

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No.227 of 2011****Reserved on 17.03.2021****Pronounced on 24.03.2021**

1. Surjeet Singh Saluja (died) through legal representatives:
 - 1(a) Ravindra Pal Saluja, S/o Surjeet Singh Saluja, age 58 years, R/o Beedpara, near Lal Tanki, Raigarh
 - 1(b) Amit Singh Saluja, S/o Surjeet Singh Saluja, age 43 years, R/o Beedpara, near Lal Tanki, Raigarh.
 - 1(c) Taranjeet Kaur Saluja, W/o Ranjeet Singh Saluja, age 62 years, R/o Punjabi Colony, Dayal Band, Bilaspur, C.G.
 - 1(d) Satwant Kaur Saluja, W/o Hardeep Singh Saluja, age 38 years, R/o Jagmal Chowk, Bilaspur (C.G.)

---- Appellants/Plaintiffs**Versus**

1. Gulam Rasool, S/o Mohammed, R/o Beedpara, Raigarh, District Raigarh (C.G.)
2. State of C.G. Through Collector, Distt. Raigarh, (C.G.) (Defendants)

---- Respondent

For Appellant	:	Shri Adil Minhaj, Advocate
For Respondent No.1	:	Shri Vineet Kumar Pandey, Advocate
For Respondent No.2/State:	:	Shri Ravi Maheshwari, P.L.

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Judgment/Order**

1. Challenge to this Appeal preferred by the Plaintiff under Section 96 of the Code of Civil Procedure, 1908 (for short 'CPC') is the judgment and decree dated 26.08.2011 passed in Civil Suit No.23-A/2011, whereby the trial Court has dismissed the Plaintiff's claim for specific performance of contract. The parties to this appeal shall be referred hereinafter as per their description before the Court below.

2. Briefly stated the facts of the case are that the Plaintiff instituted a suit claiming specific performance of contract with regard to the land in question bearing Kh.No.238/2 admeasuring 1.687 hectares situated at village Regda, Tahsil and District Raigarh. According to him, the alleged suit land was agreed to be sold by the Defendant, namely, Gulam Rasool, under an agreement to sale dated 05.04.2005 within the period of one year for a consideration of Rs.90,000/- upon receiving an earnest amount of Rs.60,000/-. It was stipulated in the alleged agreement that the rest of the sale consideration of Rs.30,000/- shall be paid at the time of its registration. It is pleaded further that the *Rin-Pustika* of it has also been delivered to him on the same day, but, he was avoiding to execute the registered deed of sale on one pretext or the other despite several requests being made and even upon the service of notice dated 08.03.2008, giving rise to the institution of the suit in the instant nature, instituted on 03.04.2008.
3. While denying the execution of the alleged agreement to sale, it is pleaded by the Defendant that on 02.04.2005, the Plaintiff had come and taken his *Rin-Pustika* for verification of the revenue papers and prepared a forged document in order to grab his alleged property and based upon it, has filed the suit.
4. In support, the Plaintiff has examined himself as P.W.1, while none was examined by the Defendant.
5. After considering the evidence led by the Plaintiff, it was held by the trial Court that the alleged agreement to sale dated

05.04.2005 (Ex.P.1) was executed between the parties, but the Plaintiff has failed to establish that he was always ready and willing to perform his part of the contract. In consequence, while dismissing the claim for specific performance of contract, the trial Court has directed for the refund of the alleged earnest amount of Rs.60,000/- along with its interest at the rate of 6% per annum from the date of institution of the suit. This is the order which has been impugned by way of this appeal.

6. According to Shri Adil Minhaj, learned counsel appearing for the Appellant/Plaintiff, the finding of the Court below holding that the Plaintiff was never ready and willing to perform his part of the contract is apparently contrary to law. It is contended further that since the evidence of the Plaintiff could not be controverted by the Defendant as he failed to enter into the witness box, therefore, no finding as such ought to have been made by the Court below while refusing to grant him the decree for specific performance of contract. In support, he placed his reliance upon the principles laid down by the Supreme Court in the matters of ***Govind Prasad Chaturvedi vs. Hari Dutt Shastri and another*** and ***Smt. Chand Rani (dead) by LRs. vs. Smt. Kamal Rani (dead) by Lrs.***, reported in (1977) 2 SCC 539 and AIR 1993 SC 1742 respectively.
7. On the other hand, Shri Vineet Kumar Pandey, learned counsel for the Respondent/Defendant, while placing his reliance upon the decision rendered by the Supreme Court in the matter of ***N.P.Thirugnanam (dead) by LRs. vs. Dr. R. Jagan Mohan***

Rao and others reported in **(1995) 5 SCC 115**, has supported the judgment and decree under appeal as passed by the trial Court.

8. I have heard learned counsel for the parties and perused the entire record carefully.
9. The main question which arises for determination in this appeal is as to whether Plaintiff was ready and willing to perform his part of the contract dated 05.04.2005 (Ex.P.1)?
10. An agreement to sale (Ex.P.1) was executed on 05.04.2005 by the Defendant – Gulam Rasool agreeing to alienate the land in question bearing Kh.No.238/2 admeasuring 1.687 hectares in favour of the Plaintiff – Surjeet Singh Saluja for a consideration of Rs.90,000/- upon receiving an earnest amount of Rs.60,000/- from him. According to the terms and conditions as stipulated therein, the sale deed was required to be executed within the period of one year. However, a legal notice (Ex.P.3) appears to have been issued by the Plaintiff for the first time only on 08.03.2008, i.e., almost more than two and half years of its execution. Although it was stated by him in his evidence that an oral request was being made on several times for its execution, but in absence of any cogent and reliable evidence, it is difficult to hold that the alleged oral request was made by him as such. That apart, in order to establish the alleged version of him, atleast some corroborative evidence should have been led by him so as to hold that the alleged oral request was ever made by him. No explanation has, however,

been given by him as to why the legal notice was issued after such a long gap of its execution, particularly, when the registered deed of sale was required to be executed within the period of one year. Under Section 16 (c) of the Specific Relief Act, 1963, it is incumbent upon him not only to aver but also to prove that he was always ready and willing to perform his part of the contract. Merely based upon such a bald statement of him, which is not even corroborated by any cogent and reliable evidence, it cannot be said that he was ever ready and willing to perform his part of the contract.

11. The aforesaid observation is fortified by the principles laid down by the Supreme Court in the matter of **N.P.Thirugnanam (dead) by LRs. vs. Dr. R. Jagan Mohan Rao and others** (supra), as relied upon by Shri Pandey, learned counsel for the Respondent/Defendant wherein, at para 5, it was observed as under:-

“5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963 (for short “the Act”). Under Section 20, the court is not bound to grant the relief just because there was a valid agreement of sale. 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 along with other attending circumstances.

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 ready and was always ready and willing to perform his part of the contract.”

12. In so far as the reliance of Shri Minhaj, learned counsel for the Appellant/Plaintiff in the matter of **Govind Prasad Chaturvedi vs. Hari Dutt Shastri and another** (supra) is concerned, the same is, however, noted to be distinguishable from the facts involved in the present matter. That is the case where the Appellant was put in the suit premises as a tenant of one Aditya Narain from 1942 and from whom, the Respondent had purchased the same in 1963. Thereafter, an agreement to sale with regard to the suit premises was executed between them on 24.03.1964 and, according to the terms and conditions stipulated therein, the registered deed of sale was to be executed within the period of two months, i.e., by May 24, 1964 and before the said period, the Appellant had written as many as three letters and requested the Respondent for the execution of the registered deed of sale in pursuance of the said agreement to sale dated 24.03.1964. In that factual scenario, the Appellant was found to be ready and willing to get the sale deed executed within the said stipulated period.

However, in the instant case, the Appellant/Plaintiff has issued a notice only on 08.03.2008, that is, much after the stipulated period for its execution and registration. In view of that, the principles laid down in the said matter would not be of any use for the Appellant/Plaintiff.

13. Likewise, the further reliance of Shri Minhaj in the matter of **Smt. Chand Rani (dead) by LRs., vs. Smt. Kamal Rani (dead) by LRs.,** (supra) would also be of no use as in the said matter, the readiness and willingness of the Plaintiff was not found to be established.
14. Considering the facts and circumstances of the case, considering further the conduct of the Plaintiff, as observed herein above, I do not find any substance in this appeal so as to call for any interference in the impugned judgment and decree, as passed by the trial Court.
15. Consequently, the appeal, being devoid of merits, is accordingly dismissed. No order as to costs.
16. A decree be drawn accordingly.

Sd/-
(**Sanjay S. Agrawal**)
Judge