixed as 05.06.2024, on which date the respondents herein being ready and willing to get the sale deed executed after due intimation to the appellant herein had approached the office of the Sub-Registrar and waited since morning till evening for execution of the sale deed by the appellant after receiving the balance sale consideration. However, the appellant did not turn up for the said purpose. Immediately thereafter, the respondents have contacted the appellant when he has refused to execute the sale deed and pay back advance earnest money paid to him. The due legal notice was issued fixing 08.07.2024 as date for execution of the sale deed.

21. Again, the respondents approached the office of the Sub-Registrar and due evidence has been produced that they had waited since morning till evening for appellant to turn up for execution of the sale deed with the cheques of the balance sale consideration to be paid to the appellant herein and immediately thereafter, the said suit was filed by the respondents on 12.07.2024. Thus, from the conduct on the part of the respondent, there is sufficient proof that the respondents herein were ready and willing to get the sale deed executed after paying the balance sale consideration to the appellant herein and the appellant herein has deliberately failed to execute the sale deed. So far as the readiness on the part of the respondents, the balance statement of account of the father of the respondent was also produced in evidence, as from the same account the initial earnest money of Rs. 10,00,000/- was also paid to the appellant, which was duly acknowledged by the appellant. Therefore, the respondents were having sufficient capacity /readiness to get the sale deed executed, which has been acknowledged by the trial court after evaluation of the evidence available on record.

22. It is not the case of the appellant that the appellant herein had ever approached the office of the Sub-Registrar on the given dates or on the

demand made by the appellants, the respondents have failed to pay the balance sale consideration, rather the appellant has never approached the office of the Sub-Registrar. Therefore, the trial court has rightly held that the respondents herein were always ready and willing to perform their part of the contract and the appellant herein has avoided to execute the sale deed. Therefore, the trial court has rightly decreed the suit for specific performance filed by the respondents herein.

23. Relying upon the judgment of the Apex Court in ***Sukhbir Singh vs. Brij Pal Singh and Ors. : (1997) 2 SCC 200*** submits that law doesn't require that to show the readiness on the part of the plaintiff, the plaintiff must establish that he had the ready cash with them. The conduct of the parties are required to be seen and from the conduct of the parties, readiness and willingness can be deduced by the courts.

24. It is further submitted by learned counsel for the respondents that after the impugned judgment and decree passed by trial court concerned the sale deed has already been executed in favour of the respondents and the entire sale consideration has already been paid by the respondents, in such view of the matter, unless the said sale deed, which has been executed through Court is challenged no relief as of now can be granted to the appellants herein.

25. In the instant case, the appellant being the executant of the said agreement to sell cannot file the suit for declaration but he ought to have filed a suit for cancellation of the said agreement to sell which the appellant has failed. Therefore, no declaration for declaring the said document null and void could have been passed at the behest of the appellant herein by the trial court. Thus, learned counsel for the respondents seeks dismissal of both the appeals.

26. Learned counsel for the respondent relying upon the judgment of the Apex Court in ***Suhrid Singh vs. Randhir Singh and Ors. : (2010) 12 SCC 112*** submits that in the instant case the appellant has sought declaration that the document i.e, the agreement to sell dated 06.03.2024, which was executed by the appellant was null and void. In the aforesaid judgment in ***Suhrid Singh (supra)***, the Apex Court has held that where

the executant of a deed wants it to be annulled he has to seek cancellation of the deed and not the declaration, whereas the non-executant can seek the annulment of a deed by filing a suit for declaration.

27. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record. The facts of the case have already been noted hereinabove in great detail.

28. The question which arise for determination by this Court are as follows:

(i) Whether the agreement to sell dated 06.03.2024 was a valid agreement?

(ii) Whether the said agreement to sell can be declared null and void at the behest of the executant of the said agreement to sell i.e., the appellant herein?

(iii) Whether the respondents herein were always ready and willing to perform their part of the contract?

29. From the perusal of the material available on record, there is no averments on the part of the appellant herein that the appellant herein was an illiterate person or was not in a position to understand the nature of the document executed by him. Even after the execution of the document, had there been any doubt in the minds of the appellant he would have raised immediate objection against the said document. He has kept silent for sufficiently long period and despite the intimation given by the respondents to come and execute the sale deed on the date fixed i.e., on 05.06.2024, the appellant has failed to appear before the office of Sub-Registrar and even till then he did not raise any objection. It is only after the legal notice was issued on behalf of the respondents for execution of the sale deed in terms of the aforesaid agreement to sell dated 06.03.2024, the appellant claims that in response to the said legal notice he has objected to the said agreement to sell. Even then, he did not take any immediate step and thereupon much after on 02.07.2024 he has filed the suit for declaration that the said agreement to sell dated 06.03.2024 is a null and void and the said agreement to sell was duly registered

document, therefore, there is a presumption of validity of the said document, as has already been held by the Apex Court in **Suhrid Singh (supra)** that the executant of a document cannot seek annulment thereof, rather he is required to file the suit for cancellation of the said document.

30. In the instant case, instead of seeking cancellation the appellant herein has sought annulment, which is impermissible in the light of the aforesaid judgment of Apex Court in **Suhrid Singh (supra)**. Thus, the Question No. 1 is decided in affirmative that the said agreement to sell was a validly executed document and Question No. 2 is decided negatively as the same could not be annulled at the behest of the appellant herein.

31. So far as Question No. 3 regarding the readiness and willingness on the part of the respondents herein is concerned, the agreement to sell was executed on 06.03.2024 and an amount of Rs. 10,00,000/- out of Rs. 40,00,000/- was already paid by the respondents to the appellant, which the appellant has duly acknowledged. Though, he claims that the said amount was a loan amount, had it been so he has never offered to pay back the said amount on the due date. Rather, in terms of the aforesaid agreement to sell the appellants had approached the office of the Sub-Registrar, waited there from morning till evening after due intimation to the appellant. However, the appellant did not turn up for execution of the sale deed in terms of the aforesaid agreement to sell.

32. Further, immediately thereafter the respondents have contacted the appellant and appellant has refused to execute the sale deed and he was trying to sell the property to somebody else with some higher sale consideration. In such circumstances, the appellant with utmost readiness and willingness had issued the written legal notice through their advocate fixing the date for execution of the sale deed again on 08.07.2024 and on that date also the respondents approached the office of the Sub-Registrar, waited there since morning till evening for the appellant to come and execute the sale deed with the cheques ready to be handed over to the appellants against the balance sale consideration, which however the appellant herein did not turn up and the suit was filed on 12.07.2024 by the respondents for specific performance of the contract and even after the impugned judgment and order was passed, the respondents have

immediately paid the balance sale consideration and got the sale deed executed in their favour.

33. From the evidence available on record, it is further established that respondents have produced the bank statement of the same account from which the earnest money of Rs. 10,00,000/- was paid to the appellants and the said account before 05.06.2024 until filing of the suit was always having the balance above Rs. 30,00,000/-, therefore, there is no manner of doubt that the respondents were always ready and willing to perform their part of the contract and they also had the financial capacity to pay at all the relevant times to the appellant and it is only because of the appellant who did not turn up on both the occasions to execute, the sale deed could not be executed. In such circumstances, there is no manner of doubt that the appellants were always ready and willing to perform their part of contract. Thus, the Question No. 3 is decided in affirmation.

34. In such view of the aforesaid findings, this Court do not find any illegality in the impugned judgment and order passed by the trial court. Accordingly, both the instant appeals are ***dismissed***.

(Anish Kumar Gupta,J.)

September 14, 2026
Shubham Arya