

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-4047 of 2011 (O&M)
Date of decision: 14.02.2020

Ravinder Singh & Anr.

... Appellants

versus

Jagjit Kaur & Ors.

... Respondents

and

RSA-4054 of 2011 (O&M)

Ravinder Singh & Anr.

... Appellants

versus

Jagjit Kaur & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Sunil Chadha, Sr. Advocate with
Mr. Saurva Kanojia, Advocate,
for the appellants.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Saksham Mahajan, Advocate
for the respondents.

ARUN MONGA, J.

1. The above titled appeals arise out of reversal of findings by the first Appellate Court vide judgment dated 17.09.2011, whereby judgment and decree dated 18.10.2005 passed by the trial Court decreeing the suit of the plaintiffs, were set aside and the suit filed by the plaintiffs was dismissed with costs.

2. The trial Court held that plaintiffs were entitled to specific

performance of agreement to sell dated 07.10.1991 regarding the suit property measuring 23 *kanals* 16 *marlas* and the sale-deed executed by defendant No.1 in favour of defendants No.2 to 4 were not binding upon the rights of the plaintiffs. But the first Appellate Court below held otherwise. While deciding the appeals filed separately by legal representatives of defendant No.1 and legal representatives of defendant No.2 along with defendants No.3 and 4, it was, *inter alia*, held that defendants No.2 to 4 are *bonafide* purchasers for consideration without notice and thus dismissed the suit of the plaintiffs. Hence, the two second appeals by plaintiffs before this Court assailing the judgment and decree dated 17.09.2011 passed by the first Appellate Court below.

3. Brief factual narrative first as noticed by the Courts below.

4. Plaintiffs(appellants herein) claiming that Ajit Singh, deceased, predecessor-in-interest of defendants No.1 to 5 had executed agreement to sell dated 17.10.1991 qua suit land in their favour, filed a suit for possession by way of specific performance of contract. As per agreement to sell dated 07.10.1991, a total consideration of Rs.1,78,600/- was negotiated between the parties to the agreement. Rs.1,50,000/- was paid at the time of execution of agreement and only balance of Rs.28,600/- remained to be paid to get the sale-deed executed. The target date for the sale-deed was set as 20.05.1992. Prior to execution of agreement to sell dated 07.10.1991, the parties thereto approached Sh. Jasinder Singh Deol, Advocate along with Sh. Gurmail Singh *Lambardar*(village Headman) and one Sh. Avtar Singh son of Sh. Ajit Singh and narrated the terms and conditions of the deal. The said Advocate then drafted the agreement dated 07.10.1991 and defendant No.1 received

the cash amount of Rs.1,50,000/-, out of the total sale consideration, in presence of said Advocate, Gurmail Singh, Headman and Avtar Singh. Plaintiffs were given actual possession. They always remained ready and willing to perform their part of contract and had sufficient funds at their disposal even before the target date. However, even before the expiry of target date, defendant No.1 executed two sale-deeds dated 14.05.1992, one in favour of defendants No.2 and 3 and other in favour of defendant No.4 qua the suit land. The plaintiffs/ appellants alleged that after execution of sale-deed dated 14.05.1992, defendants No.2 to 4 tried to take possession of the suit property on 20.05.1992 but did not succeed. Relief of declaration was also sought that aforesaid two sale-deeds dated 14.05.1992 executed by Ajit Singh deceased defendant No.1 in favour of defendants No.2 to 4 are *void* and ineffective etc. and not binding upon the rights of the plaintiffs.

5. In the joint written statement filed by defendants No.1 to 4, it was denied that plaintiffs were in actual or in physical cultivating possession of the suit land. Execution of the agreement of sale dated 07.10.1991 was denied. It was stated to be forged, fabricated, fictitious and illegal document. Any payment of sale consideration of Rs.1,50,000/- to defendant No.1 by the plaintiffs was also denied. Defendants No. 2 to 4 claimed themselves to be *bonafide* purchasers without notice of the agreement to sell set up by the plaintiffs. Defendants No.2 to 4 claimed to be in specific possession of the suit land and pleaded that they were cultivating the same after possession was delivered to them by defendant No.1.

6. In the replication, the averments of the plaint were reiterated

and the contents of the written statement were controverted.

7. Based on the pleadings of parties, the trial Court framed the following issues:-

“1. Whether the defendant no.1 entered into an agreement to sell in favour of the plaintiff?OPP

2. If issue No.1 is proved, whether the plaintiff is ready and willing to perform his part of the contract?OPP

3. Whether the plaintiff is entitled for permanent injunction restraining the defendant from interfering in the possession of the plaintiff?OPP

4. Whether the plaintiff is entitled for the declaration that the sale deed executed by defendant No.1 in favour of defendants No.2 and 3 is illegal, null and void?OPP

5. Whether the plaintiff is entitled for the possession by way of specific performance on the basis of agreement dated 7.10.91?OPD

6. Whether the defendant Nos. 2 to 4 are bonafide purchaser for consideration and without notice and the alleged agreement set up by the plaintiff?OPD

7. Relief.”

8. The parties to the suit adduced their respective oral as well as documentary evidence in support of their pleadings and in order to discharge the respective onus of proof casted upon them on the issues *ibid*.

9. After appreciation of evidence, the trial Court decreed the suit for specific performance of the agreement to sell dated 07.10.1991 with a further restraint on the defendants from interfering in the peaceful possession of the plaintiffs over the suit property.

10. Aggrieved, defendants No.1 and defendants No.2 to 4 filed two separate appeals before the first Appellate Court, which as noticed above,

have been allowed, leading to the filing of instant regular second appeals by the plaintiffs.

11. I have heard Mr. Sunil Chadha, Senior counsel for the appellant assisted by Mr. Saurva Kanojia, Advocate and Mr. Sumeet Mahajan, Senior counsel representing the respondents assisted by Mr. Saksham Mahajan, Advocate and have perused the judgments rendered by Courts below viz-a-viz the evidence adduced by respective parties.

12. This Court on 04.05.2012 while admitting RSA No. 4047 of 2011, formulated the following substantial questions of law for determination:-

“Whether judgment of the lower appellate Court arriving at a different conclusion on agreement Ex.P1, than that arrived at by the trial Court is perverse, based on misinterpretation and misconstruction of the material and documentary evidence?

Whether in the absence of any plea of defendant in the written statement, finding regarding the plaintiffs being not ready and willing to perform their part of the contract by the lower appellate Court is not contrary to the pleadings of the parties?

13. Learned Senior counsel appearing for the appellants strenuously argued that first Appellate Court while rendering the impugned judgment has seriously erred in holding that due execution of the agreement to sell dated 07.10.1991 has not been proved on record by the appellants/plaintiffs. The said finding of the Appellate Court below is solely based on the premise that the signatures of vendor Ajit Singh were obtained on blank stamp papers and the agreement in question has been typed by using the said blank papers. The said finding of the Appellate Court suffers from a serious illegality in as much as the same is quite contrary even to the

pleaded case of vendor Ajit Singh himself as the only pleaded case of the defendant in respect of execution of the agreement dated 07.10.1991 is to the effect that the same is a forged and fabricated document. Except for the said false and vague plea taken in the written statement, nothing has been stated as to how and in what manner the alleged blank paper signed by vendor Ajit Singh came into the hands of the appellant/ plaintiffs and as to how the appellants/ plaintiffs came in possession of the suit land.

14. Learned Senior counsel for the appellants further argued that while rendering the impugned findings, the lower Appellate Court relied upon certain minor and most immaterial discrepancies in the agreement and the statements of the witnesses, namely, Sh. Jaswinder Singh Deol, Advocate (PW-3) and Avtar Singh(PW-4). The learned lower Appellate Court gravely erred in holding that had Lambardar Gurmail Singh been examined by the plaintiffs then he could have proved that he had informed the plaintiffs that Ajit Singh has already executed two sale deeds in respect of the suit land in favour of respondents No.6 to 8 in this regard. It was also pointed out that in their suit itself, appellants/ plaintiffs have pleaded that on 20.05.1992 their father was informed by Lambardar Gurmail Singh that Ajit Singh had executed sale-deeds in respect of the suit land in favour of respondents No.6 to 8.

15. Learned Senior counsel for the appellant further argued that lower Appellate Court erred in holding that readiness and willingness of the appellants/ plaintiffs could have been proved by them by causing their appearance before the Sub Registrar along with balance sale consideration and their oral statement in this regard is sufficient. In this regard, suffice is to submit that as per the well settled law, statement of the appellant/

plaintiffs to the effect that they had sufficient funds with them to pay the balance sale consideration amount besides registration charges(stamp duty) and as such they were ready and willing to perform their part of contract, could be held to be sufficient to establish their readiness and willingness especially in view of the fact that only a paltry sum of Rs.28,600/- was left to be paid as balance sale consideration, since against payment of substantial amount of Rs.1,50,000/- as earnest money, possession of the suit land had already been delivered to the appellants on 07.10.1991 itself. In this regard, he has placed reliance on **Santa Singh Vs. Binder Singh & Ors. 2007(1) RCR(Civil) 162, Aniglase Yohannan Vs. Ramlatha & Ors. 2005 AIR(SC) 3503, Faquir Chand & Anr. Vs. Sudesh Kumari 2007(2) RCR(Civil) 64, Darshan Singh Vs. Ram Singh, 2008(4) RCR(Civil) 919, Azhar Sultana Vs. B. Rajamani & Ors. 2009(17) SCC 27 and Sarwan Singh Vs. Kankar Singh 2001(1) RCR(Civil) 513**, to contend that once vendor Ajit Singh had already executed the sale-deeds dated 19.05.1992 of the suit land in favour of respondents No.6 to 8, there was absolutely no need for the appellant/ plaintiffs to appear before the Sub Registrar along with balance sale consideration on the target date i.e. 20.05.1992. In any case, in their joint written statement, respondent/ defendants pleaded that since there does not exist any agreement of sale between the parties, there arises no question of readiness and willingness to perform their part of the contract. Once there is no pleading by the respondent/ defendants in their written statement that plaintiffs were not ready and willing to perform their part, any amount of evidence, even if brought on record by them, could not have been legally looked into by the learned lower Appellate Court. In this regard, he relied upon **Sant Singh Vs. Amarjit Singh, 2015(9) RCR(Civil)**

185.

16. Learned Senior counsel for the appellants further argued that Appellate Court below committed a serious illegality in brushing aside the admission made by vendor Ajit Singh in his cross-examination that the appellant/ plaintiffs remained ready and willing to perform their part of the contract, by holding that the said witness was subjected to a lengthy arduous cross-examination and on account of said fact, he might have committed a mistake. On absolutely untenable and flimsy grounds the lower Appellate Court found fault with the notice dated 19.05.1992(Ex.P-2) and the postal receipt(Ex.PW/2) vide which the said notice(Ex.P/2) was dispatched through registered post.

17. Learned Senior counsel for the appellants further argued that in absence of any pleadings much less any specific pleading, the lower Appellate Court committed illegality in holding that since the agreement of sale(Ex.P1) is shrouded by suspicious circumstance and its due execution is not proved, therefore, in terms of Section 20(2) of the Specific Relief Act, relief of specific performance of the agreement in question could not have been granted in favour of the appellant/ plaintiffs. While rendering the said finding, the lower Appellate Court seriously erred in not taking into consideration the aforesaid specific admission of vendor Ajit Singh that appellant/ plaintiffs remained ready and willing to perform their part of the contract. Simply on the ground that in the revenue record, joint possession of Ajit Singh with his brothers has been shown, the lower Appellate Court erred in holding that the actual physical possession of the suit property was never delivered to the appellant/ plaintiffs. It was contended that since the appellant/ plaintiffs had paid substantial amount of Rs.1,50,000/- out of

total sale consideration of Rs.1,78,600/- to vendor Ajit Singh, therefore, the plaintiffs were handed over the actual physical possession of the suit land on the same very day i.e. 07.10.1991.

18. Learned Senior counsel for the appellants further argued that since the appellant/ plaintiffs as well as all the respondents are the residents of the same village and on the date of execution of the agreement to sell dated 07.10.1991 itself, possession of the suit property was handed over to the appellant/ plaintiffs, therefore, it cannot be said that respondents No.6 to 8 are the *bonafide* purchasers of the suit land for a valuable consideration and further that they had no notice about the said agreement(Ex.P1). He has relied upon **Jaswinder Singh Vs. Nirmal Kaur 2018(2) RCR(Civil)903, Ajmer Singh Vs. Gurdial Singh 2015(67) RCR(Civil) 559 and Ganga Saran(deceased)rep. By LRs Vs. Kashi Prasad, 2012(56) RCR(Civil) 797, R.K. Mohammed Ubaidullah Vs. Hajee C. Abdul Wahab(D) By Lrs, 2000(3) RCR(Civil) 595 and Nirmal Singh Vs. Gejo and another 1996(3) RCR(Civil) 744.**

19. Per contra, learned Senior counsel appearing on behalf of the respondents argued that learned Appellate Court has rightly allowed the appeal by dismissing the suit of the plaintiffs as the alleged agreement to sell dated 07.10.1991 is a forged and fabricated document. He strenuously argued that plaintiffs failed to prove that they were ready and willing to perform their part of the contract and, therefore, Section 16(c) of the Specific Relief Act, 1963 dis-entitled them to seek the relief of specific performance in as much as it envisages that as person 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, cannot seek enforcement of the contract by way of specific performance in his favour. Admittedly, the plaintiffs did not appear before the Sub Registrar on the stipulated date for execution of the sale-deed on 20.05.1992. Though, the plaintiffs had tried to project that they did not go to the office of Sub Registrar on having received the information about sale of suit land by defendant No.1 in favour of defendants No.2 to 4, but lower Appellate Court rightly disbelieved the aforesaid version of the plaintiffs on the ground that Sh. Gurmail Singh, alleged to have informed of the sale of the suit property in favour of defendants No.2 to 4 has not been examined by the plaintiffs. No explanation whatsoever has been given as to why the aforesaid person was not examined by the plaintiffs as a witness. Thus, the explanation as to why the plaintiffs did not appear before the Sub Registrar has rightly been discarded by the Appellate Court below. The Appellate Court below has rightly relied upon the judgment passed by Hon'ble the Apex Court in Ram Awadh case(supra) to hold that plea of plaintiffs being not ready and willing to perform their part of the agreement is available to subsequent purchaser also. The plaintiffs also failed to comply with legal requirement, in the plaint, which was mandatory under Section 16(c) of Specific Relief Act and, therefore, the suit of the plaintiffs was rightly dismissed while relying on the case of Padmakumari(supra)

20. Learned Senior counsel further referred to notice(Ex.PW2/1) and argued that the Appellate Court below had also taken note of crucial aspect of the case that the alleged notice sent by the plaintiffs comprises of three pages. On the first page, the date mentioned is 19.05.1992 whereas at the third page, the date mentioned is 20.05.1992. The Appellate Court

below has rightly held that it is not proved that the said notice was actually dated 19.05.1992. Moreover, Sh. A.N. Bhardwaj, Advocate through whom the said notice was allegedly sent, has not been examined. On the alleged postal receipts also the date is not legible. Thus, the Appellate Court below has rightly doubted the version set up by plaintiff that purported notice dated 19.05.1992/ 20.05.1992 was actually sent to the defendants on 19.05.1992 by the plaintiff.

21. Furthermore, argued learned Senior counsel for respondents that plaintiffs also failed to prove that they were in possession of the suit land as was the case set up by them, while on the other hand, learned Appellate Court has rightly returned a finding in favour of defendants No.2 to 4 (respondents No.6 to 8 herein) that they were *bonafide* purchasers for consideration without notice of the agreement to sell set up by the plaintiffs. Learned Senior counsel also relied on the pleadings of the plaintiffs in as much as the plaint does not state that defendants No.2 to 4 were aware of the alleged agreement to sell dated 07.10.1991 before execution of the sale-deeds by defendant No.1 in their favour. In support of his arguments, learned Senior counsel relied on law laid down by Hon'ble the Apex Court in **Jumma Masjid Vs. Kodimaniandra Deviah AIR 1962 SC 847**, **Lohia Properties(P) Ltd. Tinsukia Dibrugarh, Assam Vs. Atmaram Kumar 1993(4) SCC 6**, **Ram Awadh(Dead) by LRs & Ors. Vs. Achhaibar Dubey & Anr. 2000(2) SCC 428**, **Padmakumari & Ors. Vs. Dasayyan & Ors. 2015(8) SCC 695**, **Azhar Sultana Vs. B. Rajamani & Ors. 2009(17) SCC 27**, **Khagendra Lall Dutta & Anr. Vs. Jacob Sole Jacob 1995(5) SCC 446**, **Crystal Developers Vs. Asha Lata Ghosh(Smt.)(Dead) through LRs & Ors. 2005(9) SCC 375**, **Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. & Ors. 2016(1) SCC 207** and **B.**

Vijaya Bharathi Vs. P. Savitri & Ors. 2018(11) SCC 761.

22. Learned Senior counsel for the respondents further argued that Appellate Court has rightly disbelieved PW3 Sh. J.S. Doel, Advocate (alleged scribe of the agreement to sell) and also the alleged witness of the agreement Avtar Singh. PW3 Sh.J.S. Doel has, *inter alia*, deposed as under:-

“I do not remember as to who wrote the portion Mark-D encircled red on Ex.P-1. The portion marked C, I do not know who has written the portion C in the agreement Ex.P1.....It is correct that the Mark D on Ex.P1 is typed in the margin left above this portion. I do not know what necessity arose for typing portion D in the margin on stamp papers. It must be known to the typist. I do not remember the name of the typist from whom the agreement was got typedI do not remember in whose handwriting the words LTI Gurmail Singh, marked E were written. But it is not in my handI do not remember if the word LTI marked E on the agreement was written by any of the parties to the agreement ...I do not remember as to when the portion B was written on the agreement. I even do not know as to who wrote this....”

23. Learned Senior counsel for the respondents has referred to the statement of plaintiff Ravinder Singh as PW2, where he deposed that “The writing within the red encircled was written by Mr. Deol”, whereas Mr. Deol in his deposition say that he does not know who had written it. PW2 Ravinder Singh further admits that “my father had played a major role in arriving at the agreement. I had merely signed the agreement. It was my father who had paid the amount shown in the agreement. Whereas, in the plaint, it is alleged that earnest money was paid by the plaintiffs and in the cross-examination plaintiffs say that the same was paid by their father and not by them. He has further pointed out that as per PW4 Avtar Singh, who

is alleged marginal witness of the agreement to sell, “Mr. Deol wrote it thumb mark”, whereas Mr. Doel(PW3) in his deposition has stated that “I do not remember in whose writing the word LTI Gurmail Singh Mark E was written.

24. According to learned Senior counsel for the respondents the aforesaid discrepancies duly noticed by the Appellate Court and proves that the alleged witnesses were not present when the alleged agreement to sell was scribed and that even the alleged scribe Sh. J.S. Doel had actually not scribed the same, especially when he does not even remember the name of typist. It is worth noticing in the alleged notice by Advocate Mr. A.N. Bhardwaj (Ex.PW2/1) that there is a absolutely no mention of any alleged scribe namely Sh.J.S. Doel, Advocate. Thus, name of Sh. J.S. Doel, Advocate has been introduced later as an afterthought malafidely.

25. According to learned Senior counsel, from the cross-examination of PW3 Sh. J.S. Deol, there is no doubt that the said alleged scribe Sh. J.S. Deol, Advocate was not present at the time of alleged execution of agreement to sell.

26. After giving careful thought and on perusal of pleadings vis-a-vis the evidence adduced by the parties and considering rival contentions of learned Senior counsels, this Court is of the opinion that both the appeals are bereft of merit and deserve to be dismissed. The trial Court fell in error in decreeing the suit in favour of the plaintiffs. The evidence adduced does not establish the genuineness, due and valid execution of the agreement between the parties.

27. Adverting to the substantial questions of law formulated by this Court, the answer thereto is self contained in the findings returned by the first Appellate Court in as much as it minutely examined the agreement to sell dated 07.10.1991(Ex.P-1) and found various suspicious

circumstances which are a clear pointer towards said document being a forged one. The observations of the Lower Appellate Court are as under:-

“12. A perusal of the agreement of sale Ex.P1 reveals that it has been typed by typist in English. It is mentioned in this agreement that it has been drafted by Sh. Jaswinder Singh Doel, Advocate who has been examined by the plaintiffs. In the cross-examination Sh. Jaswinder Singh Deol has stated that he does not remember the name of the typist from whom he got typed the agreement of sale The attesting witness of this agreement PW-4 Avtar Singh in his cross-examination has stated that Ajit Singh handed over the stamp papers to Sh. J.S. Doel and after that Sh. J.S. Doel called the typist. He also disclosed that the typist was sitting near the chair of the Advocate. This evidence proves that typist who has typed the agreement Ex.P1 was sitting near the seat of Sh.J.S. Doel, Advocate. But Sh. J.S. Doel has deposed that he does not remember the name of typist who has typed the agreement. This fact creates doubt regarding the due execution of the agreement. Sh. J.S. Doel also could not tell who had written the portion Mark-D encircled red in the agreement. This portion in the agreement has been typed in the margin left on the left side of the agreement and there is no explanation as to why typist had used this blank space to write the names of two attesting witnesses along with other portion of recital of the agreement. On the first page, the margin has been left on the entire page whereas on the second page the space left for margin has been used at the end of the agreement. Counsel for the defendants have submitted that manner in which the agreement has been typed proves that the signatures of Ajit Singh were already available on the blank stamp papers and agreement has been typed in such a manner so as to reach these signatures of Ajit Singh. The typist who had typed the agreement was the material witness to dispel the suspicious

circumstances which have been pointed out by counsel for the defendants as above, but he has not been examined. Sh. J.S. Deol also could not remember who had written the words “LTI Gurmail Singh” near the place where the thumb impression of attesting witness Gurmail Singh is affixed. He also could not remember who has written the word “Ajit Singh Ukat” appearing above the signatures of Ajit Singh. In case the agreement was drafted and got typed by this witness, he was bound to have the knowledge regarding entire writing work and signatures and thumb impression appearing on the agreement. The words “Ajit Singh Ukat” were not required to be written in the agreement as words “first party” was typed by typist in English. These words appeared in between the words “first party” and signatures of Ajit Singh. It seems that these words has been used to fill up the vacant space appearing in between the words “first party” and signatures of Ajit Singh. Counsel for the defendants have further pointed out that as per normal practice, the name of first party is written first and thereafter the name of second party is written. But here, the name of first party i.e. Ajit Singh is typed on other side which shows that it is forged and fabricated document. After going through the agreement, I find myself in agreement with him. It seems that words first party has been written at place where the signatures of Ajit Singh have appeared. The name of witnesses have been mentioned in the blank space left as margin may be due to paucity of space which was left after remaining portion of the agreement was written.

13. Keeping in view the defects appearing in the agreement of sale Ex.P1, I find that due execution of the agreement of sale by plaintiffs is not proved. The findings of Lower Court in this regard, in my opinion, is erroneous and are liable to be set aside. The plaintiffs have examined hand writing expert Sh. Gian Parkash Sharma who vide his report Ex.P13 has opined after comparison of disputed signatures of Ajit Singh appearing on the agreement with the standard signatures

*appearing on the written statement and its verification, power of attorney that the disputed signatures and standard specimen/ signatures have been written with same kind of movement and by one and the same person. The evidence of this witness is not helpful to the case of the plaintiffs. In **Balbir Singh Versus Sarup Singh & Ors. 2004(2) Civil Court Cases 186(P&H)** our Hon'ble High Court has held that if there are two divergent reports of two hand writing expert, the court is justified in ignoring the reports and placing reliance on the testimony of attesting witnesses and the scribe. In the present case the plaintiffs examined Avtar Singh who is one of the attesting witness of the agreement Ex.P1. He has deposed as per case of the plaintiffs regarding execution of the agreement. This witness does not know how to read or write English but he has deposed about the execution of the agreement which is written in English. His evidence is discrepant with regard to writing of words "LTI Gurmel Singh" on the agreement. According to this witness, Sh. J.S. Doel Advocate wrote these words in the agreement whereas according to said Advocate, he did not know who has written these words. It seems that this witness was not present when agreement was allegedly executed by defendant no.1 Ajit Singh. The plaintiffs did not examine the other attesting witness namely Lamberdar Gurmel Singh. No reason has been explained for his non examination. He could have proved that he had informed the plaintiffs that defendant No.1 Ajit Singh has already executed two sale deeds regarding the suit property in favour of Sukhpal Singh and others. Due to his non-examination, it is not proved that the plaintiffs did not get their presence marked before Sub Registrar to prove their readiness and willingness as they were already informed by Lamberdar Gurmel Singh about the transfer of suit property by defendant No.1 Ajit Singh in favour of Sukhpal Singh and others. The readiness and willingness of the plaintiffs could have been proved by their appearance before Sub Registrar along with balance sale consideration.*

The oral statement of witnesses of the plaintiffs in this regard is not sufficient. The plaintiffs have pleaded that a notice was also served upon defendant No.1 Ajit Singh to execute the sale deed. The copy of this notice Ex.P2 has been proved on the record. It is a carbon copy of original notice. A perusal of this notice reveals that on the first page, the date 19.5.1992 is written whereas on third page which is on separate sheet of paper, the date is mentioned as 20.5.1992. In the postal receipt Ex.PW2/2, the date on which notice was dispatched is not legible. It is not clear from the notice whether it was sent on 19.5.1992 or 20.5.1992. Rather the notice creates doubt regarding its genuineness as two dates are mentioned in the notice.”

The above observations rendered by the first Appellate Court leave no manner of doubt that conclusion drawn by it is totally acceptable and based on plausible reasoning. A bare look at the document Ex.P1 shows that bearing the signatures of Ajit Singh on second page thereof appears to have been taken on an earlier occasion. It seems that said signature was used to fabricate the agreement later on. More so, as is borne out from first page of the agreement, it does not bear his signature. Ajit Singh in his written statement completely denied having executed the agreement to sell set up by the plaintiffs. Even if opinion/ deposition of PW Gian Parkash Sharma, stated to be handwriting expert is accepted that agreement dated 07.10.1991(Ex.P1) bears the signatures of Ajit Singh, then also the condition and contents of the document and surrounding circumstances arouse serious doubts about its genuineness and do not inspire confidence with regard to its valid execution by Ajit Singh.

28. Thus, answer to the first question of law framed by this Court

while admitting the appeal, goes in favour of the defendants and against the appellants.

29. As regards the second substantial question of law framed by this Court, apart from Para No.13 of the judgment rendered by the first Appellate Court, as reproduced above, para Nos. 15 and 16 of the judgment under appeal are significant and the same are also reproduced hereinbelow:-

“15. As discussed earlier, the plaintiffs never got their presence marked before Sub Registrar on the stipulated date i.e. 20.5.1992 for execution and registration of sale deed. They have taken the plea that they were told by Lamberdar Gurmel Singh that sale deeds have already been executed, so they did not get their presence marked. This plea is not proved as Lamberdar Gurmel Singh was not produced to prove this plea. Learned trial court thus erroneously held that the plaintiffs were ready and willing to perform their part of contract and relief of specific performance of the agreement of sale was granted.

*16. Counsel for the plaintiffs has submitted that Ajit Singh himself has admitted in his cross examination that Ravinder Singh and his co plaintiff remained ready and willing to perform their part of contract and due to this admission, the suit was rightly decreed by learned lower court. On the other hand counsel for the appellant while relying upon the law settled in **Jai Sree Yadav versus State of UP 2004(2) Apex Court Judgments 491(SC)** has submitted that the defendant No.1 Ajit Singh was subjected to lengthy cross examination and due to lapse of time, the witness was bound to give contradictory statement. It has been held in the abovesaid ruling that when a witness is subjected to lengthy arduous cross examination over a lengthy period of time, there is always a possibility of the witnesses committing mistake which can be termed as omissions, improvements and contradictions therefore those infirmities will have to be appreciated in the*

background of ground realities which make the witness confused because of the filibustering tactics of the cross examining counsel. In view of the law settled in this ruling, the contradictions and discrepancies appearing in the evidence of defendant No.1 Ajit Singh as he was subjected to lengthy cross examination cannot be looked into. Defendant No.1 Ajit Singh has categorically stated during his evidence that he has never executed the agreement of sale and has rather sold the suit land to defendants No.2 to 4 for consideration. The admission made by this witness that Ravinder Singh and his co plaintiff remained ready and willing to get the sale deed executed cannot be looked into as he has also stated immediately, thereafter that no agreement was executed between himself and plaintiffs and question of his readiness and willingness does not arise. Moreover as stated earlier there is no evidence on record to prove that the plaintiffs ever visited the office of Sub Registrar along with balance sale consideration to execute the sale deed. On the other hand appellants have proved on record the due execution of the sale deeds by Ajit Singh defendant No.1 in their favour. The finds(?) of learned lower court in this regard are not correct.”

30. This Court is in complete agreement with the findings referred hereinabove. Assuming, without holding though, that the defendant/vendors had the knowledge of the agreement, the same would not effect the sale-deed executed in their favour. The assertion of the plaintiffs that they remained ready and willing to perform their part of the agreement was strongly denied by the defendants. Issue No.2 was specifically framed qua the same. Onus was on the plaintiffs to prove that they remained ready and willing. Having failed to discharge the said onus, they cannot now urge that sale-deeds by Ajit Singh in favour of defendants No.2 to 4 absolved them of their obligation. Furthermore, plaintiffs claimed that in the morning of

20.05.1992 they came to know that Ajit Singh had already sold the land to defendants No.2 to 4. If that be so, it is highly improbable, rather unbelievable, that plaintiffs would have gone to record their presence in the office of Sub Registrar to obtain execution of sale-deed as if to buy disputed land with an intention of obvious further litigation.

31. As regards the reliance placed by the appellants on the judgments cited by learned Senior counsel in course of arguments already mentioned in Para No.15(supra) of the judgment, a perusal thereof would reveal that in the peculiar and distinct facts and circumstances it was found by the Court that party concerned was ready and willing to perform his part of the contract. That being not the case here, the said judgments are of no help to the appellants. At the cost of repetition, appellants herein have failed to prove, firstly, that agreement was genuine, secondly, it was duly and validly executed and thirdly, that they had been ready and willing to perform their part of agreement. In the case of Azhar Sultana(supra), it was held by Hon'ble the Apex Court that a Court in a suit for specific performance of contract is required to pose itself following questions, namely:-

- (i) *Whether the agreement of sale is valid and binding on both the vendor and vendee; and*
- (ii) *Whether the plaintiff is all alone been ready and willing and still ready and willing to perform his part of the contract.*

In the present case, the appellants have failed to prove both these conditions.

32. In Sant Singh's case, *ibid*, this Court held that a person who denies the execution of the sale-deed, cannot be permitted to raise the plea of readiness and willingness. In the instant case, the appellants themselves

pleaded that they had been ready and willing to perform their part of the contract. In view of this and the law laid down by Hon'ble the Apex Court in Azhar Sultana's case (supra), it was incumbent upon the appellant/plaintiffs to prove that they had been ready and willing to perform their part of the contract. The reliance placed on the judgment of this Court in Sant Singh's case (supra), therefore, does not help the appellants in any manner.

33. The contention of Mr. Sunil Chadha, learned Senior counsel for the appellants that defendants No.2 to 4 cannot be said to be *bonafide* purchasers *sans* notice of agreement Ex.P1 is beyond the question of law formulated by this Court for adjudication and disposal of the instant appeals. Even otherwise, on merits also, the said contention is not acceptable in view of the findings of fact recorded by the first Appellate Court after proper appreciation of evidence to the effect that defendants No.2 to 4 are *bonafide* purchasers for consideration without notice of the alleged agreement set up by the appellants which are neither perverse nor illegal. The settled law is that in a suit for specific performance, the averment of readiness and willingness on the part of the plaintiffs has to be up to the date of filing of suit. Mere averment alone is not sufficient and supportive thereof is also necessary. Reference may be had to **Ram Awadh (Dead) by LRs & Ors. Vs. Achhaibar Dubey & Anr. 2000(2) SCC 428.** That apart, it is also well settled principle of law that not only original vendor, but also subsequent purchaser can taken the plea that plaintiff is not ready and willing to perform his part of the contract as enunciated in **Azhar Sultana Vs. B. Rajamani & Ors. 2009(17) SCC 27.** The judgments relied upon by learned Senior counsel for the appellants do not state to the contrary and are, therefore, of no help to the appellants.

34. In R.K. Mohammed Ubaidullah case (supra) it was held that a person in possession is deemed to have some interest or title in the property and if prospective vendee does not make a proper enquiry, he will be deemed to have notice of the existing state of affairs and cannot be claimed to be a *bonafide* purchase. In the present case, the first Appellate Court held and in my opinion rightly so, on due appreciation of evidence, that that appellants had failed to prove their possession at the relevant time. This finding too is neither perverse nor illegal. The judgment *ibid* relied upon by learned Senior counsel for the appellants has, thus, no applicability in the case in hand.

35. Reliance place on judgment in re: Nirmal Singh(supra) is also misplaced. The plaintiff therein had proved that subsequent purchaser had knowledge of agreement by the vendor with him to sale. That being not the case herein, the said judgment too is not applicable since the appellants have failed to prove any such knowledge by the subsequent purchasers/respondents.

36. In the aforesaid background of the discussion and the reasoning contained therein, the settled position in law that emerges is that in a suit for specific performance, the averments of readiness and willingness on the plaintiff's part up to the date of filing of the suit and prove thereof are necessary. The same has been enunciated by Hon'ble the Supreme Court in the case of Ram Awadh(deceased) *ibid*.

37. It is also well settled principle of law that not only the original vendor but also subsequent purchaser is entitled to raise the contention that the plaintiff was not ready and willing to perform his contract of contract.

Reference can be made to the case of Azhar Sultana(Supra). The argument

of learned Senior counsel for the appellants to the contrary is, therefore, bereft of merit and has to be necessarily rejected.

38. To sum up, after consideration of facts and circumstances vis-a-vis evidence adduced, this Court is of the opinion that findings of facts recorded and conclusion drawn by the learned First Appellate Court seem to be in conformity with the record as perused by this Court. This Court is of the view that findings have been returned after correct appreciation of evidence. There seems no perversity or illegality in the findings. No interference is, therefore, called for. Both the appeals are dismissed.

(ARUN MONGA)
JUDGE

February 14, 2020
Jiten

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No