

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

**RSA No.906 of 2015 (O&M)**  
**Date of Decision: May 18, 2015**

Smt.Amarjit Kaur and another

...Appellants

Versus

Harpal Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.A.K.Vermani, Advocate  
 for the appellants.

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**INDERJIT SINGH, J.**

Appellants-defendants Smt.Amarjit Kaur and Sukhdev Singh have filed this regular second appeal against Harpal Singh respondent-plaintiff, challenging the impugned judgment and decree dated 31.05.2012 passed by learned Civil Judge (Junior Division) Amritsar, vide which the suit filed by plaintiff for possession by way of specific performance was decreed and also challenging the judgment and decree dated 30.07.2014 passed by learned Addl. District Judge, Amritsar, vide which the appeal filed by the appellants-defendants was dismissed.

The brief facts of the case are that plaintiff-respondent Harpal Singh filed a suit against Smt.Amarjit Kaur and Sukhdev Singh defendants-appellants for possession by way of specific performance of the contract dated 26.01.2004 regarding the agriculture land

measuring 16 kanal 7 marla as fully described in the head note of the plaint. It is mainly stated in the plaint that defendants agreed to sell the property in dispute to the plaintiff @ ₹3,50,000/- per acre and ₹2,11,000/- was paid as earnest money and date for execution of the sale deed was fixed as 20.06.2004 vide agreement to sell dated 26.01.2004, which is signed by both the parties. It is also stated that the plaintiff is ready and willing to perform his part of the contract and is having ready money to pay the balance sale consideration but the defendants are putting off the matter.

On the other hand, the case of defendants in the written statement is that all the co-sharers of the land have not been made as a party and sum of ₹2,11,000/- has not been given by the plaintiff as earnest money. Defendant No.1 being a widow lady does not know how to read and write Punjabi and defendant No.2 under the influence of drugs does not know the technicalities of law. It is further stated that plaintiff had an evil motive to grab the land of the defendants and purchased 2 killas of land by forging the sale deed. It is also stated that defendants lodged complaints against the plaintiff as he as forged the agreement to grab their property. There is no question of readiness and willingness of the plaintiff as he used to take the signatures of the defendants on blank papers.

Plaintiff-respondent examined PW-1 Kuldip Singh, PW-2 Davinder Khanna, PW-3 Naresh Chander Sharma and examined himself as PW-4. On the other hand, defendants-appellants Smt.Amarjit Kaur and Sukhdev Singh examined themselves as DW-1

and DW-2 respectively.

Learned Civil Judge (Junior Division), Amritsar vide judgment and decree dated 31.05.2012, decreed the suit filed by the plaintiff by appreciating the evidence. Against above-said judgment and decree, an appeal was filed by the appellants-defendants and learned Addl. District Judge, Amritsar vide judgment and decree dated 30.07.2014 dismissed the appeal.

Aggrieved from the above-said judgments and decrees, present regular second appeal has been filed by the appellants-defendants.

At the time of arguments, learned counsel for the appellant argued that plaintiff has failed to prove his readiness and willingness to perform his part of the contract and he has not got marked his presence before Sub Registrar on the date fixed. He further argued that notice was sent by the plaintiff after 1½ years from the date of execution of sale deed and it was also conditional. He next argued that as per Section 16(c) of the Specific Relief Act, the plaintiff should always remain ready and willing to perform his part of the contract. Learned counsel for the appellant further contended that the agreement was scribed on 26.01.2004, which was a gazetted holiday and the stamp papers were purchased by the purchaser on that very day, which creates doubt.

After hearing learned counsel for the appellant and after going through the record, I find that it is nowhere mandatory that the plaintiff must get mark his presence before the Sub Registrar on the

date fixed. The Court is to appreciate the evidence produced by the parties. The plaintiff, in the present case, is pleading in the plaint as well as deposing in his statement before the Court that he remained ready and willing to perform his part of the contract and still ready and willing to perform his part of the contract. The fact that plaintiff gave notice to defendants to get execute the sale deed, also shows willingness of the plaintiff. Further, filing of the suit for specific performance also shows that the plaintiff is ready and willing to perform his part of the contract.

On the other hand, it is not the case of the defendants that they remained ready and willing to perform their part of the contract and plaintiff was not ready and willing. Rather, the case of the defendants is that the agreement is a forged document. The defendants have not produced any evidence to show that the agreement to sell is forged one. The mere fact that agreement was scribed on 26.01.2004 i.e. on gazetted holiday, also does not create any doubt. The agreement to sell is not to be scribed in the office of the Government. A Deed Writer can scribe the agreement even on Sunday. Similarly, the stamp papers are not shown to be purchased from Government Treasury. These are purchased from the Stamp Vendor and the Stamp Vendor can sell the stamp papers on any day at any time and there is no such bar on him not to sell the stamp papers on gazetted holidays.

From the evidence on record, I find that the plaintiff has duly proved the fact that he was ready and willing to perform his part

of the contract and still ready and willing to perform his part of the contract. Rather, the defendants were not ready to execute the sale deed at any time as they are alleging that the agreement is forged document. Learned Addl. District Judge, Amritsar has discussed the law laid down by this Court in ***Santa Singh vs. Binder Singh and others 2006(4) CCC 608 (P&H)***, in which it is held that statement of plaintiff is sufficient to infer that he was ready and willing to perform his part of contract, when defendant denies the execution of the agreement.

Further, I find that nothing has been shown as to how the notice given by the plaintiff was conditional. Even otherwise, when the defendants are not ready to execute the sale deed on any ground, then they cannot say that plaintiff was not ready and willing to perform his part of the contract. The mere fact that notice has been given after a long delay, will also not show that plaintiff was not ready and willing to perform his part of the contract. Rather, it is in the evidence that the defendants have also executed sale deeds regarding some other lands in favour of the plaintiff.

Learned counsel for the appellant cited judgment passed by the Hon'ble Supreme Court in ***Man Kaur (Dead) by LRs vs. Hartar Singh Sangha, 2011(1) RCR (Civil) 189***. I have gone through this cited judgment and the same having distinguished facts will not apply in the present case.

In view of the above discussion, I find that the concurrent findings given by the Courts below are correct, as per law and do not

require any interference from this Court and the same are upheld. No substantial question of law arises in this regular second appeal.

Therefore, finding no merit in the present regular second appeal, the same is dismissed.

**May 18, 2015**  
Vgulati

**(INDERJIT SINGH)**  
**JUDGE**