

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

RSA No.1547 of 1988

Date of decision: 12th February, 2018

Pavitar Singh (deceased) through LRs

... Appellants

Versus

Kaushalya Devi & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Jai Bhagwan, Advocate for the appellants.

Mr. Ashok Goel, Advocate for the respondents.

FATEH DEEP SINGH, J.

Initially Amar Nath plaintiff instituted a suit on 18.05.1982 and during the course of proceedings, upon his death his legal heirs stepped into his shoes and by another quirk of fate the then defendant Pavitar Singh too died and is being represented by his widow Kulwant Kaur who is appellant before this Court now.

The brief facts that have come about from the submissions of Mr.Jai Bhagwaj, Advocate for the appellants and Mr.Ashok Goel, Advocate representing the respondents are that one Pavitar Singh defendant executed an agreement to sell on 08.01.1978 with plaintiffs Amar Nath and Nachattar Singh, the latter having died and being represented by his LRs. The agreement was in respect of 200 square yards of plot bearing Khasra No.958 min and 956 min at the agreed rate of Rs.50/- per square yard and the total sale consideration for which

comes to Rs.10,000/-, out of which admittedly Rs.3500/- have been paid as earnest money. It was agreed upon between the two sides at the time of execution of the agreement that the sale deed would be executed within 30 days after vacation of stay orders by the trial Court in another suit preferred by Nachattar Singh and which admittedly stood dismissed on 27.03.1978. As a consequence of some misunderstanding, be that as it may, the plaintiff preferred the suit on 18.05.1982 for specific performance of this agreement dated 08.01.1978 taking the plea that the defendant had not so far informed the plaintiff as to whether the said injunction has been vacated or not and the result of these proceedings and that on 02.06.1981 the plaintiff served a notice on the defendant and thereafter on 11.06.1981 through his counsel and lastly on 27.01.1982 again through his counsel requesting the defendant to get the sale deed executed and claimed that the defendant has failed to perform his part of the contract and sought its enforcement taking a plea that he was still ready and willing to perform his part of the contract and also claimed in the alternative refund of Rs.3,500/- being the earnest money and Rs.6,500/- being damages, total Rs.10,000/- along with interest at the rate of 12% per annum from the date of filing of suit till actual realization.

In his stand taken in the written statement to the amended plaint, defendant admitted the agreement to sell so executed between the parties and claimed that he had duly intimated on 02.04.1978 that the stay has been vacated and the plaintiff could get the sale deed executed but he never done the same, and denied each and every contention and claimed

that it was the defendant who has been ready and willing to undergo his part of the agreement to sell and thus, sought dismissal of the suit. Upon replication, the trial Court framed following issues:

1. Whether the defendant informed the plaintiff about the vacation of the stay order and plaintiff was not ready and willing to get the sale deed registered ? OPD
2. Whether the suit is not maintainable ? OPD
3. Whether the plaintiff has waived his right by his conduct ? OPD
4. Relief.

The plaintiff in his evidence examined PW1 Parsini Devi followed by the testimony of PW2 Jagdish Deed Writer who proved postal acknowledgement Ex.PA and notice Ex.PB and thereafter PW3 Prem Chand reiterated the case of the plaintiff being son of the deceased Amar Nath and tendered documents Ex.PC and Ex.PD and closed the evidence.

On the other hand, defendant examined DW1 Teja Singh regarding information given to the plaintiff, DW2 Amla Singh to the similar effect and thereafter DW3 Sarwan Singh Record Keeper to prove the file of the previous case and thereafter defendant testified as DW4 reiterating his case and after proving documents Ex.D1 to Ex.D5 closed his evidence.

The Court of learned Sub Judge (1st Class), Patiala through judgment dated 23.11.1985 decreed the suit of the plaintiff with costs, against which the defendant preferred an appeal which too stood dismissed vide impugned judgment dated 06.02.1988 by the Court of learned Additional District Judge, Patiala and that is how the parties are before this Court in the instant appeal.

After hearing learned counsel for the two sides and as is conceded by them before this Court at the bar, the principal contention of the parties revolves around the very issue of readiness and willingness. Though with much fanfare, learned counsel for the appellants has sought to raise the plea that the Court below though has not framed issued but had disposed off the suit regarding readiness and willingness to execute the sale deed, and to hammer home the point has cited '**M/s J.P. Builders and another v. A. Ramadas Rao and another**' 2011(1) SCC 429; '**N.P. Thirugnanam (Dead) by LRs v. Dr. R. Jagan Mohan Rao**' 1995(2) RCR (Rent) 647; '**Mathew v. Kuruvilla**' 1987 AIR (SC) 2328; and '**Punjab Urban Planning and Dev. Authority v. M/s Shiv Saraswati Iron & Steel Re-Rolling Mills**' 1998(2) RCR (Civil) 292 to drive home the point that the Court should be slow to grant specific performance at the mere asking of it. However, the same is sought to be controverted with much elance by learned counsel for the respondents on the grounds that neither there has been violation of the provisions of Section 16(c) of the Specific Relief Act and that the onus to rebut the case specifically shifts upon the appellant/defendant who has failed to do

so and therefore the findings have been rightly recorded by the Court below.

From the very pleadings of the parties before the Courts, the submissions that have been made before this Court in the arguments of the two sides, though no specific issue as to the readiness and willingness for the plaintiff to undergo his part of the contract dated 08.01.1978 was framed, however, in the instant case parties were fully aware as to the case of the other side and being aware of the rival case had led their respective pleadings and evidence and therefore, failure of the Court to form an issue pales into insignificance for which this Court seeks support from **‘Sri Gangai Vinayagar Temple and another v. Meenakshi Ammal and others’ 2014(4) RCR (Civil) 920.**

More so, as is there in the judgment of the learned trial Court, there is a categoric finding during the findings on issue No.4 which pertains to the relief clause, holding that the purchasers remained ready and willing to perform their part of the agreement and after their death their LRs are ready and willing to perform their part of the agreement, and has further held that the defendant has not been able to establish that he has informed the plaintiffs about the vacation of stay and even then he has not got the sale deed executed or that he was ready and willing to perform his part of the agreement. The agreement has been duly proved as Ex.PC and which is not displaced by any of the sides. Furthermore, in the impugned judgment, as has been brought to the notice of this Court, there has been an observation which reads as follows:

“... .. If defendant was willing to perform his part of the contract and in fact he wanted to inform the plaintiff regarding the vacation of stay order he must have given a notice in writing to Amar Nath. On the other hand, plaintiff gave notice in writing to the defendant for getting the sale deed executed and registered in spite of that defendant did not get the sale deed executed and registered in favour of the plaintiffs. Thus defendant was not ready and willing to perform his part of the contract while plaintiffs were ready and willing to do so.”

Thus, a categorical finding has been given by the Court below that the defendant was not ready and willing to perform his part of the contract while the plaintiffs were ready and willing to do so. Thus, the cited ratios do not come to the aid of the appellants in any manner and certainly in another proposition of law for which support is being sought from ‘**J. Lingaiah and others v. G. Hanumanthappa and others**’ **2001(10) SCC 751**, their Lordships of Hon’ble the Supreme Court were of the view that where some of the issues in a suit were not framed by the trial Court but had arrived at a finding thereon, certainly does not call for remand of the matter and thus, clearly rebuts the contentions that have been sought to be raised by learned counsel for the appellants.

The plaintiff through his evidence has proved his stand and the onus thus, sufficiently shifts upon the defendant who had examined only two witnesses DW1 Teja Singh and DW2 Amla Singh but their admissions in their cross-examinations rather demolish the case of the defendant to the hilt and even deposition of defendant Pavitar Singh who

in his examination in-chief admits that the plaintiff told him that he would get the sale deed executed within one month and rather when confronted with the signatures on the acknowledgement of the legal notice so served upon him, has sought to wriggle out of it but did not lead any substantial evidence to rebut the same and rather accepts that he did not issue any notice to the plaintiff in writing intimating about the fulfillment of the stipulation laid down in the contract regarding the disposal of the suit. The very issuance of notice Ex.PB proved by PW1 shows the element of readiness and willingness on the part of the plaintiff together with the deposit of money in the treasury further corroborates the element of his readiness and willingness. Lastly, though no plea was taken in the pleadings of the defendant as to the bar of limitation, however, being a legal issue and as is contended by the respondents' counsel, the very pleadings set up by the plaintiff bear out in no uncertain terms that there is categorical mention in paragraph No.7 of the amended plaint that the plaintiffs have been all along and are still ready and willing to perform their part of the contract and were always ready with the money and used to request the defendant for that purpose and which is corroborated from the fact that right from the year 1981 the plaintiff had been serving legal notices and oral requests to the defendant if the condition has matured for entering into the sale deed or not and has specifically mentioned that lastly the cause of action arose to the plaintiff on refusal of the defendant a week ago to the filing of the suit when the defendant refused to undergo his obligation to the contract agreement and

there is no controverting of this evidence by the defendant. Since the plaintiff has duly fulfilled the condition laid down in Section 16(c) of the Specific Relief Act and the suit has been filed within three years when the plaintiff had knowledge that the performance is being refused by the other side. Certainly, the consistent findings of the trial Court and so the learned first appellate Court have taken into account all these considerations and have come to a totally justifiable conclusion. The appeal being hopelessly without merit, stands dismissed. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

February 12, 2018
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No