

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

**RSA No.6724 of 2016 (O&M)  
Date of Decision.16.01.2019**

Amar Pal and another

...Appellants

Vs

Dharam Pal and another

...Respondents

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

Present: Mr. Adrash Jain, Advocate  
for the appellants.

Mr. Manmohan, Advocate  
for caveator-respondent No.1.

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**AMIT RAWAL J. (ORAL)**

The appellants-defendants have not been successful in defending the suit at the instance of the respondent-plaintiff claiming specific performance of the agreement to sell dated 31.05.2000. This case has a chequered history.

The plaintiff asserted that defendants had executed an agreement to sell dated 31.05.2000 whereas the target date for execution and registration of the sale deed was 30.11.2001 but being a holiday appeared on 29.11.2001. A sum of ₹8500/- was received as earnest money against the total price of ₹1,10,000/- in respect of land measuring 3 kanals 12 marlas.

The defendant opposed the suit and stated to be a loan transaction of ₹8500/- which was returned but the plaintiff did not return the signed papers and converted into agreement to sell. An agreement to sell dated 29.03.2000 in favour of Chandi was also pleaded.

Plaintiff examined six witnesses and brought on record following documents:-

*“Ex.P1 Agreement to sell dated 31.5.2000.*

*Ex.P2 Jamabandi of year 1999-2000.*

*Ex.P3 Affidavit dated 29.11.2001.*

*Ex.P4 Affidavit dated 03.12.2001.*

*Ex.PW-1/A Endst. of Sub-Registrar, Palwal dated 31.5.2001.*

*Ex.PW4/A Carbon copy of legal notice dated 16.01.2002.*

*Ex.PW4/B Postal receipt.*

*Ex.PW4/C Postal receipt.*

*Ex.PW/D Registered AD.*

*Ex.PW4/E Registered AD.”*

Defendants examined two witnesses and closed evidence.

The trial Court decreed the suit. However, in the meantime, Chandi had also filed the suit, which was decreed by the trial Court but in appeal, the matter was remitted with direction to implead Chandi as party. After the remand, the suit was decreed and the appeal preferred before the lower Appellate Court was also dismissed.

Mr. Adarsh Jain, learned counsel appearing on behalf of the appellants submitted that the plaintiff had not been ready and willing to perform his part of the agreement, as no explanation has come forth in not taking steps, for, legal notice was dated 16.01.2002 and the suit was filed on 17.09.2003. There is delay of two years.

Readiness has to be proved from the date of agreement, during its subsistence, till filing of the suit, during pendency of the suit till conclusion. Even agreement to sell is registered.

I am afraid aforementioned arguments of Mr. Jain are not sustainable, as the facts aforementioned reveal that the defendant had also attempted to thwart the claim of the plaintiff by executing an agreement in favour of Chandi. It was, in these circumstances, the plaintiff could not seek relief immediately on the expiry of stipulated date. Such an explanation cannot be a ground for negating plea of readiness and willingness. Witnesses have been coherent and consistent to prove the execution, much less, payment of earnest money.

In view of aforementioned circumstances, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below, 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**

**January 16, 2019**  
Pankaj\*

Whether Reasoned/Speaking    Yes

Whether Reportable                No