

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

**RSA No.3796 of 2011 (O&M)
Date of Decision: 11.01.2016**

Satpal Garg and others

.....Appellants

Vs

Mohit and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. M.L. Sarin, Senior Advocate with
Ms. Alka Sarin, Advocate
for the appellants.

Dr. Surya Parkash, Advocate
for the respondents.

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?*

RAJ MOHAN SINGH, J

[1]. Subsequent vendees/defendants No.4 to 6 have filed this appeal against judgment and decree dated 31.05.2011 passed by Additional District Judge, Panchkula whereby judgment and decree dated 24.12.2010 passed by Civil Judge (Sr. Divn.), Panchkula was set aside. Cross-objections were also dismissed vide the aforesaid judgment and decree.

[2]. Plaintiff Mohit filed suit for specific performance directing the defendants to transfer SCO No.220, Sector 14,

Urban Estate, Panchkula in favour of the plaintiff as per agreement to sell.

[3]. Commercial site bearing SCO No.220, Sector 14, Urban Estate, Panchkula measuring 327.916 square meters was allotted to the defendants No.1 to 3 for a consideration of Rs.80,10,000/- and they had deposited Rs.29.46,000/- in the Estate Officer, HUDA, Panchkula and the remaining sale consideration was also to be deposited in the Estate Office, HUDA, Panchkula in installments. Defendants were the owners of the alleged land.

[4]. On 31.05.2003, defendants No.1 to 3 entered into an agreement to sell in respect of aforesaid property with the plaintiff. Plaintiff paid an amount of Rs.3 lacs as earnest money to the defendants No.1 and 2. The agreement to sell was executed by defendant No.1 on behalf of defendant No.3 as well. The last date for execution of sale deed was fixed on or before 17.10.2003 which was further extendable upto 17.10.2004 subject to payment of interest @ 15% per annum on the balance payable amount by the plaintiff to the defendants No.1 to 3.

[5]. Plaintiff alleged that the agreement to sell was filled in by the defendant No.1 in his own handwriting. All the terms and conditions were agreed between the parties. The agreement

was signed by the parties after understanding the contents of the same. Thereafter defendants became greedy as they did not want to transfer the property in favour of plaintiff, rather interested in transferring the same in favour of some other person for which they had no right in view of agreement to sell. Plaintiff had written various registered notices to the defendants No.1 to 3 and others not to transfer the property in favour of anyone except the plaintiff. The notices dated 25.09.2003, 29.03.2003 and 09.10.2003 had been issued to the defendants No.1 to 3 vide postal receipts. The Estate Officer, HUDA had already written letter dated 30.09.2003 to the plaintiff that he could get the order from the Court of law. Seeing the contemplated action on the part of the defendants and to restrain them from alienating the property in question in favour of other persons, plaintiff had to file suit for permanent injunction.

[6]. Defendants No.1 to 3 filed written statement in which they had admitted the execution of agreement to sell dated 31.05.2003, but also pleaded that the agreement to sell had been cancelled subsequently. Plaintiff wrote letter dated 09.10.2003 to the defendants No.1 to 3 for extension of time for execution of sale deed upto 17.10.2004. The plaintiff met the defendants No.1 to 3 and requested them to transfer the plot in

his favour in terms of agreement to sell, but the defendants did not accede to the request of the plaintiff and refused to execute the sale deed in his favour and showed their annoyance on the ground that the plaintiff had filed a case against them. Plaintiff was always ready and willing to perform his part of obligation and is still ready and willing to purchase the property in question as per agreement to sell dated 31.05.2003. On these broad features, the suit came to be filed.

[7]. Defendants No.1 to 3 contested the suit and filed joint written statement on all counts. They claimed that the agreement to sell dated 31.05.2003 was cancelled and the suit in question was filed only to create hurdle in transfer of the site in favour of Satpal Garg, Ashish Kehar and Ashok Kumar. The aforesaid persons had paid sale consideration of Rs.29,46,000/-. Defendants No.1 to 3 also alleged that the suit was not maintainable and the plaintiff had not come to the Court with clean hands. The agreement to sell was cancelled on 24.06.2003 and earnest money was returned to the plaintiff. The plaintiff had torn the agreement to sell in the present of defendants No.1. Defendants No.1 to 3 pleaded that the plaintiff might have torn the coloured photocopy of the agreement to sell and kept the original with him.

[8]. The talks were in-offing to sell the property in favour of

Satpal Garg in the month of August 2003. When the notice of the plaintiff was received by the defendants through registered post on 14.08.2003. After receipt of notice, Satpal Garg had a telephonic talk with the defendant No.1 and defendant No.1 had told him that if due to the claim of the plaintiff, he was not interested to purchase the plot, he was free to get his amount back. Defendant No.1 also sent registered letter dated 05.09.2003 in the aforesaid context. Thereafter Satpal Garg, Ashish Kehar and Ashok Kumar entered into agreement to sell dated 25.09.2003 with the defendants No.1 to 3 and assured that they would deal with the plaintiff of their own. Agreement to sell dated 25.09.2003 was executed and signed by the parties.

[9]. Defendants No.1 to 3 further alleged that despite the assurance given by Satpal Garg, Ashish Kehar and Ashok Kumar, they did not utilise the amount paid by aforesaid three persons. Defendant No.1 had written letter dated 27.01.2004 to the Estate Officer, HUDA not to transfer the plot in favour of Satpal Garg and others without his consent as they wanted to avoid litigation. Defendants No.1 to 3 also alleged that the plaintiff and Satpal Garg, Ashish Kehar and Ashok Kumar had joined hands as they wanted to blackmail the defendants No.1 to 3.

[10]. Defendants No.1 to 3 further alleged that plaintiff had

played fraud with the defendants and thereafter Satpal Garg and others had entered into agreement to sell dated 25.09.2003 with them. Despite the registered notice, Satpal Garg and others had assured defendant No.1 to 3 that they would deal with the plaintiff themselves. Defendants No.1 to 3 also alleged that Satpal Garg and others have refused to deal with the plaintiff as they wanted extra money from them. On merits allegations of the plaintiff were denied.

[11]. On the basis of pleadings of the parties issues were framed by the trial Court on 02.11.2004.

[12]. Both the parties were called upon to lead evidence to prove their case.

[13]. Plaintiff examined himself, Sudhir Gupta and Sukhchain, Addl. Ahlmad on 08.08.2005 and closed the evidence in affirmative.

[14]. When the defendants No.1 to 3 were called upon to lead evidence, an application under Order 1 Rule 10 CPC was filed which was allowed on 08.04.2006 by the trial Court and defendants No.4 to 6 were impleaded.

[15]. Defendants No.4 to 6 filed their written statement and took plea of bar of the suit under Order 2 Rule 2 CPC, besides claiming that the suit was the result of collusion between the plaintiff and defendants No.1 to 3. On merits ownership of

defendants No.1 to 3 was denied as process of transfer was completed in favour of defendants No.4 to 6 and a formal letter of conveying the re-allotment was issued in their favour by the Estate Officer, HUDA, Panchkula on 15.10.2003.

[16]. Added defendants took the plea that they had become owner on payment of entire sale consideration to defendants No.1 to 3. They also took a stand that application for setting aside the transfer in favour of defendants No.4 to 6 was moved by the plaintiff in civil suit No.894 of 2003 which was dismissed. The suit was for permanent injunction in respect of property in question. The suit was dismissed by the trial Court vide order dated 12.01.2006. No appeal was filed against the said judgment by the plaintiff.

[17]. Subsequent vendees/defendants No.4 to 6 further took the plea that the present suit was barred under Order 2 Rule 2 CPC as the plaintiff had filed civil suit No.894 of 2003 for permanent injunction regarding the same subject matter and continued with the suit till the same was finally dismissed as having become infructuous on 12.01.2006. Plaintiff did not file any suit for specific performance at the initial stage and, therefore, the present suit was not maintainable. Defendants No.1 to 3 had transferred their proprietary rights in the property in favour of defendants No.4 to 6 on 15.10.2003 and the present

suit for specific performance was filed on 23.07.2004, therefore, suit was not maintainable as the defendants No.1 to 3 had also divested their right in the property. Defendants No.4 to 6 also contested the claim of the plaintiff on merits.

[18]. Issues were re-framed vide order dated 09.06.2006. Thereafter additional issue No.(i) was framed on 22.08.2007 and issues No.1-A to 1-D were framed on 13.09.2008. On re-framing of issues and additional issues, both the parties went to trial on the following issues:-

- “1. Whether the plaintiff is entitled to possession of suit property by way of specific performance of agreement to sell dated 31.05.2003? OPP*
- (i) Whether the defendants are in collusion with each other? OPP*
- 1A. Whether the SCO site No.220, Sector 14, Panchkula belongs to the defendants No.4 to 6. If so, its effect? OPD*
- 1B. Whether the suit of the plaintiff is barred by the provisions of Order 2 Rule 2 CPC? OPD*
- 1C. Whether the present suit has been filed by the plaintiff in collusion with defendants No.1 to 3? OPD*
- 1D. Whether the plaintiff has concealed true and material facts from the Court? If so, its effect? OPD.*
- 2. Whether the plaintiff has no locus-standi to file*

the present suit, nor is it maintainable in the present form? OPD

3. *Whether the defendants No.4 to 6 are bonafide purchasers of suit property entitle to protection under Section 41 of the Transfer of Property Act? OPD No.4 to 6.*

4. *Relief.”*

[19]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[20]. Trial Court dismissed the suit vide judgment and decree dated 24.12.2010.

[21]. Feeling aggrieved against the aforesaid judgment and decree, plaintiff filed appeal before the lower Appellate Court which was accepted vide judgment and decree dated 31.05.2011 passed by Additional District Judge, Panchkula.

[22]. Appellants have filed this appeal by formulating the following substantial questions of law in para No.35 of grounds of appeal:-

- “i) Whether the suit for specific performance was barred under Order 2 Rule 2 CPC?*
- ii) Whether the doctrine of lis pendens applies to the transfer in favour of the defendant-appellants?*
- iii) Whether the Lower Appellate Court could have decreed the suit for specific performance without there being any averment and without*

it being proved that the plaintiff-respondent was ready and willing to perform his part of the contract?

- iv) *Whether the Lower Appellate Court without returning the finding that there was due compliance of the mandatory provisions of Section 16(c) of the Act could have decreed the suit for specific performance?*
- v) *Whether the judgment and decree passed by the Lower Appellate Court is sustainable in law in view of the fact that no issue-wise findings have been returned by the Lower Appellate Court?*
- vi) *Whether the Lower Appellate Court erred in reversing the well reasoned judgment given by the Trial Court without dealing each and every finding given by the Trial Court?*
- vii) *Whether the Courts have erred in holding that Ex.P1 was admissible in evidence?*
- viii) *Whether the Courts below erred in holding that the defendant-appellants were not owners of the suit property at the time of filing of the suit especially in view of the order dated 10.11.2005 which became final as it was never challenged by the plaintiff-respondent?*
- ix) *Whether the judgment and decree passed by the Lower Appellate Court is perverse and hence liable to be set-aside?*

[23]. I have heard learned counsel for both the parties and

have also gone through the record.

[24]. Admittedly the property in dispute was allotted to defendants No.1 to 3 for consideration of Rs.85,10,000/- and they had deposited Rs.29,46,000/-. Defendants No.1 to 3 executed agreement to sell with plaintiff on 31.05.2003 for Rs.5,00,000/- as premium. The target date for executing the transfer was 17.10.2003 which was further extendable upto 17.10.2004 subject to 15% per annum as interest on the balance amount. The amount of Rs.3,00,000/- was received as earnest money. The agreement Ex.P-1 was admitted by defendants No.1 to 3, but according to them the same was cancelled and earnest money was returned to the plaintiff.

[25]. Plaintiff while appearing as PW-5 has specifically stated in his cross-examination that defendant No.4 Satpal Garg asked the plaintiff that he wanted to purchase the property in question. Plaintiff met Satpal Garg in the month of August 2003.

[26]. Plaintiff wrote a letter dated 12.08.2003 (Ex.P-2) to defendant No.4 by referring to agreement to sell dated 31.05.2003 that he should not purchase the property in question as the plaintiff was having first right to purchase the same in view of his agreement to sell. Plaintiff also wrote letter dated 22.09.2003 (Ex.P-7) to the Estate Officer, HUDA, Urban Estate, Panchkula with the request to withhold the permission to

transfer the SCO No.220, Sector 14, Panchkula with reference to his agreement to sell dated 31.05.2003. Admittedly vide letter dated 05.09.2003, defendant No.1 had wrote letter to defendant No.4 asking him to get the amount back from him.

[27]. Defendants No.1 to 3 had applied for transfer/permission in favour of defendants No.4 to 6 on 24.09.2003, claiming friendly transfer. Transfer/permission was allegedly granted on 25.09.2003. On 25.09.2003, itself defendants No.4 to 6 appeared in the office of Estate Officer, HUDA and submitted all the documents including transfer/permission and process was completed. This fact has been admitted by Satpal Garg while appearing as DW-2 in his cross-examination.

[28]. As per HUDA policy dated 25.02.1987, transfer/permission is required to be sent by registered post and to be produced with affidavit. Admittedly by referring to agreement to sell, plaintiff had issued registered notice to the Estate Officer, not to transfer the property with a copy to defendants No.1 and 4 vide Ex.P-4 dated 29.09.2003. HUDA replied to the plaintiff vide letter dated 30.09.2003 (Ex.P-8) that plaintiff should approach the Court to stop the transfer.

[29] Before the Estate Officer, HUDA, defendants No.4 to 6 filed affidavit dated 03.10.2003 (Ex.P-24) and submitted that they shall bear full responsibility of any litigation. Thereafter

plaintiff filed suit for permanent injunction on 08.10.2003 (Ex.P-9) against the defendants No.1 to 4 and the Estate Officer, HUDA, Sector 6, Panchkula.

[30]. Para No.8 and 11 of the said plaint are relevant to be quoted, which are as under:-

“8. *That yesterday plaintiff visited the office of the defendant No.4 and the house of defendant No.1 to 3 for restraining themselves from making the transfer of the above said plot in favour of defendant No.6 or anybody else, except for the plaintiff, but they refused to accept the request of the plaintiff and said that they will make the transfer in favour of defendant No.6 or any other person as suggested by defendant No.6.*

11. *That the cause of action accrued to the plaintiff from 03.10.2003, when the plaintiff received the letter Annexure P-5 of the defendant No.4 and then yesterday when the defendants declined to accept the request of the plaintiff for not to transfer the above said plot to defendant No.6 or any body else other than the plaintiff.”*

[31]. Notice of the aforesaid suit was issued to the defendants for 15.10.2003. Plaintiff had also issued registered notice dated 09.10.2003 (Ex.P-6) to the Estate Officer, HUDA that civil suit has been filed. Plaintiff wrote letter to the

defendants No.1 to 3 to extent the time for execution of sale deed upto 17.10.2004 vide letter dated 09.10.2003 (Ex.P-6). On 15.10.2003 all the defendants appeared before the Court in civil suit No.894 of 2003 vide Ex.P-10. The order dated 15.10.2003 has been produced on record as Ex.P-10.

[32]. Defendants No.6 filed written statement in that suit on the ground that the suit was only to create hindrance in the transfer of plot in their favour. The written statement dated 14.10.2003/15.10.2003 has been produced on record Ex.P-9/B.

[33]. In the aforesaid suit, vide order dated 15.10.2003, the civil Court granted interim injunction, restraining the defendants No.1 to 5 from transferring the property in question in favour of defendant No.6 or any other person. Factum of re-allotment/transfer in favour of defendants No.4 to 6 was not adverted to by the defendants at the time of grant of stay.

[34]. Despite the stay order, re-allotment was done in favour of defendants No.4 to 6 vide re-allotment dated 15.10.2003 (Ex.D-2/6).

[35]. Defendants No.1 to 3 filed the written statement in the aforesaid civil suit Ex.P-9/A on 21.10.2003. Due to Contempt petition No.1608 of 2003, the Estate Officer withdrew the transfer order/dated 15.10.2003 on 31.12.2003 (Ex.P-11) on the ground that interim stay order was granted by the court and the

matter was sub-judice before the civil Court at the time of re-allotment of the property. The process was kept in abeyance till decision by the civil Court. Due to withdrawal of the aforesaid re-allotment letter, the aforesaid COCP became infructuous on 22.03.2004 (Ex.P-12). Liberty was given to the petitioner therein i.e. plaintiff herein to seek remedy in accordance with law.

[36]. On 21.04.2004, the said civil suit No.894 of 2003 was adjourned for 28.07.2004. Somehow the date was preponed to 04.05.2004, without the knowledge of plaintiff (Ex.P-14). On 04.05.2004 the suit was adjourned for 12.05.2004. Some Ajay Chaudhary appeared for plaintiff though he was never engaged and the suit was dismissed in default on 12.05.2004. On 13.05.2004, though defendant did not appear, but re-allotment dated 15.10.2003 was restored on the ground that civil suit No.894 of 2003 had been dismissed on 12.05.2004. Re-allotment was done by order dated 13.05.2004 (Ex.D-2/8).

[37]. According to plaintiff, the aforesaid exercise was the result of collusion between defendants No.1 to 6 and the Estate Office, HUDA and fraud was committed upon the Court as well as upon the plaintiff. Thereafter on 30.06.2004, defendants No.4 to 6 applied for transfer/permission in favour of Manmohan etc., property dealers on the strength of re-allotment. In support of application for re-allotment Ex.P-25, an affidavit dated

02.07.2004 was filed by the defendants No.4 to 6 to the effect that no dispute or court case was pending in respect of the property.

[38]. On 23.07.2004, the present suit for specific performance came to be filed. On 28.07.2004, learned counsel for the plaintiff did not locate the civil suit No.894 of 2003 in the cause list of the Court. On making inquiries, factum of dismissal came to be noticed. An application was filed for restoration of the suit. Suit was restored vide order dated 10.08.2004 (Ex.P-13) with continuity of stay order. Against the aforesaid order Civil Revision No.4154 of 2004 was filed by defendants No.4 to 6 against the order of restoration Ex.P-13. The said revision petition was dismissed by this Court vide order dated 05.10.2004.

[39]. On 22.12.2004, defendants No.4 to 6 filed an application Ex.P-16 for dismissal of the suit as having become infructuous on filing of suit for specific performance. Defendants No.4 to 6 also filed civil suit for permanent injunction restraining the Estate Officer for cancelling the transfer order dated 15.10.2003 and for mandatory injunction directing the Estate Officer, HUDA to transfer the property in favour of Manmohan etc. on 18.07.2005 (Ex.P-19). No injunction was granted in the said suit and ultimately the said suit was got dismissed as

withdrawn by defendants No.4 to 6 on 19.01.2008 (Ex.P-19).

[40]. Plaintiff led evidence in civil suit No.494 of 2003 and closed the evidence on 08.08.2005. Defendants' witness did not appear, but defendants No.4 to 6 were impleaded in the said suit. Said suit was declared infructuous as in the opinion of the learned counsel for the plaintiff the cause of action of suit for specific performance accrued later on and, therefore, prior thereto suit for permanent injunction was maintainable. Suit was allowed to be dismissed as withdrawn being infructuous, however in the concluding part of the order plaintiff was given sometime to amend his suit or otherwise till next date. For ready reference para no.9 of the order dated 10.11.2005 (Ex.P-14) is given as under:-

“9. *So the plaintiff was not entitled to continue his suit for permanent injunction in his favour after 17.10.2004 the date on which he get cause of action to file the suit for specific performance and in any case after 23.07.2004 the date on which the suit for specific performance of contract was filed and the suit of the plaintiff for permanent injunction could not have continue, thereafter. Had the suit of the plaintiff for permanent injunction not been dismissed in default, on 12.05.2004, even then he could have got the relief of interim injunction only till 23.07.2004 because after that his suit for*

permanent injunction become infructuous. Thus now on this day, the suit of the plaintiff has to be deemed infructuous and interim injunction order cannot be given to him any more, when the suit of the plaintiff has become infructuous and this court is not entitled to confer any relief of interim injunction in his favour. Plea of the Id. Counsel for the plaintiff that transfer of the plot in dispute should be set right as it has been transferred in favour of defendants no.6 to 8 in violation of stay order granted by the court, cannot be allowed. Though it is correct that stay order shall be deemed in existence as on 13.5.2004 when transfer of the plot was made in favour of defendants no.6 to 8. However, even the stay order at the most can be construed to continue up to 23.7.2004 on which date the plaintiff filed a suit for specific performance in the court of Ld. Civil Judge (Senior Division) Panchkula. He could have moved appropriate application. In the said suit for claiming further relief of interim injunction till the decision of the said suit and the interim injunction granted in the present suit was of no help to the plaintiff after that date, the suit being become infructuous. Even the present application to set right the transfer of the plot in dispute was moved by the plaintiff on 22.12.2004 whereas he has already filed the suit for specific performance in the court of Ld. Civil Judge (Senior Division)

Panchkula on 23.7.2004. Therefore, this court is of the considered view that no direction can be given to set right the alleged transfer of plot in dispute in favour of defendants no.6 to 8, due to present suit itself become infructuos. Hence, the application of the plaintiff for set right the alleged transfer in favour of defendants no.6 to 8 is hereby dismissed. The application of defendants no.6 to 8 for dismissing the suit have infructuous is allowed to the extent that suit has become infructuous, however, the plaintiff is given some time to amend his suit or otherwise i.e. till next date.”

[41]. In view of aforesaid order, the Estate Officer, HUDA made a re-allotment letter ineffective till the rights of the parties are decided by the competent authority vide order dated 05.12.2005 (Ex.P-21). Defendants No.4 to 6 applied for possession to HUDA on the strength of re-allotment dated 15.10.2003, but they were not allowed to do so. The contempt petition No.1009 of 2006 was ordered to be disposed of vide order 10.08.2006 (Ex.P-18) by observing that the civil Court shall be competent to go into the merits of the application under Order 39 Rule 2-A CPC. Ultimately the agreement to sell was impounded by the Collector under the Stamp Act and charged Rs.510/- vide order dated 20.12.2010.

[42]. Learned counsel for the appellants vehemently argued

that the suit is barred under Order 2 Rule 2 CPC and the plea of readiness and willingness can be taken by the subsequent vendee. The findings recorded by the lower Appellate Court are claimed to be contrary to law.

[43]. In **Jugraj Singh and another vs. Labh Singh and others, (1995)2 SCC 31**, the Hon'ble Apex held that the plea that the plaintiff must always be ready and willing to perform his part of contract is available only to the vendor or his legal representatives, but not to the subsequent purchasers. The Hon'ble Apex Court in **Ram Awadh (dead) by LRs and others vs. Achhaibar Dubey and Another, JT 2000(1) SC 535**, while interpreting Section 16 of the Specific Relief Act (hereinafter referred to as 'the Act') held that the obligation imposed by Section 16 is upon the Court not to grant specific performance to a plaintiff who has not met the requirement of clauses (a), (b) and (c) thereof. The Court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of agreement, the specific performance whereof he seeks. There is, therefore, no question of plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the Court

to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. Learned counsel for the appellants further relied upon **M.M.S. Investments, Madurai and others vs. V. Veerappan and others, (2007)9 SCC 660** to contend that the aforesaid judgment is distinguishable on its facts and is not applicable on the ground that transfer was made after the decree of the trial Court. After the transfer by way of conveyance, the question of readiness and willingness is wholly inconsequential. After the conveyance, only question to be adjudicated is whether the subsequent purchaser was *bona fide* purchaser for value without notice or otherwise?

[44]. Learned counsel for the appellants also relied upon **Azhar Sulatana vs. B. Rajamani and Ors., JT 2009(2) SC 622** to contend that the subsequent purchaser is also entitled to raise the plea of readiness and willingness on the part of the plaintiff. In this judgment **M.M.S. Investments, Madurai and others'** case(supra) was not relied upon. The main stress of the learned counsel for the appellant is that the appellants being subsequent vendees can take up the plea that plaintiff was not ready and willing to perform his part of contract.

[45]. Learned counsel while relying upon **Satya Jain (dead) through LRs and others vs. Anis Ahmed Rushdie (dead)**

through LRs and others, (2013)8 SCC 131 also contended that considering the time spent, if at all agreement to sell is to be honoured, the sale deed has to be executed on the market price of the suit land as on date, for that necessary exercise has to be taken by the trial Court in determining the exact market value of the suit land as on date.

[46]. In K. Prakash vs. B.R. Sampat Kumar, (2015)1 SCC 597, the Hon'ble Apex Court held that grant of decree for specific performance is discretionary and the Court's discretion should not be arbitrary. Discretion must be exercised in accordance with sound judicial principles. The remedy for specific performance is an equitable remedy, the Court while granting relief of specific performance should exercise discretionary jurisdiction. The Appellate Court should also not exercise its discretion against the grant of specific performance on erroneous considerations or sympathetically considerations, though under Section 20 of the Act, a party is not entitled to get the decree of specific performance merely it is lawful to do so. Nevertheless, once the agreement to sell is legally and validly proved and further requirements for getting such decree is established, then Court has to exercise its discretion in favour of granting decree for relief of specific performance. Subsequent rise in price will not be treated as

hardship entailing refusal of the decree for specific performance. Rise in price is a normal changing of circumstance and, therefore, on that ground decree for specific performance cannot be reversed. In view of observations made by the Hon'ble Apex Court in **K. Prakash** and **Satya Jain (dead) through LRs and others'** cases (supra) the consensus view can be taken that the defendant can be asked to execute the sale deed on the basis of prevailing market value of the property.

[47]. Learned counsel for the appellants also argued that the first Appellate Court has committed jurisdictional error in not deciding the appeal by addressing itself to all the issues of law and facts involved in the present case and for giving reasons in support of its findings. Under Order 41 Rule 31 CPC, the lower Appellate Court was obligated and mandated to independently access the evidence of the parties and to consider the relevant points which arose for adjudication before it. By relying upon **H. Siddiqui (dead) by LRs vs. A. Ramalingam, 2011(2) Supreme 427**, learned counsel submits that the provision in terms of Order 41 Rule 31 CPC is like guideline for the Appellate Court as to how the Court has to proceed and decide the case. The provisions should be read in such a way so as to require that the various particulars mentioned therein should be

taken into consideration.

[48]. The trial Court discussed the aspect of readiness and willingness by observing that the plaintiff has candidly admitted that he never issued any notice to the defendants calling upon them to execute and register the sale deed in terms of Ex.P-1 in his favour at any point of time. When suggestion was given to the plaintiff that he was not having amount of Rs.85,00,000/- ready with him since 31.05.2003 till date 08.03.2008, the plaintiff denied the suggestion, but admitted in the next line of his cross-examination that he never informed the defendants No.1 to 3 vide letter or notice that he was having the amount of Rs.85,00,000/- and was ready and willing to give this amount. The plaintiff admitted that Arun Mittal etc. had never applied in HUDA for obtaining permission for transfer of the suit property. The trial Court while concluding on the basis of preponderance of evidence held that the plaintiff was not able to prove his readiness and willingness to prove his part of contract.

[49]. Learned counsel for the appellants on the aforesaid premise contended that the findings recorded by the trial Court on the issue of readiness and willingness have been reversed by lower Appellate Court without any reasoning. Issue-wise findings have not been given on the aspect of Order 2 Rule 2 CPC.

[50]. Relying upon para nos.8 and 11 of the plaint in a suit for permanent injunction Ex.P-9, learned counsel for the respondents submitted that once the plaintiff had the knowledge about the refusal to execute the sale deed on the basis of agreement to sell dated 31.05.2003, the filing of suit for permanent injunction was not maintainable and cause of action accrued to the plaintiff for filing suit for specific performance and, therefore, the findings recorded by the lower Appellate Court are *per se* illegal.

[51]. Learned counsel for the appellants relied upon **Ahmadsahab Abdul Mulla(2) (dead) through LRs vs. Bibijan and others, (2009)5 SCC 462** and contended that there cannot be any split of cause of action. In view of order dated 10.11.2005 passed by the Additional Civil Judge (Sr. Divn.) Panchkula, wherein the suit for permanent injunction was declared to be infructuous and plaintiff was given sometime to amend the suit, despite the fact that the suit for permanent injunction had already come into existence on 23.07.2004. The limitation should have been started from the knowledge when the plaintiff came to know about that the defendants have refused to honour the agreement to sell.

[52]. Learned counsel for the appellant further contended that bar under order 2 Rule 2 CPC can be established on the

basis of judgment given in the previous suit and not unnecessarily on production of pleadings. Two conditions are to be satisfied. Firstly that the earlier suit and the second suit must arise from same cause of action. Secondly two suits must be between the parties. Learned counsel relied upon **Smt. Ralli and others vs. Smt. Satinderjit Kaur, 1998(1) PLR 666.**

[53]. Again learned counsel for the appellants contended that property stood transferred in favour of defendants No.4 to 6 by HUDA and there cannot be any *lis pendens*. Prior to the filing of the present suit and even in the suit for permanent injunction they were not impleaded as party, though made party subsequently in a suit for permanent injunction as well as in a suit for specific performance. The Court has to be satisfied in terms of Section 16(c) of Act that the plaintiff was ready and willing to perform his part of contract or not? Admittedly no notice was given by the plaintiff to defendants No.1 to 3. On that premise, learned counsel for the appellants has assailed the judgment and decree of the trial Court with reference to material on record.

[54]. Learned counsel for the respondents, on the other hand submits that the defendants in collusion with the Estate Office played fraud upon the Court as well as on the plaintiff while getting the date changed from 28.07.2004 to 04.05.2004 and on

that day the case was got adjourned to 12.05.2004 by getting one Ajay Chaudhary appeared on behalf of plaintiff who was never engaged by the plaintiff. On 12.05.2004 due to non-appearance of the plaintiff the suit was got dismissed in default and thereafter got the re-allotment dated 15.10.2003 restored. Learned counsel contended that the fraud vitiates all solemn acts and the party committing fraud can be thrown out at any stage of litigation.

[55]. Learned counsel for the respondents while addressing his arguments submitted that readiness and willingness on the part of the plaintiff is fully proved on record in view of the fact that agreement to sell dated 31.05.2003 is an admitted fact between the parties. Cancellation has not been proved by the defendants No.1 to 3 by way of any document or evidence in any manner, nor the return of money has been proved on record. Apparently defendant No.4 had told the plaintiff that he wanted to purchase the property in question from defendants No.1 to 3 in the month of August 2003 and the plaintiff admittedly wrote a registered notice to defendant No.4 on 12.08.2003 (Ex.P-2) forbearing him to purchase the property in question and copy of that notice was also given to the defendant No.1. The plaintiff also wrote a letter to the Estate Officer for withholding the transfer permission vide notice dated

22.09.2003 (Ex.P-7). Even the defendants No.1 to 3 after adhering to the communication send by the plaintiff wrote a letter dated 05.09.2003 to the defendant No.4, calling him to get back his amount.

[56]. The collusion between the defendants and the Estate Office is writ large on the face of the record that once the transfer permission was granted on 25.09.2003, the same day defendants No.1 to 6 appeared before the Estate Officer, then got the process completed, whereas according to HUDA policy, transfer policy is granted always by way of registered post and to be produced with the affidavit. The communication in terms of agreement to sell in favour of the plaintiff was always within the knowledge of the defendants as well as the Estate Office, despite that defendants No.1 to 3 transferred the property in favour of defendants No.4 to 6. Now defendants No.4 to 6, whether can raise plea of readiness and willingness on the part of the plaintiff is the subject matter of interpretation in view of **M.M.S. Investments, Madurai and others'** case (supra). The question involves herein is that once the conveyance is executed in favour of defendants No.4 to 6, the question of readiness and willingness is relevant or not and the only thing which is to be seen whether defendants No.4 to 6 are bona fide purchasers or not?

[57]. Learned counsel for the respondents while relying upon the aforesaid judgment contended that it is only the plea of *bona fide* purchaser which has to be seen after execution of conveyance in favour of defendants No.4 to 6. The onus is on the purchasers to prove that they are the *bona fide* purchasers for valuable consideration without notice. **Ram Awadh (dead) by LRs and others'** case supra) was distinguished on the aforesaid premise. While relying upon **M.M.S. Investments, Madurai and others** and **Ram Awadh (dead) by LRs and others'** cases (supra) this Court in **Bahadur Ram vs. Lakhwinder Singh and others, 2008(3) RCR (Civil) 457** held that the subsequent vendee who has already got the transfer in his favour cannot take the plea of readiness and willingness in terms of the previously cited judgments. The plea of *bona fide* is the only relevant issue because readiness and willingness is really not relevant after the conveyance is executed in favour of defendants No.4 to 6. In order to prove the plea of *bona fide* purchaser, learned counsel for the respondent has strongly relied upon the communication made between the parties as well as between the plaintiff and Estate Officer, HUDA specifically communicating that the existence of agreement to sell dated 31.05.2003 and the nature of claim made therein. Defendant No.4 specifically told the plaintiff that he wanted to

purchase the property in question and plaintiff in reply thereto had informed him not to purchase the same. The said correspondence is duly exhibited on record with reference to evidence.

[58]. In view of aforesaid question of making enquiry by the subsequent purchasers before getting the transfer in their names does not arise at all as they were having knowledge about the existing agreement to sell dated 31.05.2003. In view of above, even if, the law laid down by the Hon'ble Apex Court in **Ram Awadh (dead) by LRs and others** and **M.M.S. Investments, Madurai and others'** cases (supra) is applied in the present context, the same would crystallize the situation whether defendants No.4 to 6 are proved to be *bona fide* purchasers or not?

[59]. In view of discussion made hereinabove the answer to the aforesaid question would be negative. On the aforesaid proposition, learned counsel for the respondents also cited **Ran Dass and another vs. Shisha Singh and others, 2007(5) RCR (Civil) 800** and **R.K. Mohammed Ubaidullah and others vs. Hajee C. Abdul Wahab (D) by LRs and others, (2000)6 SCC 402** to say that subsequent purchasers must prove their *bona fide*. Protection under Section 19(b) of Act, *bona fide* purchaser for value not without notice is in the nature of

exception to the general rule. Therefore burden of proving of good faith is on the purchaser who pleads that he is an innocent party. Good faith is a question of fact which must be considered and decided on the facts of the case.

[60]. In the instant case, the concept of good faith is not proved, rather prior intimation and knowledge of defendants No.4 to 6 are the proved facts. Defendants No.4 to 6 cannot be held to be innocent purchasers in good faith which is *sine qua non* for application of Section 19(b) of the Act. The filing of suit for permanent injunction before the date of execution of sale deed does not bar the suit for specific performance under Order 2 Rule 2 CPC. The filing of suit for permanent injunction has no effect on the filing of suit for specific performance in view of **Daulat Ram vs. Hari Ram and another, 2003(2) RCR (Civil) 268** and **Meena Rani vs. Ajaib Singh, 2003(3) RCR (Civil) 545.**

[61]. In the case of **Smt. Bhagwan Kaur vs. Harinder Pal Singh, 1992(1) RRR 59**, this Court held that the foundation for claim of specific performance in a subsequent suit is not the same as in the case of earlier suit for permanent injunction. The plea of bar in terms of Order 2 Rule 2 CPC should be satisfactorily established by the defendants and the same is not the subject matter of any inference. The pleadings of the earlier

suit have to be filed in a subsequent suit. The Hon'ble Apex Court in **Gurbux Singh vs. Bhoorlal, AIR 1964(SC) 1810**, laid down that in order to plead bar of suit in terms of Order 2 Rule 2 CPC, the pleadings of the earlier case should be satisfactorily established and the same cannot be presumed on the basis of any inferential reasoning. In order to prove plea of *bona fide* purchaser, mere inspection on time from the entries and ownership of possession in the name of vendor is not enough to hold a transferee to be a *bona fide* purchaser. Vendor was supposed to know the earlier agreement by necessary inquiry. In the instant case even the plaintiff informed the defendant by way of established material on record. The Division Bench of this Court has taken the aforesaid view in **Bal Singh and others vs. Ravinder Singh and others, 2005(3) RCR (Civil) 677.**

[62]. In the instant case readiness and willingness on the part of plaintiff to perform his part of agreement has to be tested with reference to the conduct of the parties, attending circumstances and evidence on record. In **Narinderjit singh vs. North Star Estate Promoters Ltd., (2012)5 SCC 712**, the Hon'ble Apex Court while dealing with the aforesaid proposition held that the question whether the parties are ready and willing to perform their part of contract is required to be tested in the

light of pleadings of the parties and evidence brought on record. The conduct of the parties play a very pivotal role. The concept of readiness and willingness cannot be treated as a straight-jacket formula and the issues has to be decided keeping in view the facts and circumstances of the case which is relevant to the intention and conduct of the parties to the litigation.

[63]. The conduct of the defendants No.4 to 6 in the instant case is so glaring that despite the currency of stay by the civil Court they purchased the property and having knowledge about the prior agreement to sell they ventured to purchase it despite information given by the plaintiff as first hand information and also advised them not to purchase the property in question. In a way defendants No.4 to 6 had purchased the litigation and that was so when submitted before the Estate Officer by way of executing affidavit that they will be responsible for all litigation in respect of suit property.

[64]. In view of observations made in **M.M.S. Investments, Madurai and others'** case (supra) the only relevant factor after execution of conveyance is plea of bona fide purchaser of the subsequent vendee. In view of observations made in **Ran Dass and another, R.K. Mohammed Ubaidullah and others** and **Bahadur Ram's** cases (supra), defendants No.4 to 6 cannot be proved to be *bona fide* purchasers. Similarly plea of bar of suit

in terms of Order 2 Rule 2 CPC cannot be entertained in view of **Daulat Ram, Meena Rani** and **Smt. Bhagwan Kaur's** cases (supra), rather the case is proved to be a case of fraudulent transaction in favour of defendants No.4 to 6.

[65]. The proceedings of civil suit No.894 of 2003, showed glaring facts when the contesting defendants got the case preponed from 28.07.2004 to 04.05.2004 and thereafter got the same dismissed in default by making one Ajay Chaudhary to appear on behalf of plaintiff are the instances which go in a way to show that the defendants No.4 to 6 were out and out to purchase the property after getting the suit dismissed by any means and after having done so successfully they got the re-allotment done within no time. Though the suit was restored with continuity of stay order, but the conduct of the defendants is apparently exhibited on record which cannot be said to be a *bona fide* conduct.

[66]. The plea of appellant that the suit is beyond limitation on the strength of para no.8 and 11 of the plaint, of suit for permanent injunction has no application inasmuch as that the suit for permanent injunction was only against the intended effort of the defendants No.1 to 3 in selling the property to defendants No.4 to 6, who were not even the party at the initial stage. The cause of action of filing suit for permanent injunction

was only to restrain defendants No.1 to 3 from transferring the land during subsistence of agreement to sell in favour of the plaintiff. After the target date, the cause of action for filing suit of specific performance accrued in favour of the plaintiff and the same was filed. The observations made in order dated 10.11.2005 giving sometime to amend the suit is only an explanatory note once the suit itself was declared to be infructuous. There was no occasion for the trial Court to give time to amend the suit particularly when by that time suit for specific performance had already come into existence, therefore, the limitation as claimed by the appellants on the strength of Article 54 of the Limitation Act of the precedent is not attracted, nor any split of cause of action can be appreciated in terms of judgment Ex.P-14.

[67]. The substantial questions of law as formulated by learned counsel for the appellants do not arise inasmuch as that no bar in terms of Order 2 Rule 2 CPC can be appreciated in the light of observation made in the preceding paras. Defendants No.4 to 6 have purchased with the notice of agreement to sell in favour of the plaintiff. In view of this defendants No.4 to 6 cannot be presumed to be *bona fide* purchasers. The plea of willingness is a very composite plea as has been held by the precedents cited in the preceding paras.

The conduct of the parties i.e. defendants No.4 to 6 is one of the component to be appreciated while dealing with the plea of readiness and willingness. The conduct of the defendants No.4 to 6 is proved to be *mala fide* in view of established material on record and, therefore, the plea in terms of Order 16(c) of the Act cannot come to the aid of the appellants. The findings have been given on the issues of question Nos.(i) to (iv) have the composite answer in the aforesaid manner. Judgment and decree passed by the lower Appellate Court is proved to be valid judgment and decree in view of discussions made therein.

[68]. The appeal has been filed by the subsequent vendors without proving themselves to be *bona fide* purchasers without notice, therefore, subsequent vendees have to prove themselves to be the *bona fide* purchasers and it was not open to them to assail any other issue over and above or the plea being the *bona fide* purchasers.

[69]. The evidence on record is sufficient to reverse the findings recorded by the trial Court and the agreement to sell Ex.P-1 is proved to be a valid agreement, rather that was admitted agreement. In the absence of proving that the same was cancelled and the money was paid back to the plaintiff, the agreement to sell will hold the field for the purpose of this litigation. The order dated 10.11.2005 has to be understood in

the light of over all pleadings and evidence on record and the findings recorded by the lower Appellate Court cannot be held to be illegal, nor any perversity can be presumed in the judgment and decree passed by the lower Appellate Court because the impugned judgment and decree is based on lawful appreciation of pleadings and evidence on record.

[70]. In considered opinion of this Court, no law point worth cognizance is involved in the present appeal, therefore, I find no merit in this appeal, the same is accordingly dismissed.

January 11, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE