

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.301 of 2005****1. Ishwar Mishtri (died) through LR's**

1.a Ramesh Vishwakarma, S/o Late Ishwar Mishtri, aged about 50 years,

1.b Bihari Vishwakarma, S/o Late Ishwar Mishtri, aged about 41 years,

1.c Kusu Vishwakarma, S/o Late Ishwar Mishtri, aged about 34 years,

All R/o Company Bazar, Ambikapur, Dist. Surguja (CG)

2. Birju Mishtri, S/o Mewa Mishtri, aged about 50 years, Caste-Vishwakarma, r/o Company Bazar, Ambikapur, P.S. Ambikapur, District Surguja (CG)**---- Appellants/Defendants****Versus**

Vasudev Singh (died) through LR's

Satyendra Singh S/o late Vasudev Singh, aged about 50 years, R/o Village Sonpur, Tahsil - Ambikapur, District - Surguja (CG)

---- Respondent/Plaintiff

For Appellants/Defendants	: Mr.A.K.Prasad, Advocate
For Respondent/Plaintiff	: Mr.Vivek Bhakta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****24/09/2019**

- 1.** The substantial question of law involved, formulated and to be answered in this second appeal preferred by the appellants/defendants is as under:-:-

“Whether both the Courts below were justified in decreeing the suit of the plaintiff without framing the issue with regard to the readiness and willingness on the part of the plaintiff to perform the contract as enumerated under Section 16 (c) (i) of

the Specific Relief Act, 1963 by recording a perverse finding ?”

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

2. The plaintiff herein instituted a suit for specific performance of contract in relation to the suit land bearing Khasra No.57/2, area 10 decimal, pleading inter-alia that he entered into agreement to sell with the defendant on 15.2.1984 for cash consideration of ₹ 500/- and paid the entire consideration amount forthwith and pursuant to which, the defendant delivered peaceful and vacant possession of the suit land to the plaintiff and thereafter the plaintiff constructed the house on the said land and started residing therein. Thereafter, the plaintiff made repeated requests to the defendant for executing the sale deed in his favour, which he avoided on the pretext that permission of the Collector would be required for getting the sale deed executed in his favour and when in the year 1985, the requirement of getting the permission from the Collector came to an end, then also, the defendant did not execute the sale deed in his favour, which necessitated for filing of the suit for specific performance of contract.
3. The defendant filed his written statement and denied the averment made in the plaint stating inter-alia that he is not sole owner of the suit land and his brother Birju is also co-owner of the suit land, he was not empowered to execute the sale deed in favour of the plaintiff, agreement to sale is

forged and the suit is barred by limitation, as such, the suit deserves to be dismissed.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 27.10.2000, decreed the suit of the plaintiff by recording a specific finding that the suit land was self-acquired property of the defendant which he agreed to sale vide Ex.P-1 in favour of the plaintiff on 15.2.1984 and obtained ₹ 500/- as total consideration and delivered the possession of the suit land to the plaintiff on the same day. On appeal being preferred by the defendant, the first appellate Court maintained the judgment and decree of the trial Court, against which, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants, in which substantial question of law has been framed by this Court, which has been set-out in the opening paragraph of this judgment.

5. Mr.A.K.Prasad, learned counsel for the appellants/defendants, would submit that both the Courts below were absolutely unjustified in decreeing the suit of the plaintiff without framing any issue with regard to readiness and willingness on the part of the plaintiff to perform his part of contract as enumerated in Section 16 (c) of the Specific Relief Act, 1963 (hereinafter called as 'the Act of 1963') that too by recording perverse finding, therefore, the judgment and decree of both

the Courts below deserve to be set aside and the suit deserves to be dismissed.

- 6.** On the other hand, Mr.Vivek Bhakta, learned counsel for the respondent/plaintiff, would support the judgment and decree of both the Courts below and submit that admittedly as held by the Courts below the plaintiff has paid the entire consideration amount of ₹ 500/- to the defendant on 15.2.1984 and he was also placed in possession by the defendant and he is continuing in possession of the suit land and therefore, only registration of sale deed has to be done by the defendant which he avoided for this or that reason, as such, there was no dispute with regard to readiness and willingness, yet no prejudice has been caused to the defendant on account of non-framing the issue *qua* readiness and willingness, as such, the second appeal deserves to be dismissed.
- 7.** I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
- 8.** In a suit filed by the plaintiff for specific performance of contract claiming that he has entered into agreement to sale with the defendant for cash consideration of ₹ 500/- to purchase the suit land on 15.2.1984, the trial Court returned a finding that the defendant has entered into agreement to sale and obtained full consideration of ₹ 500/- and pursuant to

which, placed the plaintiff in possession of the suit land on the date of agreement to sell dated 15.2.1984 and granted decree in favour of the plaintiff.

9. The only plea which has been raised by learned counsel for the appellants/defendants in this second appeal is that no issue was framed with regard to readiness and willingness on the part of the plaintiff to perform his part of contract and therefore, the suit deserves to be dismissed by setting aside the judgment and decree of both the Courts below.

10. At this stage, it would be appropriate to notice Section 16(c) of the Act of 1963 which states as under:-

“16. Personal bars to relief.-Specific performance of a contract cannot be enforced in favour of a person-

(c) who fails 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.”

Section 16(c) of the Act of 1963 mandates that in a suit for specific performance of contract the plaintiff must show that all the conditions precedent have been fulfilled and also allege and prove the readiness and willingness to perform the contract of his part from the date of contract at the time of hearing. Readiness and willingness of plaintiff to perform his part of agreement of sale of land must be decided with reference to conduct of parties, attendant circumstances and

evidence on record (See **Narinderjit Singh v. North Star Estate Promoters Limited**¹).

11. Similarly, in **R.C. Chandiok v. Chuni Lal Sabharwal**²

Their Lordships of the Supreme Court have held that “readiness and willingness cannot be treated as a straitjacket formula and the issue has to be decided keeping in view the facts and circumstances relevant to the intention and conduct of the party concerned.”

12. The Supreme Court in the matter of **Syed Dastagir v. T.R. Gopalakrishna Setty**³ followed the principle of law laid down in **R.C. Chandiok** (supra) with approval and held as under:-

“13. It was held in the case of R.C. Chandiok v. Chuni Lal Sabharwal that readiness and willingness cannot be treated as a strait-jacket formula. This have to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. Finally, we have no hesitation to hold that the pleading as made by the plaintiff not only shows his readiness and willingness to perform his part of obligation under the contract but by tendering total amount shows he has performed his part of the obligation. We also construe such a plea to be a plea of readiness and willingness as required under Section 16 (c). In view of the aforesaid findings we hold that the High Court committed an error by defeating the claim of the plaintiff on the basis of wrong interpretation of his plea in terms of the said section.”

13. Reverting to the facts of the present case in light of the provisions contained in Section 16(c) of the Act of 1963 and

1 (2012) 5 SCC 712

2 (1970) 3 SCC 140

3 (1999) 6 SCC 337

the principle of law laid down by the Supreme Court in **Narinderjit Singh** (supra) and **R.C. Chandiok** (supra), it is quite vivid that in the instant case, the plaintiff/purchaser had paid the entire consideration amount of the suit land to the defendant on the date of agreement to sale dated 15.2.1984 and after payment of consideration amount, the defendant has placed the plaintiff in possession of the suit land. Both the Courts below have recorded finding that the plaintiff has paid the entire consideration amount to the defendant and the defendant has delivered peaceful possession of the suit land to the plaintiff, which has not been challenged by the appellants/defendants in this second appeal, as such, the aforesaid two facts i.e. payment of entire consideration amount by the plaintiff to the defendant and thereafter delivery of possession of the suit land by the defendant to the plaintiff is pleaded as well as established.

- 14.** The only question that has been placed for consideration is non-framing of issue by the trial Court with regard to readiness and willingness on the part of the plaintiff to perform the contract.
- 15.** It is correct to say that the trial Court has not framed any issue in this regard, but the fact remains that as held by the Supreme Court in **Narinderjit Singh** (supra), readiness and willingness of plaintiff to perform his part of agreement of sale of land must be decided with reference to conduct of parties,

attendant circumstances and evidence on record. The plaintiff has performed his part of contract by making payment of sale consideration to the defendant and the defendant has placed the plaintiff in possession of the suit land, but thereafter definitely, sale deed was not executed by the defendant in favour of the plaintiff. It is case of the plaintiff that the defendant has avoided the execution of sale deed on the pretext that permission of the Collector is required for alienating the suit land which according to the parties, requirement came to an end in the year 1985 and thereafter the plaintiff filed a suit on 31.8.87 stating that the defendant is avoiding the execution of sale deed in his favour, as such, non-framing of issue with regard to readiness and willingness has not caused any prejudice to the defendant. The plaintiff has performed his whole part of contract which is evident from finding recorded by two Courts below and evidence available on record. It is the defendant who has to execute the sale deed in favour of the plaintiff which has not been shown by him that he was ready and willing to execute the sale deed and it is the plaintiff who has not been taken interest in getting the sale deed executed in his favour and avoided it. Even otherwise, there cannot be any reason on the part of the plaintiff not to get the sale deed executed in his favour, if it is actually asked for by the defendant, the plaintiff being in possession of the suit land and constructed house and residing therein, rather it is the defendant who raised

several objections for not executing the sale deed in favour of the plaintiff, which is admitted fact recorded by two Courts below, as such, by not framing issue *qua* readiness and willingness, no prejudice has been caused to the defendant.

16. In view of aforesaid legal analysis, the substantial question of law is answered in favour of the plaintiff and against the defendant. I do not find any illegality or perversity in finding recorded by two Courts below, as such, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

17. A decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-