

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.3955 of 2000

Date of Decision: May 14, 2015

Partap Singh (deceased) through LRs

...Appellants

Versus

Harinder Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE FATEH DEEP SINGH

- 1. Whether Reporters of local papers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Mr. Sukhdip Singh Brar, Advocate
for the appellants.

Mr. H.N.S. Gill, Advocate
for respondents No.1,3 and 5.

None for respondents No. 2 to 4.

Mr. Bikramjit Aroua, Advocate
for LR's of respondent No.6.

FATEH DEEP SINGH, J.

What got initiated way back on 10.6.1988 when the then plaintiffs-Harinder Singh, Joginder Singh, Harvinder Singh, Daljit Singh and Harbahajan Singh preferred against Tara Singh, the original owner (defendant No.1) and Partap Singh (defendant No.2) subsequent purchaser a suit for possession by way of specific performance of a registered agreement to sell dated 25.11.1983 Ex.P1 in respect of land measuring 34 kanals and 14 marlas detailed and described in the headnote of the plaint and

which suit stood decreed, wherein, the relief for permanent injunction stood declined vide judgment and decree dated 7.2.2000 by the learned Civil Judge (Junior Division) Amritsar. These findings were upheld by the learned first Appellate Court of learned District and Sessions Judge, Amritsar through impugned judgment and decree dated 29.8.2000, whereby, two separate appeals of Partap Singh as well as Tara Singh defendants stood dismissed with costs. It is against these consecutive findings, the unsuccessful subsequent purchaser-Partap Singh has preferred the instant regular second appeal before this Court.

Heard, learned counsel for the parties. The concise factual situation emancipating from the arguments and the records of the lower Court shows that defendant No.1-Tara Singh happens to be the owner of the suit property and it is claimed by the plaintiffs that they entered into a registered agreement to sell Ex.P1 with this defendant, who has agreed to sell the same for a total sum of ₹1,80,000/- and out of which plaintiffs claim that they have paid ₹50,000/- as earnest money. It is claimed by the plaintiffs that since the land fell into the conglomeration of Urban Land Ceiling and Regulation Act it was agreed upon that the seller would seek prior permission of the authorities and, thereafter, would execute the sale deed and then deliver the actual possession of suit property. Though, it is alleged that thereafter, a sum of ₹27,000/- was paid out of the remaining sale consideration on various occasions by the plaintiffs and Tara Singh even executed a pronote of sum of ₹10,000/- in their favour and remaining amount was received orally. It is alleged further that only a sum of ₹1,03,000./-remained due to be paid by the

plaintiffs out of this total sale consideration. It is further accepted by the plaintiffs that earlier they have filed a suit for permanent injunction against the defendant-owner from alienating suit land and, thus, prayed that inspite of having received requisite permission from the concerned authority has failed to execute the sale deed as per his obligation and hence suit in question was preferred thereafter, claiming that they were ready and willing to undergo their part of the contract.

The stand of the seller defendant No.1 is that the suit was barred by limitation as well as questioned maintainability of the suit in the light of the previous suit for permanent injunction and has claimed that he has earlier entered into an agreement to sell dated 8.10.1983 Ex.PX with defendant No.2- Partap Singh, present appellant for a total consideration of ₹1,75,000/- as prior to this Partap Singh was cultivating the land in question as a lessee by virtue of agreement of mortgage dated 5.8.1983 Ex.DW4/2\Ex.DW5/1 and that he had received a sum of ₹1,25,000/- from Partap Singh and has termed the agreement to sell Ex.P1 to be under undue influence, coercion and pressure and being not an outcome of voluntariness and free accord. It is claimed by the seller that he had already brought this to the knowledge of the plaintiffs who inspite being aware of it and out of their own personal enmity with Partap Singh had gone ahead with it for obvious reasons.

The stand of the defendant No.2-Partap Singh, present appellant, besides, taking usual preliminary objections of lack of locus standi, cause of action, maintainability, estoppel, limitation and the suit being barred under Order II Rule 2 CPC has

filed reply on merits, wherein, he claimed that Tara Singh was owner of suit land and he had entered into an agreement to sell on 8.10.1983 Ex.PX also denoted as Ex.DW4/1 with Partap Singh and denied any knowledge of agreement between Tara Singh and the plaintiffs. The stand of this defendant is that prior to the alleged agreement to sell Ex.P1 he was in cultivating possession of the suit land as a lessee on year to year basis and that Tara Singh had also entered into an agreement for mortgage for sum of ₹80,000/- with him and has acknowledged having received a sum of ₹70,000/- on 5.8.1983 and that it was on the basis of this situation Tara Singh executed an agreement to sell Ex.PX in his favour and, thus, sought to claim that he was a bonafide purchaser for a valuable consideration having no knowledge of the transaction between plaintiffs and defendant No.1 Tara Singh. The learned trial Court framed the following issues:-

1. Whether the defendant No.1 executed an agreement to sell the suit property dated 25.11.83 in favour of plaintiffs and plaintiff paid Rs.50,000/- to defendant No.1 OPP?
2. Whether the plaintiffs were ready and willing to perform their part of the agreement, if so, whether they are entitled to get the sale deed executed in their favour and to the possession of the suit land? OPP
3. Whether the suit is liable to be stayed u/s 10 CPC? OPD
4. Whether the suit is time barred? OPD
5. Whether the agreement dated 25.11.1983 was not executed by the free mind and will by the defendant No.1 ? OPD
6. Whether the plaintiffs have knowledge of agreement to sell dated 8.10.83 executed by defendant No.1 in favour of defendant No.2? OPD
- 6A Whether the suit is barred under Order 2 Rule 2 of CPC? OPD
7. Relief.

The plaintiffs to prove their case examined PW1 Gurdeep Singh, Deed Writer, PW2 Sukhwinder Singh, Lambardar and PW3 Ajmer Singh both were attesting witnesses of the agreement to sell Ex.P1 and, thereafter, examined PW4 Surinder

Monga, Clerk of the Advocate to prove the previous suit by way of Ex.PW4/1 and, thereafter, plaintiff-Harinder Singh himself stepped into the witness box as PW5 and proved documents Ex.PA to Ex.PC.

The defendants examined DW1 Gurdip Singh, who proved agreement to sell by way of Ex.DW1/1 and Ex.DW1/2; DW2 Ram Rattan, proved agreement to mortgage by way of Ex.DW2/1; DW3 Shiv Kumar Sodhi, Deed Writer, proved the agreement between Tara Singh and Partap Singh by way of Ex.DW1/1 and, thereafter, remaining witnesses DW4 Swaran Singh (sic) and DW5 Joginder Singh (sic) proved agreement to mortgage and agreement to sell being an attesting witnesses and scribe. Lakhwinder Kaur DW6 (sic) mortgagor of Harinder Singh-plaintiff testified against the plaintiff and DW7 (sic) Gurcharan Singh Sandhu, Advocate has proved agreement to sell by way of Ex.DW4/1. Lastly defendant-Partap Singh testified as DW9. Consequent thereupon, the impugned findings have come to crystallise.

This Court has framed by the concurrence of the contesting parties the following substantial question of law:-

Whether the suit of the plaintiff is barred by limitation as well as his own act and conduct and by the provision of Order II Rule 2 CPC, if so to what effect; and whether the plaintiff is entitled to a decree for specific performance or not?

Appreciating the arguments. The counsel for the appellants has laid multifarious attacks on the impugned findings. It has been contended that the very plea regarding permission from Urban Land Ceiling Authority is a guise for condonation of the limitation as neither this is depicted in the agreement to sell

Ex.P1 and it is only at a belated stage it has come up as a face saving device and has sought to stress on the fact that plea of part payment orally by the plaintiffs has never been depicted in the alleged agreement in any manner. It is with much elance counsel has argued that the suit was barred by limitation as it was filed beyond the period of 3 years and that even by virtue of provisions of Order II Rule 2 CPC by initially filing a mere suit for permanent injunction the subsequent suit out of which the present appeal has arisen was not maintainable and submitted that since the time was the essence of the contract and after expiry of period of 6 months the same came to an end on its own and that right from the execution of the disputed agreement to sell till the filing of the suit and even thereafter, there is no element of readiness and willingness established and proved on the records by the plaintiffs upon whom onus lay heavily and concluding his arguments has submitted that even the material document of sale deed which has put to an end the entire claim of the plaintiffs has never been challenged and cited judgments **AIR 1997 SC 772 T.L. Muddukrishana and another vs. Smt. Lalitha Rama Chandra Rao; 1997(3) PLR 760 (P&H) Rao Narain vs. Durga Devi; 1998 (2) RCR (Civil) 114 (P&H) Smt. Ralli vs. Smt. Satinderjit Kaur; 2000(3) RCR (Civil) 595 R.K. Mohammad vs. Hajee C. Abdul Wahab; AIR 1990 Delhi 42 Ajit Prashad Jain vs. N.K. Widhani and others; 2002(2) RCR (Civil) 815 Nirmala Anand vs. Advent Corporation Pvt. Ltd, and others; 1989 Civil Court Cases 347 (P&H) Jagsir Singh and another vs. Punjab Kaur and others** to enliven his arguments.

Mr. Bikramjit Aroua, learned counsel representing the LR of respondent No.6 vociferously controverted the findings firstly on the grounds that there is no provision under the law for seeking sanction of Urban Land Ceiling Authority and since the time is essence of contract the suit ought to be filed within limitation period and has sought to highlight that the learned Courts below have failed to appreciate the evidence and the pleadings in the right earnest has called upon this Court to have reappraisal and relook in the exercise of its power as a special case to enable the Court to judiciously adjudged the matter and has sought to claim that since the relief of specific performance is purely discretionary and where even if a valid agreement to sell is there but in the absence of any proof of continuous readiness and willingness does not makes it obligatory for the Court to grant relief and in support of his arguments cited **2014(13) RCR (Civil) 2525 Sushila Devi (Deceased) through LRs vs. Adeline D. Lall (Deceased) through LRs and another; 2011 AIR SC (Civil) 1812 Saradamani Kandappan vs. S. Rajalakshmi and others;1997(2) RCR (Civil) 312 K.S. Vidyanadam vs. Vairavan; 2009(1) RCR (Civil) 570 Ravinder Kumar vs. Harcharan Singh; 1995(2) RCR (Rent) 647 N.P. Thirugnanam (Dead) by LRs vs. Dr. R. Jagan Mohan Rao .**

Mr. HNS Gill, Advocate representing respondents No.1,3 and 5 to controvert the arguments of the counsel for the other respondents has sought to highlight the fact that after the findings of the learned first Appellate Court, Tara Singh has never challenged these findings and seeking support from **AIR 1997**

S.C. 3760 Ram Parkash vs. Smt Charan Kaur and another

has argued that by virtue of this principle of resjudicata bars Tara Singh to any relief much less his right to controvert the allegations. Learned counsel for the respondents has gone through the testimonies of the witnesses of the plaintiffs to hammer home the point that there was proven case of the plaintiffs as to their readiness and willingness to undergo their part of the contract and, thus, has sought to highlight that there are consecutive findings of the two Courts below calls for dismissal of the appeal being hopelessly without any merit.

Appreciating the rival contentions, it is a fundamental principle of law as has been laid down in **1998(1) PLJ 643 (SC) Punjab Urban Development Authority vs. M/s Shiv Saraswati Iron and Steel Re-Rolling Mills** that the pleadings are the very foundations of a case of a party besides the established law that it is for the plaintiff to establish his case and to stand on his own legs and cannot in any manner take undue advantage of the weaknesses of the other side. The very stand of the plaintiffs taken in their plaint shows that there is an averment that the said land being within the conglomeration of Urban Land Ceiling and Regulation Act and defendant No.1 was to apply to the competent authority for getting the permission to sell the same and defendant No.1 was to submit the requisite form to the competent authority and, thereafter, obtain permission to get the sale deed executed in favour of the plaintiffs and it is on the basis of this averment it is further highlighted in the plaint that the plaintiffs have been requesting defendant No.1 to get the permission from the competent authority and to execute the sale

deed and who had been postponing the execution of the sale deed on one pretext or the other and had been informed the plaintiffs having received permission from the authority in question and claims further for creating a cause of action to file the instant suit that it was only about a week back when they went to the competent authority and came to know that necessary permission has been obtained by the defendant No.1 to execute the sale deed. As has been pointed out on behalf of the appellants the very own document of the plaintiffs i.e. agreement to sell Ex. P1 which covers this alleged contract between the parties goes to show that there is no pre-condition imposed in this agreement upon defendant No.1 and rather it finds mentioned that the sale deed would be executed within six months from today (i.e. Agreement) and, thus, enunciates that the time was the essence of this contract and, therefore, by virtue of Sections 47,48 of the Indian Contract Act 1872 enjoins that the same ought to be respected and followed in letter and spirit and, therefore, in terms of Section 50 of the Indian Contract Act, if any agreement states that a particular act relating to the furtherance of a contract is to be done in a particular manner it should be done in that manner and it is not open to the parties to chalk out his own manner of performing his part of the contract and, therefore, this plea that has been raked up regarding approval from competent authority is a falsified belated afterthought one solely set up by the plaintiffs on his own without there being a provision in the original contract and to the mind of this Court is purely and purely with a malafide intention of the plaintiffs to wriggle out of the bar of limitation as the suit in question stood filed on 10.6.1988 after more than five years of the

execution of the agreement to sell contrary to the stipulations therein and, thus, even is hopelessly time barred in view of the provisions of the Limitation Act, 1963 by way of Section 3 and there is not even an iota of grounds set up for condonation of this delay in the legitimate manner. The schedule to the Limitation Act serial No.54 provides the period of limitation for filing a suit for specific performance of a contract to be three years from the date fixed for the performance or if no such date is fixed when the plaintiff had notice that performance is refused. Thus, in this situation as is the position of law laid down in **1997(2) RCR (Civil) 312 K.S. Vidyanadam vs. Vairavan** relied upon on behalf of defendant-Tara Singh which lays down the proposition that it would be inequitable to give relief of specific performance in such a case where time is essence of the contract. Law on this point is well enunciated in **2011 AIR SC (Civil) 1812 Saradamani Kandappan vs. S. Rajalakshmi and others** and cited on behalf of learned counsel for defendant No.2 Tara Singh. What reasons are forthcoming on behalf of the plaintiffs for such an inordinate delay is not at all proved on the records nor sought to be adduced by any manner. More so, a close look at the document of competent authority by way of Ex.PW5/2 shows that it was issued on 26.5.1987 and even by that analogy the suit is hopelessly barred by principle of laches as the plaintiffs ought to have immediately knocked at the doors of the Court. As has been vociferously argued by Mr. Arora learned counsel for the owner-vendor, who has sought to place reliance on **2014(13) RCR (Civil) 2525 Sushila Devi (Deceased) through LRs vs. Adeline D. Lall (Deceased) through LRs and another; 2011 AIR SC (Civil) 1812**

Saradamani Kandappan vs. S. Rajalakshmi and others;1997
(2) RCR (Civil) 312 K.S. Vidyanadam vs. Vairavan; 2009(1) RCR
(Civil) 570 Ravinder Kumar vs. Harcharan Singh to derive the point as learned counsel for the plaintiffs-respondents could not show by any manner under what provisions there was a requirement of seeking such a permission and there is not even an iota of evidence in this regard of covered under the conglomeration of Urban land and being a pure agricultural land this Court has its doubts as to the applicability of Urban Land Ceiling Act on such a property as it is according to the revenue records on the file and is being used for purely agricultural purposes and, therefore, even by that analogy this plea of the plaintiffs does not fructifies and similar is the proposition laid down in **AIR 1990 Delhi 42 Ajit Prashad Jain vs. N.K. Widhani and others; 2002(2) RCR (Civil) 815 Nirmala Anand vs. Advent Corporation Pvt. Ltd, and others;** relied upon on behalf of the counsel for the appellants which provides that it is not an essentiality for seeking a relief for specific performance of such a contract. Since in the impugned findings the Courts below have failed to take note of this fact as well as misconstruing and misinterpreting the pleadings and the evidence and, therefore, in view of the settled position of law reliance of which can be placed on **2009(1) RCR (Civil) 570 Ravinder Kumar vs. Harcharan Singh** where within the ambit of Section 100 CPC when the pleadings and material evidence have been invariably wrongly interpreted gives rise to specific question, enables this Court to exercise its jurisdiction and appraise the same even in a regular second appeal.

The stand of the plaintiffs in his plaint that they have been making certain payments after the execution of the agreement to sell intermediately amounting to ₹27,000/- including a pronote of ₹10,000 is only an uncorroborated oral stand and neither is highlighted in the agreement to sell by way of any endorsement or mention therein as the term of payment nor is cogently and substantially proved on the records by any means are matters which have a bearing on the case of the plaintiffs.

Looking from another angle to this plea of limitation as well as bar of the provisions of Order II Rule 2 CPC, the plaintiffs as per their own admission have filed a suit for permanent injunction prior to the filing of the instant suit on 11.4.1985 and which suit as per the orders of dismissal Ex.DW9/8 was dismissed as withdrawn on 15.12.1988 i.e. during the period when the second suit had been filed out of which the present appeal has arisen and it is undisputed plea reflected in the arguments and the records that cause of occurrence in that very suit for permanent injunction and in the subsequent suit for specific performance are invariably one and the same, thus, arguments that have sought to be advanced on behalf of the appellants by Mr. S.S. Brar based on **1997(3) PLR 760 (P&H) Rao Narain vs. Durga Devi; 1998(2) RCR (Civil) 114 (P&H) Smt. Ralli vs. Smt. Satinderjit Kaur** and, therefore, having been aware of the cause of action having arisen as per the agreement to sell Ex.P1 at the time of filing of the suit for permanent injunction on 11.4.1985 the plaintiffs could have easily preferred the relief of specific performance in a suit for permanent injunction which they failed to do. Further in the light of this stand of the plaintiffs

foundation of the case of the plaintiffs being resting on the same cause of action being one and the same and Hon'ble Supreme Court in **AIR 70 SC 1951 Sidramappa vs. Raja Shetty and others** have laid similar proposition holding that in such an eventuality bar of Order 2 Rule 2 CPC comes into play and to the mind of this Court relief of specific performance in the subsequent suit certainly been barred in view of the provisions of Order II Rule 2 CPC.

Though, not much of a significant nature, it is the stand of the appellant-Partap Singh, who happens to be defendant No.2-subsequent purchaser that prior to entering into contract with the plaintiffs defendant No.1 original owner had on the basis of agreement to mortgage dated 5.8.1983 Ex.DW4/2/Ex.DW5/1 mortgaged this land to him for sum of ₹80,000/- and he was in cultivating possession of the same by virtue of revenue records Ex.DW9/2 to Ex.DW9/5 and which have not been controverted by any means. Though, not very essentiality, the agreement to sell claimed by defendant No.2-present appellant that the vendor had executed an agreement to sell dated 8.10.1983 Ex.PX much prior to the time when the agreement to sell was executed and, therefore, it was incumbent upon the plaintiffs to have verified the antecedents of the appellants as the parties to this lis belongs to the same village and were fully aware of the status of the parties and in support of his contentions Mr. S.S. Brar learned counsel for the plaintiffs has placed reliance on **2000(3) RCR (Civil) 595 R.K. Mohammad vs. Hajee C. Abdul Wahab** to hammer home the point on the basis of Hon'ble Apex Court's ratio that a person in possession is deemed

to have some title or interest in the property and a prospective vendee is obliged to make a proper enquiry of the status of the person in possession regarding any lease, agreement or deed executed by the owner in his favour and, thus, it was held by Their Lordships that if no such proper enquiry is made it is deemed that the person in question have notice of the existing affairs and since it is proved on the records and is not otherwise rebutted that at the time of execution of agreement to sell Ex.P1 there was an encumbrance on the land in question with the present appellant. Though, Mr. HNS Gill, learned counsel for the plaintiffs had argued at length to highlight that in his written statement Tara Singh vendee admits having entered into an agreement with the plaintiffs and which even fairly conceded on behalf of the other counsel and, thus, not much of an advantage can be derived by Tara Singh on account of such a stand that it was not an outcome of free will and accord. However, there being no requirement of law for getting such an agreement to sell registered, it appears to this Court that the plaintiffs by getting the agreement to sell registered is trying to over emphasise apparently with an ulterior motive and apprehensive of the possession of the present appellant for an oblique motive are matters which have effect on the conduct of the parties.

The most contentious issue over which the entire arguments of the parties revolve is the very element of readiness and willingness on the part of the plaintiffs to undergo their part of the contract. There is only an ambiguous and fake averment in the plaint of the plaintiffs that they remained ready and willing throughout this period to perform their part of the contract and

even are now ready and willing to perform their part of the agreement. As has been highlighted during the course of arguments that statement of the plaintiff-Harinder Singh himself as PW5 attains all the more importance and his cross-examination as has been brought to the notice of this Court shows that plaintiff-Harinder Singh admits that he did not give any notice in writing to Tara Singh to execute the sale deed in his favour and further that the date of maturity of the agreement has come to an end when permission from the competent authority was received and that he did not give any notice thereafter to Tara Singh to undergo his part of the contract and though has tried to wriggle out of this commitment and that he along with Ajmer Singh went to Tara Singh to ask him to execute the sale deed when confronted was unable to give any date when he claims it so or the number of times he had gone there and further accepts above all that he did not move any application to competent authority including Sub-registrar for marking his presence as to his readiness and willingness and further it is admitted by plaintiff that he took the khasra numbers of the land from the Patwari to get the same executed in his favour leaves no scope to doubt that the plaintiffs were aware of the status of this property prior to this agreement. Since the parties have come up before the Court under the provisions of Section 15, 16(c), 20 and 22 of the Specific Relief Act, 1963 and it is well settled position of law as is laid down in the case of **1995(2) RCR (Rent) 647 N.P. Thirugnanam (Dead) by LRs vs. Dr. R. Jagan Mohan Rao** by the Hon'ble Apex Court holding that remedy for specific performance is an equitable remedy on the sole discretion of the Court which needs to be

exercised based on the settled principle of law holding further that under the provisions of Section 20 of the Specific Relief Act, 1963 the Court is not bound to grant such relief merely because it is lawful or there is a valid reason, thus, sufficiently rebut the arguments of Mr. HNS Gill, learned counsel for the plaintiffs that even if his agreement Ex.P1 is legally executed document even when the circumstances may deny the grant of relief to the plaintiffs the provisions of Section 16(c) of the Specific Relief Act, 1963 envisages that the plaintiff himself must plead and prove that he had performed and has always been ready and willing to perform the essential terms of the contract which are to be performed by him from the date of the agreement till the end of the proceedings of the suit which element is certainly missing.

Reverting back to the instant case, there is no material evidence to support the case of the plaintiffs that they were ready and willing to perform their part of the contract after the execution of the agreement till the filing of the suit. It is a normal human reaction that the plaintiffs were expected to have issued a legal notice calling upon vendor to have undergone his part of the contract or as is commonly undertaken in the rural areas to have moved appropriate application before the Sub-registrar for marking their presence or could have taken some measures in support of their stand and rather what has come up in their evidence goes against the plaintiffs on all counts. What could be enunciated from the testimony of PW1 Gurdeep Singh, Deed Writer is regarding execution of agreement to sell but not much to hold and so is the fate of PW2 Sukhwinder Singh, Lambardar, witness of this agreement to sell including PW3 Ajmer

Singh attesting witness of this agreement, whereas, PW4 Surinder Monga, Clerk has brought about only the filing of previous suit for permanent injunction by his counsel. On the other hand, deposition of DW1 Gurdip Singh has sought to bring about agreement to sell in favour of defendant No.2 by defendant No.1 by virtue of Ex.DW1/1/Ex.DW1/2, whereas, DW2 Ram Rattan has proved agreement to mortgage in favour of plaintiffs by way of Ex.DW2/1 and this agreement to sell *inter se* between two defendants is proved by DW3 Shiv Kumar Sodhi, Deed Writer who has proved this document by way of Ex.DW1/1 along with the attesting witnesses DW4 Swaran Singh (sic), DW5 Joginder Singh (sic) Deed Writer, who have proved the agreement to mortgage and having scribed the agreement to sell and agreement to mortgage respectively and supported in toto by the deposition of DW7 Sardara Singh (sic) a witness to this agreement *inter se* between the two defendants coupled with the deposition of DW8 Gurcharan Singh (sic) who has proved this agreement to sell by way of Ex DW4/1.

Thus, in the light of this evidence and the utter failure of the plaintiffs to prove the very essential element of readiness and willingness and seeking support from **(2011) 1SCC 429 J.P. Builders and another vs. A. Ramadas Rao and another** and **1978 AIR (SC) 537 Mrs. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi and others** this Court comes to the conclusion that the distinction between readiness and willingness is clear as readiness pertains to financial capacity and willingness involves the conduct of the party wanting to perform contract and, therefore, willingness follows readiness and in terms of Section 16

(c) of the Specific Relief Act, 1963 the plaintiff in such a suit himself proves the essential requirements of continuous readiness and willingness to perform part of his contract from the date of contract till filing of the suit and subsequent thereto which the plaintiffs have miserably failed.

Now the million dollar question comes up before this Court in view of this situation of the parties whether the Court was justified in granting a relief for specific performance of the contract and to the mind of this Court in such a situation when the suit is not only hopelessly time barred by limitation by own laches of the plaintiffs his unfair conduct in proving the element of readiness and willingness and that it was after the expiry of the period of time envisaged in the agreement to sell in favour of the plaintiffs the subsequent agreement to sell leading to sale in favour of the defendant No.2-present appellant having arisen certainly goes against the plaintiffs and, thus, the plaintiffs cannot derive any advantage over the defendants-appellants by their such a conduct. Though, by virtue of own conduct of vendor Tara Singh, who has failed to assail the impugned judgment after the findings against him was recorded by the learned trial Court as well as learned first Appellate Court and in view of the law laid down in **AIR 1997 S.C. 3760 Ram Parkash vs. Smt Charan Kaur and another** has attained finality qua Tara Singh and he cannot be relegated to his original position by virtue of this. However, at the same time to ward off any such eventuality of hobnobbing *inter se* between plaintiffs and defendant No.1 and to protect the interest of subsequent purchaser-Partap Singh it cannot be held that this conduct of Tara Singh in not assailing the

judgments of the two Courts below would have adverse impact on the case of the present appellant and the factual situation in **2011 (1) RCR (Civil) 130 Jora Singh vs. Lakhwinder Kumar and others** relied upon by the plaintiffs does not comes to their aid.

In the totality of this evidence and what has been discussed above, the two Courts below in the impugned findings have certainly failed to take cognizance of these essentialities in this case and has totally misconstrued the evidence and the law qua the issue of limitation, the question as to the readiness and willingness of the plaintiffs to undergo their part of the contract and the fact that the suit of the plaintiffs was barred by the provisions of Order II Rule 2 CPC and which findings of the two Courts below needs to be outrightly struck down holding these findings to be perverse and illegal and, thus, are set aside by way of acceptance of the instant appeal holding that the appellant-Partap Singh by this situation become bonafide purchaser for valuable consideration on the strength of the sale deed.

(FATEH DEEP SINGH)
JUDGE

May 14, 2015
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