

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

**RSA No.1448 of 2011 (O&M)  
Date of Decision.05.03.2019**

Ram Saran

...Appellant

Vs

Kali Ram

...Respondent

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. V.D. Sharma, Advocate  
for the appellant.

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**AMIT RAWAL J. (ORAL)**

**C.M. No.4028-C of 2011**

For the reasons stated in the application, delay of 20 days  
in filing of the appeal is condoned.

Application is allowed.

**RSA No.1148 of 2011**

The appellant-plaintiff is in regular second appeal  
against the judgment and decree dated 16.11.2010 whereby judgment  
and decree dated 25.01.2010 passed by the trial Court decreeing the  
suit, has been set aside.

It was alleged that the plaintiff had paid a sum of  
₹40,000/- in the presence of the witnesses and scribed by one Harish  
Kumar Leekha, deed writer at Court Campus Tohana. Even  
possession of the suit property measuring 31-2/3 sq. yards i.e. half  
share out of total 63.3 sq. yards was also handed over. Plaintiff  
appeared before the Registrar on 3.8.2004 and remained present till 5  
PM but the defendant did not turn up. Even plaintiff also sent a legal

notice dated 10.03.2006.

The defendant opposed the suit. On merit, it was submitted that the parties to the suit had purchased the plot measuring 126.6 sq. yards vide sale deed dated 13.2.2004 in equal shares and thereafter, purchased mini bus and sold 60 sq. yards from the said plot. Owing to non grant of permission to ply the bus by the Transport Department, plaintiff did not disclose anything to the answering defendant and sold the bus by obtaining thumb impression of the answering defendant on some stamp papers. Defendant purchased the tractor bearing registration No.HR-23-3093 in February 2004 through Umed Singh, which the plaintiff took away with the assurance to use the same for commercial purpose. Instead of returning the tractor, extended threats.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the defendant entered into an agreement to sell the plot in question on 14.7.2004 and received Rs.40,000/- as full payment of the plot? OPP*
- 2. Whether the plaintiff has always been ready and willing to perform his part of contract? OPP*
- 3. Whether the alleged agreement is forged and fabricated document, if so to what effect? OPD*
- 4. Whether the suit of the plaintiff is not maintainable in the present from? OPD*
- 5. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD*

*6. Whether the plaintiff is stopped to file the present suit by his own act and conduct? OPD*

*7. Whether the plaintiff has suppressed the true and material facts from the Court? OPD*

*8. Whether this Court has no jurisdiction to try and entertain the present suit? OPD*

*9. Relief.”*

Plaintiff in order to prove the assertions made in the plaint, brought on record photocopy of the agreement to sell dated 14.07.2004, Ex.PW2/A and examined Harish Kumar Leekha, document writer as PW1 and himself appeared as PW3. PW1 brought on record his register reflecting execution of the agreement. Raj Singh another attesting witness had turned hostile. Defendant also led his evidence.

The trial Court decreed the suit but the lower Appellate Court reversed the finding.

Learned counsel appearing on behalf of the appellant submitted that even if time was not essence of the agreement by taking into terms and conditions of agreement, there is no limitation under Article 54 of the Limitation Act, which envisages cause of action as and when breach is alleged. Once the intention of the parties to enter into agreement to sell as well as with regard to property aforementioned has been proved through the testimony of document writer by bringing on record register, lower Appellate Court totally swayed with the finding of the criminal court wherein plaintiff was set free on probation but in appeal convicted for three

years. The appeal against the same is stated to be pending. Without noticing the fact that such finding did not have any binding effect, civil suit has to be decided on the touchstone of direct and cogent evidence, particularly, defendants have not been able to belie his thumb impressions on all three pages of the agreement to sell and in such circumstances, discretionary relief ought to have been maintained.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. Agreement to sell did not envisage any target date. Even if the plaintiff had appeared, it is evident that there was a breach in August 2004 but did not take any steps for performance of the agreement. Legal notice sent is dated 10.03.2006 whereas the suit in question was filed on 05.04.2007. The readiness and willingness has to be continuous, in view of the ratio decidendi culled out by Hon'ble Supreme Court in para 17 in **B.Vijaya Bharathi Versus P.Savitiri & Ors., 2017 (4) Civil Court Cases 291 (S.C.)** which reads as under:- “

*“15. Ram Awadh (supra) is a judgment by three Judges of this Court overruling Jugraj Singh vs. Labh Singh , (1995) 2 SCC 31, in which it was held that the plea that the plaintiff is not ready and willing to perform the contract is personal only to the seller-defendant. Subsequent purchasers cannot take this plea. This was stated to be an erroneous view of the law by the three Judge Bench, and the judgment in Jugrag Singh was set aside as follows:- "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 Case is erroneous."*

With regard to return of the tractor, which was one of the issue in the criminal case, PW3 did not support the version of PW1 Harish Kumar i.e. stamp papers were purchased by Kali Ram nor stamp vendor was examined. All these factors have been looked into collectively by the lower Appellate Court being the last court of fact and law.

In view of such circumstances, I do not find any illegality and perversity in the judgment and decree rendered by the lower Appellate Court, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**March 05, 2019**  
Pankaj\*

Whether Reasoned/Speaking      Yes

Whether Reportable                      No