IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. RSA No.4851 of 2013 (O&M)

Nagina Judge

… Appellant

Versus

Purshotam Singla & others

… Respondents

2. RSA No.4852 of 2013 (O&M)

Shah-e-Naaz Judge

… Appellant

Versus

Purshotam Singla & others

… Respondents

Date of decision: 12th March, 2020

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. H.S. Grewal and Ms. Raina Sabharwal Thakur,
Advocates for the appellant in RSA-4851-2013;
for respondent No.5 in RSA-4852-2013.

Mr.M.L. Sarin, Senior Advocate with
Mr. Nitin Sarin and Mr.Ritesh Aggarwal, Advocates
for the appellant in RSA-4852-2013;
for respondent No.5 in RSA-4851-2013.

Mr. Sanjay Majithia, Senior Advocate with
Mr. Inderjit Singh, Advocate for respondents No.1 to 4.

FATEH DEEP SINGH, J.

The above detailed two regular second appeals between the same sets of parties, having arisen in the same very civil suit between them bearing No.RT.294 of 14.10.2006/03.04.2008/16.12.2011 and having been disposed off through a common judgment and decree dated

07.03.2011, on account of common question of law and facts involved, are being taken up and disposed off together by way of this common judgment.

Plaintiffs Parshotam Singla, Sanjeev Garg, Om Parkash Bansal and Kamal Mahajan (now respondents) filed against defendants Ajit Singh Judge, Nagina Judge and Shah-e-Naaz Judge, father and two daughters respectively (latter two being appellants before this Court, the father being holder of general power of attorney on behalf of the daughters), a suit for possession by way of specific performance of agreement to sell dated 03.02.2004 in respect of the land measuring 24 Bighas 4 Biswas duly detailed and described in the head note of the plaint with consequential relief of permanent injunction restraining the defendants and their agents, servants and attorneys etc. from selling, alienating, mortgaging, encumbering or transferring the land in question in any manner whatsoever. The Court of learned Addl. Civil Judge (Junior Division), S.A.S. Nagar Mohali through judgment and decree dated 07.03.2011 decreed the suit and which findings were upheld in the impugned judgment of the Court of learned Additional District Judge, S.A.S. Nagar Mohali who vide judgment and decree dated 29.08.2013 dismissed the appeal of the appellant/defendants. That is how these two appeals have come about and are thus being taken up together.

The brief facts that are essential to be highlighted before venturing into the relative merits of the case of the two sides, are that undisputedly Ajit Singh Judge son of Sunder Singh Judge happens to be the owner in possession along with his two daughters Nagina Judge and Shah-e-Naaz Judge of the land duly detailed and described in the head note of the plaint. The father also is the duly constituted attorney of the daughters. The plaintiffs and the defendants entered into a sale agreement dated 03.02.2004 regarding sale of this land measuring 24 Bighas 4 Biswas. The agreed rate was ₹ 34,76,000/- per acre (one acre approximately equal to 4 Bighas). Out of the total sale consideration, ₹ 30.00 lacs were paid in advance and as per the terms and conditions reduced into writing on the same very day ₹ 10.00 lacs were to be paid on or before 31.03.2004 and the balance ₹10.00 lacs on or before 31.05.2004 before the Sub-Registrar, Dera Bassi. The plaintiffs alleged that they were ready and willing to undergo their part of the contract, ready with the balance sale consideration amount but the defendants had backed out of the same. It is clamed that on 31.03.2004 the plaintiffs tried to contact defendant No.1 but to no avail and on the same day they went to the office of Sub-Registrar, Dera Bassi along with ₹ 10.00 lacs and waited for the defendants between 9:00 a.m. till 5:00 p.m. but the defendants failed to turn up and they got their presence marked and attested by the Executive Magistrate, Dera Bassi. It is further alleged that even after 31.03.2004 the plaintiffs tried to contact defendant Ajit Singh and in the process had prepared demand drafts (detailed in the plaint) in all numbering six for a sum of ₹ 9.35 lacs in the name of the defendants and ₹ 10.65 lacs was with them in cash to be paid at the time of the execution of the sale deed including the money for paying expenses for the purchase of stamp papers and registration fee etc. but the defendants tried to be evasive. Alleging that the very intention of the defendants from the inception of this agreement was deceptive and after receiving the amount their intention has become mala fide. The plaintiffs feeling desperate and desolate contacted the defendants on 30.08.2004 to enable them to buy stamp papers as the same in view of the amount involved were not available at Dera Bassi and had to be purchased from Treasury Office at Rajpura regarding which they appeared before the concerned Executive Magistrate and got their affidavit attested to this effect. Thus, claiming that the defendants have committed breach of the terms of the contract, sought invocation of the judicial intervention seeking specific performance of this agreement to sell.

The defendants upon appearance, in their written statement besides usual preliminary objections had taken two self-contradictory stands claiming that no written contract of sale was ever executed between the parties on 03.02.2004 and alleged that the claimed agreement to sell was forged, fabricated and manipulated by the plaintiff side and at the same time, they admitted that they were always ready and willing to perform their part of the contract and rather tried to topple the tables against the plaintiffs on the grounds that it was the plaintiffs who had violated the terms and conditions of the agreement to sell and which by the efflux of time became unenforceable and legally invalid and therefore, a notice was served on 02.09.2004 upon the plaintiffs as to the termination of the contract and forfeiture of the earnest money. On the other hand, the defendants claimed that subsequent to the backing out by the plaintiffs they have entered into another agreement to sell with Vishnu Goyal and Pawan Sharma on 01.08.2006 and termed that no equitable relief of specific performance can be granted to the plaintiffs. Terming the case of the plaintiffs to be unsustainable, misuse of the process of the Court, their being clear gross breach of the terms of the agreement, did not entitle the plaintiffs to any relief, who in fact failed to perform their part of the contract having been unable to pay the balance amount so due in terms of the agreement and sought dismissal of the suit.

After usual replication, the trial Court framed the following issues:-

1. Whether the defendants entered into agreement with the plaintiffs on 03.02.2004? OPP
2. Whether the plaintiffs were always ready and willing to perform their part of the contract? OPP
3. Whether the defendants have filed (sic.) to fulfill terms and conditions of agreement? OPP
4. Whether the suit is not maintainable? OPD
5. Relief.

The plaintiffs to prove their case, examined PW1 O.N. Sharma Assistant from Canara Bank followed by the testimony of PW2 Rakesh Katoch Head Cashier of Punjab National Bank to establish the fact that demand drafts Ex.P1 to Ex.P4 were prepared on behalf of the plaintiffs favouring the defendants and thereafter is the deposition of PW3 Budh Singh Clerk of Tehsil Office, Rajpura to bring about and establish the affidavits of the plaintiffs, whereas PW4 Manoj Kumar Stamp Vendor has proved the sale of stamp papers in favour of defendant

Ajit Singh and the factum of stamp papers for more than ₹ 50,000/- being available only at Tehsil Office, Rajpura as per the administrative procedure. PW5 Suresh Kumar Jain similarly proved having sold the stamp papers and PW6 Deen Dayal Senior Assistant from the office of Tehsildar-cum-Executive Magistrate, Dera Bassi proved the affidavits of the plaintiffs followed by the testimony of PW7 Sunil Kumar Jain Deed Writer. Plaintiff Purshotam Lal Singla himself examined as PW8 and reiterated the case of the plaintiffs. The same is followed by the testimony of PW9 Jaswant Singh Nambardar as to the presence of the plaintiffs on 31.05.2004 in the office of Sub-Registrar Dera Bassi. PW10 Babita Rani Stamp Vendor has placed on record and proved the entry regarding plaintiffs on stamp papers. One of the plaintiffs Om Parkash Bansal testified as PW11 to lend corroboration to the testimony of PW8 and lastly PW12 Kamal Mahajan another plaintiff has detailed the claim of the plaintiffs supporting the other PWs in this regard. The plaintiffs in their evidence proved the demand drafts Ex.P1 to Ex.P6; affidavit dated 30.08.2004 Ex.P7; copy of register Ex.P8; agreement to sell Ex.P9 and Ex.P15; copy of receipt of earnest money Ex.P16; Affidavit dated 31.03.2004 Ex.P10 and Ex.P17; copy of affidavit dated 31.05.2004 Ex.P11; copy of affidavit Ex.P12; copy of entry of register Ex.P13; copy of statement of account of bank Ex.P18; copy of ledger Ex.P19, Ex.P20 and Ex.P20/A; Certificate of CA Ex.P21; copy of newspaper Ex.P23 and Ex.P24; copy of balance sheet Ex.P25; copy of IT return Ex.P26; copy of form No.3CB Ex.P27; copies of IT returns Ex.P28 to Ex.P31; audit report of CA Ex.P32 to Ex.P85; IT returns Ex.P86 to Ex.P91 and copy of entry Ex.P92.

On the other hand defendants have examined Ajit Singh Judge as DW1 who reiterated the stand of the defendants and sought corroboration from DW2 Kuljit Singh Sehgal one of the witnesses of this agreement to prove the factum of overwriting on the agreement to sell Ex.P15. DW3 Ravinder Singh Steno from the office of Tehsildar has established the factum of an affidavit having been sworn by defendant Ajit Singh Judge and thereafter DW4 Sunil Kumar Arora Handwriting and Fingerprint Expert has proved his report and findings. In support of their case, the defendants also proved documents Ex.D1 copy of agreement to sell; Ex.D2 and Ex.D3 copies of power of attorney; Ex.D1/A copy of agreement to sell; Ex.D5 copy of affidavit; Ex.D4/1 report of finger print expert; Ex.D6 copy of legal notice; Ex.D7 copy of affidavit; Ex.D8 copy of sale agreement; Ex.D9 copy of jamabandi for the year 2008-09; Ex.D10 copy of entry of register.

Upon decreeing of the suit by the trial Court on 07.03.2011 and upholding of the same by the first appellate Court vide impugned judgment and decree dated 29.08.2013, has led to the present two regular second appeals.

Heard Mr.M.L. Sarin, Senior Advocate assisted by Mr. Nitin Sarin and Mr.Ritesh Aggarwal, Advocates as well as Mr. H.S. Grewal and Ms. Raina Sabharwal Thakur, Advocates on behalf of the appellants/defendants and Mr. Sanjay Majithia, Senior Advocate assisted by Mr. Inderjit Singh, Advocate representing the respondents/plaintiffs.

In the light of admitted legal proposition as has been laid down in **'Kirodi (since deceased) through his LR vs. Ram Parkash & others' Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019,** the Court is not supposed to frame substantial questions of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana.

It is well entrenched law, reference of which can be taken note of the ratio laid down in **AIR 1987 SC 2179 'Vinod Kumar Arora v/s Smt. Surjit Kaur'** that the pleadings are the very foundation of the case of a party and further being a suit as to specific performance of an agreement to sell which is an equitable relief in terms of Section 10 of the Specific Relief Act, the very conduct of the parties at the trial is also very essential. The defendants in their written statement have raised a specific plea having denied any such contract that has come about as to sale of their property detailed in the suit and have termed the agreement, on the basis of which the instant suit was filed, to be forged, fabricated and manipulated by the plaintiff side and regarding which the learned trial Court had framed issue No.1. However, during the course of arguments before this Court, Mr. M.L. Sarin, Senior Advocate assisted by Mr. Nitin Sarin and Mr.Ritesh Aggarwal, Advocates have led no arguments to this effect and therefore findings of the trial Court on issue No.1 need to be upheld.

From the submissions, what permeates is as to the very findings on remaining issues No.2 to 4 and thereafter the relief being sought by the plaintiffs. The argument advanced on behalf of the appellants that the plaint is not signed by all the plaintiffs does not cuts much ice in view of the counter arguments by the other side who argues that as Order VI Rule 15 CPC ensures the proposition **in writing and signed by the party**, also includes counsel and agent of party and has cited **1977 PLR 185 'Smt. Mukhtiar Kaur v/s Smt. Gulab Kaur' and**

1999 (2) PLJ 306 'Karam Chand v/s Chaman Lal' therefore the submissions of the appellants do not carries the day for them as the plaint admittedly is duly signed by the party and their counsel. Moreover, ratio relied upon by the appellants in **'Dalip Singh & another v. Sadhu Singh & others' (2014) 2 PLR 769** is contradictory to their own case.

The very provisions of Section 10 of the Specific Relief Act ensure that the very essential prerequisite for decreeing a suit for specific performance is that there was a concluded contract between the parties and that the plaintiff had performed or was ready and willing to perform his part of the contract as per the terms laid down. The defendants' stand that no such contract has come about has been well negated by the findings based on the evidence. The very stand of the plaintiffs that they were ready with the money is borne out of the fact that they had proved on record their repeated efforts to get the sale deed executed on various dates spelled in their pleadings and evidence, and the demand drafts prepared by them from the Banks, the fact that they have got their presence marked before the Executive Magistrate/Sub Registrar respectively as Ex.P7, Ex.P8, Ex.P10, Ex.P17, Ex.P11, Ex.P12, Ex.P13 and when the defendants were too adamant to go ahead with the contract by being evasive, a public notice was made in the Dainik Bhaskar and

The Tribune on 03.02.2005, Ex.P23 and Ex.P24, are illustrative of this element of readiness and willingness immediate after the execution of the agreement to sell. Having prepared demand drafts worth ₹ 10.65 lacs, learned counsel for the appellants could not displace the arguments of the respondents' counsel that substantial amount of ₹ 30.00 lacs was paid at the time of entering into the agreement to sell and thus only ₹ 10.00 lacs remained to be paid, are matters of much concern that all was not well with the stand of the defendants. The very fragility of stand of the defendants is further highlighted from the cross-examination of Ajit Singh defendant DW1 when he accepts the fact that they have accepted ₹ 2.00 crores from one Vishnu Goyal and Pawan Sharma on 01.08.2006 and entered into another agreement to sell regarding this land and the fact that in respect of the second agreement to sell a suit has been filed by the proposed buyer. From this all, it is suggestive that after getting handsome money from the plaintiffs, the defendants have tried to evade their obligation and thereafter entered into anther contract where too they did not undergo their obligation and thus, a sum of ₹ 2.00 crores was put in their chest by the defendants. Rather to the mind of this Court, such a conduct is undermining the very case of the defendants disentitling them to equitable relief and corroborating the claim of the plaintiffs that it was none but the defendants who were trying to escape from carrying on their part of the contract for obvious reasons.

Though the defendants during the pendency of the appeal before the first appellate Court had moved application under Order 41 Rule 27 CPC read with Section 151 CPC for enabling them to produce additional evidence by way of notice dated 03.09.2004 along with postal receipts/UPC receipts annexed with the application as Annexure A1 to A4. To support this contention, learned counsel for the appellants have sought support from the ratio laid down in **'Billa Jagan Mohan Reddy and another v. Billa Sanjeeva Reddy and others' (1994) 4 SCC 659; and 'Shyam Gopal Bindal and others v. Land Acquisition Officer and another' (2010) 2 SCC 316.**

Since the appellants at no point of time in their pleadings or evidence had claimed that they have revoked the agreement to sell and forfeited the earnest money so received by them from the plaintiffs and at this belated stage especially in the light of the fact when these documents and stand do not form part of the defence of the defendants for which the other party has not been afforded reasonable opportunity to rebut, it would be too preposterous to allow such a prayer and more so, in terms of Section 90 of the Evidence Act enlists that presumption regarding documents 30 years old is not applicable to the present documents as has been sought to be argued by Mr. M.L. Sarin, Senior Advocate assisted by Mr. Nitin Sarin and Mr. Ritesh Aggarwal, Advocates as the documents which were supposed to be in the custody of Ajit Singh Judge defendant No.1 have never been purported to be in his custody nor were raked up by him during his pleadings and evidence and having been come at this belated stage from a source which cannot be termed to be a proper custody therefore, having a doubtful and illegitimate origin cannot bestow upon the appellants any claim for leading and proving such documents on record and more so, a party in possession of best evidence if keeps it out of the Court, the Court is justified in drawing an adverse inference against that party. Reliance placed on **1999(1) CCC 680 (P&H) 'Ram Pal v/s Savita Verma'.** Therefore such a plea is brushed aside. The ratios laid in **'Maria Colaco & another vs. Alba Flora Herminda D'souza' (2008) 5 SCC 268; Billa Jagan Mohan Reddy's case (ibid)** and **Shyam Gopal Bindal's case (ibid)** do not help the appellants on account of factual disparity.

Though with much fanfare on behalf of the appellants reliance is sought to be placed on **'I.S. Sikandar (D) by LRs v. K. Subramani & others' (2013) 15 SCC 27; 'J.P. Builders & another vs.**

A. Ramadas Rao & another' (2011) 1 SCC 429; 'Saradamani Kandappan v. S. Rajalakshmi & others' (2011) 12 SCC 18; 'Satya Jain (dead) through LRs v. Anis Ahmed Rushdie (dead) through LRs' (2013) 8 SCC 131; 'K.S. Vidyanadam & others v. Vairavan' AIR 1997 SC 1751; 'Pemmada Prabhakar & others v. Youngmen's Vysya Association & others' 2014 (6) Supreme 409; 'Man Kaur (dead) by LRs v. Hartar Singh Sangha' (2010) 10 SCC 512; and 'Padmakumari & others vs. Dasayyan & others' 2015 (4) Supreme 467 but the same is controverted by the respondent side by citing **'Sukhbir Singh & others vs. Brij Pal Singh & others' 1996 AIR (SC) 2510; 'Mst. Sugani v. Rameshwar Das & another' 2006(4) RCR(Civil) 319; 'Satya Pal Sharma & another v. Jagjit Rai Verma' 2012(4) RCR (Civil) 216 and 'J.P. Builders & another v. A. Ramadas Rao & another' (ibid);**

The Supreme Court of India in **M/s J.P. Builders' case (ibid)** in which catena of case law has been discussed and which has assigned meaning to words 'readiness and willingness' holding that the same implies where a person was prepared to carry out the terms of the contract and has held that the word 'readiness' refers to financial capacity and 'willingness' is the conduct of the party wanting to perform. The relevant part of the judgment is reproduced herein below:-

> *"10. In **N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao & Ors., (1995) 5 SCC 115** at para 5, this Court held:*
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> > *'.....Section 16(c) of the Act envisages that plaintiff must plead and prove that he had 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 those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always*

been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of the contract.'

*11) In **P.D'Souza vs. Shondrilo Naidu, (2004) 6 SCC 649** paras 19 and 21, this Court observed:*

'It is indisputable that in a suit for specific performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstance of each case. No strait-jacket formula can be laid down in this behalf.... The readiness and willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendant did everything which was required of him to be done in terms of the agreement for sale."

Their Lordships in **M/s J.P. Builders' case (ibid)** have stressed the facts highlighting conduct of the buyer in keeping the money for the purposes of meeting the demand of the seller especially when the buyer has deposited substantial amount to facilitate and meet the requirements of the seller, is in itself a step into the direction of the fulfillment of the contract. It is there, unrefuted and unrebutted evidence that the plaintiffs out of the total sale consideration at the time of very execution of the agreement to sell on 03.02.2004 had paid ₹ 30.00 lacs Ex.P16 in advance and the balance was to be paid in two installments of ₹ 10.00 lacs each on 31.03.2004 and 31.05.2004 for which they have proved on record six demand drafts, Ex.P1 to Ex.P6 and being in possession of sufficient money as Ex.P18 to Ex.P20, Ex.20A, Ex.21, Ex.P25, Ex.P26, Ex.P27 to Ex.P31, Ex.P32 to Ex.P85, Ex.P86 to Ex.P91 is a positive element and step that has been initiated in this direction that the plaintiffs were having the financial capacity and heavy amount available with them out of which substantial amount by way of earnest money stood paid at the very time of execution of the agreement to sell. The claim that the plaintiffs' stand of readiness and willingness is based on surmises and conjectures, could not be enlivened by Mr. Sarin on behalf of the appellants. Rather the admitted conduct of the appellants is a matter of much relevance that all was not well with the case of the appellants, who have not only tried to hoodwink the plaintiffs but even the subsequent proposed prospective buyers, Vishnu Goyal and Pawan

Sharma, with whom without loss of time they have entered into a second agreement to sell on 01.08.2006.

Section 16(c) of the Specific Relief Act mandates readiness and willingness and for which no straitjacket formula can be laid down and has to be adjudged from case to case on the individual level and there can be no generalization on that score. However, it needs to be underlined that such an element of readiness and willingness ought to be proved continuous one from the date of the contract till fling of the suit and thereafter.

Reverting back to the present case, in consequence of the judgment of the trial Court, as is argued before this Court the plaintiffs have deposited the balance sale consideration before the trial Court on 05.04.2011, rather cements their claim that the element of readiness and willingness was continuous and uninterrupted from the date of the contract till the decision and even thereafter they had complied with the judgment and decree of the trial Court and which conduct does not augurs well for the appellants. More so, as has come in the evidence of the plaintiffs that they have made telephonic calls and that the stamp papers were to be purchased of heavy amount keeping in view total sale consideration of the sale deed, the same were available in the office of

Sub-Registrar Rajpura and they had made efforts in making arrangements to buy the stamp papers there as well and which is supported by the testimonies of the officials of that office, is a material corroboration to their claim. The ratios laid down in '**Sukhbir Singh & others vs. Brij Pal Singh & others'; 'Mst. Sugani v. Rameshwar Das & another'; 'Satya Pal Sharma & another v. Jagjit Rai Verma' and 'J.P. Builders & another v. A. Ramadas Rao & another' (ibid)** relied upon by the respondents in unison hold that where the buyer proves to the satisfaction of the Court that he has sufficient money to go ahead with the agreement and was willing to undergo the same is reflective of the obligation of the plaintiff to fulfill his part of the agreement and the ratios relied upon by the appellants in **'Saradamani Kandappan v. S. Rajalakshmi & others'; 'Satya Jain (dead) through LRs v. Anis Ahmed Rushdie (dead) through LRs'; 'K.S. Vidyanadam & others v. Vairavan'; and 'Pemmada Prabhakar & others v. Youngmen's Vysya Association & others' (ibid)** do not advance in any manner their case.

Since the findings of the learned trial Court as well as the first appellate Court are well reasoned taking into account each and every bit of evidence of the two sides and therefore by virtue of Section 22 of the Specific Relief Act, interference by this Court in Regular Second

Appeal can only arise if the judgment under assail of the lower Court is perverse, contrary to well recognised principles or is unsustainable on basis of evidence. Reliance placed on **AIR 1964 Pb 375 'Dr.Bal Saroop Daulat Ram v/s Lt. Col. Lakhbir Singh, Kirpal Singh & another'.**

In light of the aforegoing discussion, there is no merit in the instant appeals and thus both stand dismissed. No costs.

(FATEH DEEP SINGH)
JUDGE

March 12, 2020
rps

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