

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No.58 of 1997**

- Smt. Prabha Devi Agrawal, aged 47 years, wife of Sita Ram Agrawal, resident of 70, Jal Vihar Colony, Raipur (MP)

---- Appellant/Plaintiff**Versus****Rikhi Ram-Respondent No.1 (Died) Through Lrs**

- 1(a) Deepak Kumar Chauhan, Son of Late Rikhi Ram, aged 12 years,
- 1(b). Ghanshyam, Son of Late Rikhi Ram, aged 10 years,
- 1(c). Sukhdai, wife of Late Rikhi Ram, aged 45 years,
All resident of Village and Post Samaruma, Tahsil Gharghoda, District Raigarh (CG)

Kirti Ram-Respondent No.2 (Died) Through Lrs.

- 2(a) Girdhari Lal Chouhan, Son of Late Kirti Ram, aged 45 years,
- 2(b) Pyarelal, Son of Late Kirti Ram, aged 43 years,
- 2(c) Jailal, Son of Late Kirti Ram, aged 40 years,
- 2(d) Lalit Ram, Son of Late Kirti Ram, aged 35 years,
- 2(e) Rohit Ram, Son of Late Kirti Ram, aged 30 years,
- 2(f) Anand Mali, daughter of Late Kirti Ram, aged 28 years,
- 2(g) Chandan Bai, daughter of Late Kirti Ram, aged 25 years,
- 2(h) Ghasnin Bai, daughter of Late Kirti Ram, aged 60 years,
All resident of Village and post Samaruma, Tahsil Gharghoda, District Raigarh (CG)
3. Vijay Kumar Agrawal, aged 26 years, son of Shanker Lal Agrawal, resident of Nayaganj, Raigarh, Tahsil and District Raigarh (MP) now Chhattisgarh.
4. The State of Chhattisgarh through Collector, Raigarh (MP) now Chhattisgarh.

---- Respondents/Defendants

For Appellant: Shri H.B. Agrawal, Senior Advocate with Smt. Prabha Sharma
For Respondent No.3 : Shri Ratan Pusty, Advocate

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**CAV Order****17/08/2018**

1. This appeal is directed against impugned judgment and decree dated 25-09-1996 passed by the 2nd Additional District Judge, Raigarh in Civil Suit No.14-A/1991, by which, suit filed by the appellant/plaintiff for grant of decree of

specific performance has been dismissed.

2. When this case was listed for hearing on 18-03-2013, this Court framed additional issue and the same was referred to the trial Court for trial on the newly framed issue by recording additional evidence by permitting the parties to file additional documents, if any, and return the finding to this Court. In compliance of the said order, the learned trial Court collected evidence and has return finding on the additional issue framed by this Court vide its order dated 01-09-2014.

3. The appellant-plaintiff filed a suit for grant of decree of specific performance on the pleadings, inter alia, that Bawno, father of the defendants Rikhi Ram and Kirti Ram had entered into an agreement to sell the property in dispute comprising of land ad measuring 3.456 Hectare, situated in Village Samaruma @ Rs.3,500/- per acre on 28-06-1990 and on that date, an advance of Rs.5,000/- was also received by Bawno. According to the plaintiff, an agreement was also executed. It was further pleaded that as per the agreement, Bawno and Rikhi Ram had to execute the sale deed on or before 31-12-1990 by receiving the balance amount of consideration. According to the averments made in the plaint, the plaintiff offered balance amount of consideration to Rikhi Ram and Bawno and requested them to execute the sale deed, but it was avoided. Finally, on 16-02-1991, a registered notice was sent to Rikhi Ram and his Father Bawno, requiring them to execute the sale deed within 15 days by receiving the balance amount, but the same was replied by the notice dated 04-03-1991 denying their liability. It was also averred that the plaintiff was ready and willing to perform her part of contract. A notice was published in the two local newspapers on 17-02-1991 and 22-02-1991 and the notice was also sent to the Deputy Registrar, Raigarh and Deputy Registrar, Gharghoda. The plaintiff then came to know that Bawno had executed a sale deed in favour of defendant No.3 on 07-03-1991. On such pleadings, the plaintiff sought decree of specific

performance of contract and delivery of possession of the property in dispute. In the alternative, the plaintiff prayed for refund of Rs.5,000/- along with interest.

4. The defendants No.1 & 2 namely Rikhi Ram and Kirti Ram sons of Bawno filed their separate written statement denying the plaint allegations and stated that Maniya Seth (Maniram Agrawal) and his sons come to Village Samaruma and assured Bawno that within a period of two months, the aforesaid property will be purchased by registered deed by paying Rs.5,000/- in advance and thumb impression of Bawno and signature of defendant No.1 as witness, was obtained. According to the defendants No.1 & 2, there was no agreement of sale with Smt. Prabha Devi, the plaintiff. It was further pleaded that Maniram or the plaintiff did not perform their part of contract as per the agreement dated 28-06-1990. Bawno was keeping ill and he needed money for medical expenses and agricultural requirements, but Maniram and his sons, after giving advance of Rs.5,000/-, did not come to village. The defendant No.1, on the instructions of Bawno, approached Maniram to get the sale deed registered by paying the balance amount, but Maniram avoided by saying that his son-in-law is residing at Raipur and he would be informed and balance amount would be demanded and in this manner, till December, 1990, Maniram kept on avoiding to execute the sale deed. When Bawno became critical ill and Rs.1,000/- was demanded by the defendant No.1, Maniram refused to make payment by stating that he did not receive money from his son-in-law. In December, 1990, once again, Maniram was approached for payment of the balance amount and registration of sale deed as Bawno was in dire need of money, but Maniram neither paid the balance amount nor took any effective steps towards registration of sale deed, whereupon in the first week of January, Maniram was informed by the defendant No.1 that the advance of Rs.5,000/- was forfeited and they started making efforts towards sale of property to some other person as his father Bawno was keeping ill and there was dire need of money, therefore, they entered into an

agreement with the defendant No.3 in the month of January, after taking advance also.

5. Defendant No.3 filed a separate written statement with the pleading that he was a bonafide purchaser for value and that he was not knowing about the earlier alleged agreement between the plaintiff and the defendants No.1 & 2 regarding the same property, which was purchased by him.

6. On the basis of the pleadings of the parties, the learned trial Court framed as many as 10 issues, which included as to whether, there was any agreement to sell executed by the defendants Rikhi Ram and Bawno with the plaintiff by receiving advance of Rs.5,000/-. The learned trial Court also framed issue as to whether the plaintiff was ready and willing to perform her part of contract. The learned trial Court also framed issue as to whether the defendants Rikhi Ram and Bawno failed to execute the sale deed in accordance with the terms of the contract. The learned trial Court also framed issue as to whether Maniram and his sons, on the assurance of execution of sale deed within two months, had paid advance to Bawno and defendant No.1 and obtained thumb impression and signatures. The learned trial Court also framed issue as to whether Maniram got the sale deed executed as per the agreement.

7. The learned trial Court, though recorded a finding that the plaintiff has succeeded in proving that there was an agreement of sale of the property in dispute between the plaintiff and Bawno and his son Rikhi Ram, it also recorded a finding that the plaintiff has failed to prove that she was ready and willing to perform her part of contract.

On additional issue framed by this Court as to whether the defendant No.3 was bonafide purchaser for value having paid money in good faith and without notice of the original contract within the meaning of Section 19 of the Specific Relief Act, 1963, learned trial Court has returned a finding that the defendant No.3 is a bonafide purchaser.

8. Assailing correctness and validity of the impugned judgment and decree as also on the additional issue framed by the learned trial Court, learned Senior counsel for the appellant submits that the learned trial Court ought to have decreed the claim of the plaintiff, because the plaintiff has not only specifically offered, but also led clinching oral evidence of herself and other witnesses, who have emphatically stated that despite repeated attempts made to pay the balance amount and get the sale deed executed in favour of the plaintiff, the defendant Rikhi Ram and his father Bawno avoided to get the sale deed executed. It is submitted that in order to prove readiness and willingness, the plaintiff has proved that she was possessed of sufficient means having paid the substantial amount of Rs.5,000/- and further that she had repeatedly visited Raigarh, where the defendant No.1 and Bawno were called by her father to execute the sale deed, but they always avoided. Learned counsel for the appellant further argued that the readiness and willingness of the plaintiff is proved from the fact that when the defendants did not execute the sale deed within the time stipulated under the agreement, immediately thereafter, two notices were got published in the two local newspapers on 17-02-1991 and 22-02-1991 as also notice given to the Deputy Registrar. All these facts having been proved, the learned trial Court committed illegality in law as well as on facts both to hold that the plaintiff has failed to prove its readiness and willingness. Learned counsel for the appellant further argued that though Bawno was alive during examination of witness was taking place by the learned trial Court, but he did not enter the witness box. Similarly, Rikhi Ram, the defendant No.1 also did not enter the witness box to prove his version that he had repeatedly approached Maniram and the plaintiff, but the balance amount was neither paid nor any attempt was made to execute the sale deed. Therefore, adverse inference ought to have been drawn. It is also submitted that the defendant-Rikhi Ram and his father Bawno knowing fully well that the plaintiff

was repeatedly approaching for execution of sale deed along with balance amount as also defendant No.3 having complete notice and knowledge of the date of agreement 28-06-1990, property in dispute was sold out by Rikhi Ram and Bawno in favour of defendant No.3. Therefore, the appellant-plaintiff is entitled to equitable relief of specific performance of contract. Learned Senior counsel for the appellant further argued that the learned trial Court has returned a finding on additional issue vide its order dated 01-09-2014, which is liable to be set aside, because while recording a finding, learned trial Court has not taken into consideration that prior to execution of sale deed dated 07-03-1991, the plaintiff had already got published two notice in the newspaper on 17-02-1991 and 22-02-1991 duly proved by her. In addition, notice was also given to the Deputy Registrar. Therefore, the defendant No.3 could not be said to be bonafide purchaser. It is further submitted that the plaintiff offered more consideration as compared to that offered by defendant No.3, therefore, defendant No.3 cannot be said to have purchased the property on adequate value. In support of his submissions, learned Senior Counsel for the appellant has placed reliance on ***Union of India vs. Ibrahim Uddin and another***¹ and ***Smt. Bina Rani Sarkar vs. Smt. Hashi Rani Ghosh and others***².

9. None appeared for respondents No.1 & 2, but learned counsel for respondent No.3/defendant No.3-purchaser in support of the judgment and decree argued that the plaintiff is not entitled to get relief in the suit. It is argued that that the burden to prove readiness and willingness is on the plaintiff, which the plaintiff has failed to establish. The pleadings made in this regard are extremely vague, unspecific and without any material particular details. The plaintiff failed to prove that she was ready with payment of balance amount of consideration. The plaintiff was required to discharge the burden irrespective of case of the defendant. Merely, Rikhi Ram and Bawno did not enter into the

1 (2012) 8 SCC 148

2 AIR 2012 SC 2035

witness box, it did not absolve the plaintiff of her burden to prove that she was ready and willing to perform her part of contract in order to get decree of specific performance. It is further argued that the defendant No.3 was a bonafide purchaser for value without notice of the earlier agreement and therefore, in the circumstances, decree of specific performance in favour of the plaintiff and against defendant No.3 could not be passed. According to him, time was essence of the contract and the plaintiff having failed to prove the readiness and willingness to perform her part of contract, the suit was rightly dismissed. On additional issue, it was submitted that the learned trial Court has rightly recorded a finding because the plaintiff failed to lead evidence to prove that the defendant No.3 had prior notice of agreement dated 28-06-1990 while purchasing the property in dispute from Rikhi Ram and Bawno and subsequent sale deed executed in his favour. In support of his contention, learned counsel for respondent No.3 has placed reliance upon various decisions in the case of ***Bhairab Chandra Sinha v. Kalidhan Roy Choudhary and others***³, ***K. S. Vidyanadam and others v. Vairavan***⁴, ***Mathew v. Scaria and another***⁵, ***Ram Awadh (dead) and others v. Achhaibar Dubey and another***⁶, ***P. Retnaswamy v. A. Raja and another***⁷, ***Gyaneshwar v. Smt. Moongabai @Muneshwaribai and another***⁸, ***Ramesh Chand v. Kishan Chand and another***⁹, ***Ram Prakash v. Baddal Hussain***¹⁰, ***Baijnath and another v. Chandrika Prasad Sahu and others***¹¹, ***Mrs. Saradamani Kandappan v. Mrs. S. Rajalakshmi & others***¹², ***Satish Kumar Gupta and others v. State of Haryana and others***¹³ and ***Kalawati v. Rakesh Kumar***¹⁴.

3 AIR 1929 Cal 736

4 AIR 1997 SC 1751

5 AIR 1998 Kerala 253

6 AIR 2000 SC 860

7 AIR 2002 Madras 131

8 2006(1) MPLJ 221

9 2006(1) MPLJ 169

10 AIR 2007 Allahabad 212

11 2008(1) CGLJ 307 (DB)

12 2011 AIR SCW 4092

13 (2017) 4 SCC 760

14 (2018) 3 SCC 658

10. After hearing learned counsel for the parties, I have perused the records.

11. Before taking up the case on merits, I shall first decide an application under Order 41 Rule 27 CPC filed by the appellant/plaintiff, by which, the appellant seeks permission of this Court to bring on record as additional evidence, Income Tax Return of the appellant/plaintiff to prove availability of fund and capacity towards payment of the balance amount of sale consideration.

Learned counsel for the appellant argued that though, due to inadvertent mistake, the plaintiff could not produce bank papers to show the deposit at the time of evidence, it is also submitted that Income Tax Return is also being filed to only substantiate, what has already been pleaded by the plaintiff.

12. On the other hand, learned counsel for the respondent No.3 opposed the prayer by submitting that after 12 years, the plaintiff seeks to bring additional evidence without stating anything as to why the same could not be produced earlier throughout the proceedings before the trial Court.

13. In the application under Order 41 Rule 27 CPC, the plaintiff has failed to state as to why these documents, said to be in her possession, could not be produced in evidence by her during the course of trial. An attempt has been made to bring additional evidence on record, after almost 12 years, to fill-up the lacuna and that too without any justification in terms of the requirement of law as contained in Order 41 Rule 27 of the CPC. In view of the decision of the Supreme Court in the case of **Satish Kumar Gupta** (supra), the application, therefore, deserves to be rejected and is accordingly rejected.

14. The following point arises for determination of this Court:-

(A) Whether the learned trial Court erred in law and on facts both in recording a finding that the plaintiff failed to prove readiness and willingness to perform her part of contract?

(B) Whether the defendant No.3 is bonafide purchaser for value having

paid money in good faith and without notice of the original contract. Therefore, suit is liable to be dismissed in view of the provisions contained in Section 19 of the Specific Relief Act.

15. As far as issue as to Bawno and Rikhi Ram had entered into the agreement to sell the property in dispute in favour of the plaintiff Prabha Devi, the same has been decided in affirmative in favour of the plaintiff and against the defendants. The records of the case do not show that the defendant had filed cross objection to the said finding regarding proof of agreement to sell.

16. It is well settled legal position that one who seeks decree of specific performance, an equitable relief, is required to prove that he was and is always ready and willing to perform his part of contract, as per the statutory mandate of Section 16(c) of the Specific Relief Act. While readiness refers to the availability of the fund or the capacity to pay the sale consideration, willingness refers to the mental preparedness on the part of the plaintiff as also performance of his part of contract under the agreement. It is well settled that unless there are specific averments in the plaint with regard to readiness and willingness, no equitable relief of specific relief can be granted.

17. Averments made in the plaint with regard to readiness and willingness is quite evasive, vague and lacking in material details. As far as readiness and willingness is concerned, the plaintiff pleaded, as under:-

6. यह कि वादी द्वारा दिनांक 31.12.1990 तक कई बार बावनो एवं रिखिराम से इकरारनामा दिनांक 28.06.1990 के अनुसार प्रतिफल की शेष राशि लेकर वादान्तर्गत भूमि का विक्रय पत्र निष्पादित कर उसका पंजीयन कराने का निवेदन किया किंतु बावनो एवं रिखिराम द्वारा केवल आशवासन दिया जाता रहा और विक्रय पत्र निष्पादित करने में टालमटोल दिया जाता रहा ।

7. यह कि दिसंबर 90 के बाद भी बावनो एवं रिखिराम से शेष प्रतिफल की राशि लेकर विक्रय पत्र निष्पादित करने का निवेदन कई बार किया गया किंतु उनके द्वारा टालमटोल दिया जाता रहा ।

18. It is thus clear that the plaintiff's averment in this regard was highly vague. When the plaintiff contacted the defendants for execution of registered sale

deed, whether she was possessed and was ready with the balance amount of consideration i.e. more than Rs.28,000/- has not been specifically averred. Further more, the readiness and willingness has also to be judged with reference to the plaintiff's conduct towards performance of its own part of contract as per the terms and conditions of the contract. Under an agreement dated 28-06-1990, Ex.P-2, the parties had agreed for payment of sale consideration @ Rs.3,500/- per acre. The plaintiff had paid Rs.5,000/- as advance. It was further stipulated that the sale deed would be executed on or before 31-12-1990, upon payment of balance amount of consideration. The time was therefore, essence of the contract as held in ***Mrs. Saradamani Kandappan*** (supra).

19. The evidence led by the plaintiff to prove readiness and willingness is equally vague as the plaint averments in that regard. The plaintiff has examined herself as P.W.2. In para 2, all that has been stated by her, is that before 31-12-1990, she had repeatedly requested Rikhi Ram and Bawno to execute the sale deed by receiving the balance amount of consideration and both the defendants had assured that they will execute the sale deed and get it registered. However, the date and month when she approached Bawno and Rikhi Ram has not been stated in the evidence. From the pleadings and the evidence of the plaintiff, it is plaintiff's own case that she was married and residing at Raipur. If that be so, she was required to give specific details regarding the date as to when she visited Raigarh, which lacks in pleadings but in the evidence also. She has not stated as to when she came with the arrangement of money. Whether she came with the arrangements of balance amount of consideration in every visit or any particular visit has not been deposed. In her evidence also, she has not specifically stated about her readiness and that she was possessed of the balance amount of consideration. In fact, she has not stated anything as to what was the balance amount of

consideration and as to how, she was ready with the said amount. In her cross-examination, she deposes that for the first time in January, 1991, she had, through her Advocate, sent notice to Rikhi Ram and Bawno. The steps taken by the plaintiff, as deposed in her evidence, begins only from January, 1991, when registered notice Ex.P-3 dated 16-02-1991 was issued to the defendants. No notice said to be issued in January, 1991 has been produced and proved. It would, thus, be seen that the plaintiff has nowhere stated in her evidence that she had sent any notice prior to 31-12-1990 or immediately thereafter and the first Notice is dated 16-02-1990 i.e. 2 & ½ months after the due date, by which, balance amount was required to be paid to the defendant and get the sale deed executed. The plaintiff further admits that after 31-12-1990, she gave notice to Bawno.

20. Hari Ram Agrawal, PW-3 has not stated regarding readiness and willingness, but states that the balance amount of consideration was to be paid by 31-12-1990.

21. Maniram, PW-4, father of the plaintiff-Prabha Devi has also vaguely stated that Prabha Devi requested the defendants several times to receive balance amount and execute the sale deed, but they avoided. He has not stated any date or month when Prabha Devi came to Raigarh and the date, on which, Bawno and Rikhi Ram came to their house or when they went to the village of Bawno and Rikhi Ram and requested for execution of the sale deed.

22. No other witness has stated that the plaintiff or anyone on behalf of the plaintiff visited the house of the defendants Rikhi Ram or his father Bawno offering to pay the balance amount of consideration and for registration of sale deed. There is no paper publication or registered notice given before 31-12-1990. The legal notice or notice to the Deputy Registrar have been given only after 31-12-1990.

The submissions that as Rikhi Ram and Bawno had not entered the

witness box, therefore, adverse inference should be drawn against the defendants and in favour of the plaintiff that the plaintiff was ready and willing to perform her part of contract, is liable to be rejected, because, in a suit of specific performance of contract, burden to prove requirements of Section 16(c) of the Specific Relief Act regarding readiness and willingness is squarely on the plaintiff and the plaintiff cannot take benefit of any weakness of the defendants.

23. The Supreme Court in the case of ***Ram Awadh(dead) by L.R.s*** (supra), held, as below:-

5. "Section 16 of the Specific Performance Act reads:
 16. 'Personal bars to relief.--- Specific performance of a contract cannot be enforced in favour of a person--
 (a) xx--xx--x
 (b) xx--xx--x
 (c) who falls to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant."
6. The obligation imposed by Section 16 is upon the court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A 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 the agreement the specific performance whereof he seeks. There is, therefore, no question of the 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. We are of the view that the decision in Jugraj Singh's case (1995 AIR SCW 901 : AIR 1995 SC 945) is erroneous."

Even though, no evidence has been led by the defendants, the plaintiff is required to discharge her burden by proving the requirements of readiness and willingness as held in the judgment referred hereinabove. Moreover, even though, Rikhi Ram and Bawno did not enter the witness box, the plaintiff's witnesses have been cross-examined and given suggestion that the plaintiff was not ready and willing to perform her part of contract. Therefore, the plaintiff's suit must fail only on this ground that she has failed to prove readiness and

willingness on her part of contract under the agreement.

24. In the case of ***Gyaneshwar*** (supra), it has been held that the question of bonafide of subsequent purchaser would be relevant only after plaintiff succeeds in proving readiness and willingness, therefore, there is no need to go into the other issue of bonafide of defendant No.3.

25. In the result, I do not find any good ground to interfere with the impugned judgment and decree. The appeal is, therefore, dismissed. Let appellate decree be drawn accordingly.

SD/-
(**Manindra Mohan Shrivastava**)
JUDGE