

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

**RSA-2846-2013(O&M) and
other connected appeal.
Date of Order: 08.09.2021**

SMT. KAILASHO DEVI AND ANR

..Appellants

Versus

SATISH KUMAR AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Amit Jain, Sr. Advocate
with Mr. Varun Parkash, Advocate
for the appellant.

Mr. C.B. Goel, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

By this judgment RSA No.2846 (filed by defendant No.1 and 2) and 3055 of 2013 (filed by defendant No.3 and 4) arising from a common judgment passed by the trial Court as well as First Appellate Court shall be disposed of. The counsel representing the parties are *ad idem* that both these appeals can conveniently be disposed of by a common judgment. The regular second appeals in the states of Punjab, Haryana and Chandigarh are regulated by Section 41 of the Punjab Courts Act, 1918, and not by Section 100 CPC as held in Pankajakshi Vs. Chandrika (2016) 6 SCC 157.

While admitting RSA-2846-2013, on 04.07.2017, the Court noted that the following substantial question of law proposed by the learned counsel representing the appellant:-

- (i) Whether in the facts and circumstances of the case the appellants, who have been proved to be bonafide purchasers for consideration were entitled to protection under Section 41 of Transfer of Property Act?*
- (ii) Whether in the facts and circumstances of the case the plaintiff/respondent having received notice of cancellation of the alleged agreement in the year 2005 itself, the suit for specific performance having been filed in September, 2008 suffered from serious laches and inaction, and the same were sufficient to decline the discretionary relief of specific performance?*
- (iii) Whether the approach of the learned courts below in ignoring the inaction and lapse of the plaintiff/respondent in a suit for specific performance is not perverse?*
- (iv) Whether in the facts and circumstances of the case the alleged agreement and readiness and willingness of the plaintiff/respondent having not been proved, the approach of learned courts below in decreeing the suit for specific performance is not perverse?*
- (v) Whether in the facts and circumstances of the case in view of Section 20 of the Specific Relief Act and in view of the hardship to the appellants the suit for specific performance could be decreed?"*

FACTS:-

Defendants No.1 and 2 (the appellants in RFA No. 3055 of

2013) on receipt of earnest money of Rs. 1,00,000/- out of a total sale consideration of Rs.28,75,575/- from the plaintiff (Satish Kumar- respondent No.1 herein) agreed to sell land measuring 32 Kanal 72 Marlas vide an Agreement to Sell dated 19.10.2005. The sale deed was to be executed and registered on or before 20.09.2006. Defendant No. 1 and 2 (the owners of the property) sent a notice dated 20.12.2005 intimating that agreement to sell has been cancelled as they are unable to deliver the possession while calling upon the plaintiff to take back the earnest money he paid. On 24.01.2006, the plaintiff-Satish Kumar replied to the notice while insisting on performance of the contract. Defendant No.1 and 2, through sale deed dated 23.11.2005 transferred the property in favour of defendant No.3- Smt. Kailasho Devi. On 13.01.2006, Defendant No. 1 and 2 once more sent a notice informing the plaintiff that the Agreement to Sell dated 19.10.2005 stands cancelled and he should come and receive the earnest money. On 24.01.2006, the plaintiff one more time replied in same terms. On 04.02.2006, once again the defendants No.1-2 sent a notice reiterating that the agreement stands cancelled. On 15.02.2006, the plaintiff replied on the same terms. In the meantime, defendant No.3 transferred 11 Kanal 13 Marla land out of the suit land vide a sale deed dated 08.02.2006 in favour of defendant No.4 (Maya Devi). Thereafter defendant No.3 filed a civil suit for grant of decree of permanent injunction in which the plaintiff-Satish Kumar was added as a defendant. The suit was contested by Satish Kumar. On 20.09.2006, the plaintiff did not visit the office of the Sub-Registrar. On 17.09.2008, the plaintiff filed a suit while asserting that he was always ready and willing to perform his part of contract. Defendants No. 1 and 2 asserted

that proper agreement to sell was yet to be executed. However the defendant No.1 admitted his signature on the token of receipt of Rs.1,00,000/-. He asserted that the pre-signed blank papers have been converted into an agreement to sell. The defendant No.2, 3 and 4 have filed separate written statements.

On completion of the pleadings, the trial Court framed following issues:-

1. Whether the plaintiff is entitled for the decree for possession, decree for declaration with consequential relief of permanent injunction as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Relief.

In order to prove his case, the plaintiff examined Ravi Mohan Sharma scribe as PW-1, Ramesh Kumar, Registration Clerk as PW-2, Harminder Nath Sharma scribe as PW-3, Surinder Singh, official from Panchkula as PW-4, Ramesh Kumar, attesting witness as PW-5, whereas, the plaintiff himself appeared as PW-6. The plaintiff also produced various documents.

On the other hand, the defendants examined Banwari Lal (defendant No.1) as DW-1, Smt. Kailasho Devi (defendant No.3) as DW-2, Banta Ram as DW-3, Surinder Kumar as DW-4 and Gurnam Singh as DW-5. The defendants also produced various documents.

Both the Courts have concurrently found out that on 19.10.2005 the agreement to sell was executed between the parties on the receipt of Rs.1,00,000/- as earnest money. Although, learned Senior counsel representing the appellant has contended that the agreement to sell was

undated as it was written subsequently in the blank space on a pre-signed blank paper, however, this Bench does not find it plausible that merely because the date of the agreement to sell was subsequently written that alone would be of much significance. Thus, the findings of the Courts below with regard to the execution of the agreement to sell on receipt of earnest money stands upheld.

Heard learned counsel for the parties at length and with their able assistance perused the file.

Learned Senior counsel representing the appellant contends that the plaintiff failed to prove his readiness and willingness as required under Section 16(c) of the Specific Relief Act, 1963 (hereinafter referred to as “the 1963 Act”). He drew the attention of the court to the statement of PW-5 Ramesh Kumar and PW-6 Satish Kumar (the plaintiff) in this regard. Ramesh Kumar while appearing in evidence has admitted that the plaintiff had no resources to pay the balance sale consideration of Rs.27,74,375/-. He further submits that the Courts below have erred in granting the relief of specific performance on the ground that the plaintiff even after receipt of notice of cancellation of the agreement to sell in the month of December, did not file the suit for a period of 2 years and 9 months. Hence, he contends that the Courts below have erred in granting the relief of specific performance.

Per contra, learned counsel representing the respondent (plaintiff) while referring to the plaint, copies of the reply to the various notices and the deposition of the plaintiff, contends that the plaintiff was always ready and willing to perform his part of the contract. He further highlighted that defendant No.1 and 2 are related to defendant No.3 and the

rights of the plaintiff under the agreement are sought to be defeated by the defendants in collusion with each other. On 23.11.2005, the sale deed that was executed by defendant No.1 and 2 in favour of the defendant No.3, i.e. before dispatching the notice dated 20.11.2005, is clearly mala fide and, therefore, the Courts below have correctly decreed the suit. He further contends that defendant No.1 and 2 had no right to unilaterally cancel the agreement to sell unilaterally.

After having heard the learned counsel for the parties at length and carefully examining the paper-books as well as the records of the Courts below, this Bench now proceeds to analyse the same. At the outset, it must be noticed that the plaintiff examined, the attesting witness of the agreement to sell-Ramesh Kumar as PW-5. Learned counsel representing the appellant has produced translated version of the relevant part of his deposition, correctness whereof is not disputed by counsel representing the plaintiff. The same is extracted as under:-

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“Voltd. I am also a co-sharer with Satish Kumar in the purchase of land. I had given Rs.50,000/- to Satish Kumar. All these conditions were recorded n the agreement. It was read over. Voltd. Only my signatures were obtained on the agreement.”

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“Whether Satish Kumar had the financial position to pay Rs.28-30 Lakhs?

Ans. No. Presently also his financial position is not so.”

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Similarly, when the plaintiff appeared in evidence to prove his case as PW-6, he stated as under:-

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“When the agreement was executed the disputed land was under the cultivation of Sohan Lal and his family but girdwari was in the name of Banwari Lal and Satya Devi. I am shopkeeper and do not do any other work except shop keeping. It is incorrect whether I am working as property dealer. My shop is small. I am not income tax payee. I do not have any other source of income except income from the shop. I can not tell how much income I derive from the shop and even I can not tell by guess. I do not want to disclose whether I have any bank account nor I want to give any detail of my property. When I made the agreement, I had given money from my house. I did not obtain money from any one else. Money was already ready with me for the registry and even now I am ready to get the registry done. I have not taken loan from any Corporation or Bank. Vold. I have got the money. It is wrong to say that I had no arrangement of money for the Registry nor I have got even now. When I received notice for cancellation I did not file case immediately. Voltd. Reply to the notice was given.”

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“I do not have any proof with me from which I could show whether I was financially ready to get the sale deed registered at the relevant time i.e. from the date of agreement till the date of filing of this suit.”

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“In respect of deposit of money I do not want to tell about the Bank, Post Office or any other organization. I have not kept any diary or note book at house for keeping the account of my income, expenditure and saving. I do not want to tell how much money remains with me as cash in hand. To fulfill my needs, I have never taken any loan from any organization or bank etc. It is wrong whether I did not have enough money for the registry of land and it is also wrong that 20.09.2006 is not fixed in the agreement for execution of sale deed.”

As already noticed, the plaintiff was required to pay the balance sale consideration of Rs.27,74,375/-. From the deposition of the plaintiff, it is evident that he had knowledge that the land in question was under

cultivation of Sohan Lal and his family and defendants No.1 & 2, although owners, are not in the cultivating possession of the same. When in the cross examination the plaintiff was put leading questions with regard to his financial capacity in order to discredit him with regard to his deposition in examination in chief in respect of readiness and willingness to perform his part of the contract, he refused to disclose whether he has any bank account or any property. He rather stated that he does not wish to disclose whether he has a bank account or any property. The First Appellate Court has not adverted to the statement of the plaintiff at all.

Moreover, it is apparent from the statement of Ramesh Kumar PW-5, attesting witness of the agreement to sell that the plaintiff was not the only purchaser. Additionally, the witness admitted that the plaintiff had no resources to pay the balance sale consideration.

Furthermore, it is apparent that the plaintiff filed a suit on 17.09.2008, although, he knew that the defendant No.1 and 2 have cancelled the agreement to sell by sending the notice which was duly received by the plaintiff in the month of November. No doubt the plaintiff kept replying to the notices sent by defendant no.1 & 2, he did not take any positive step in order to get the agreement to sell enforced. He even did not lead any evidence to prove his readiness and willingness to perform his part of the contract on the target date i.e. 28.09.2006. The plaintiff did not visit the office of the Registrar to prove his willingness to perform his part of the contract. Also, defendant No.3 filed a suit for permanent injunction on 06.03.2006, in which the plaintiff was impleaded as a party. He appeared and contested the suit but did not file the suit for possession by way of

specific performance of agreement to sell for a period of 2 year and 6 months even after the filing of the suit by the defendant No.3.

Furthermore, the plaintiff does not dispute that he was in knowledge of the sale deed executed by defendant No.1 and 2 in favour of defendant No.3 on 23.11.2005. He was also in the knowledge of the fact that defendant No.3 has further sold 11 Kanal 13 Marlas to defendant No.4 vide a Sale Deed dated 08.02.2006. The plaintiff, defendant No.3 and 4 are residents of the same village where the land in dispute is located, whereas, defendant No.1 and 2 are residing out of the village. Still, the plaintiff did not immediately file the suit.

Learned First Appellate Court has overlooked these aspects which were crucial for decision of the suit for specific performance.

It may be noted here that Section 16 of the 1963 Act provides that the plaintiff is not only required to aver that he has been always ready and willing to perform his part of the contract but he has to support it by leading cogent evidence.

Section 16 of the 1963 Act is extracted as under:-

16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—
[(a) who has obtained substituted performance of contract under section 20; or]
(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
(c) [who fails to 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 of the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of

money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.

On a careful reading of Section 16(c), it becomes crystal clear that before a plaintiff can succeed in a suit for specific performance of the contract, he has not only to aver but also prove that he was always ready and willing to perform the essential terms of the contract. No doubt, explanation (i) provides that the plaintiff is not required to actually tender the amount to the defendant or to deposit the amount in Court. However, the plaintiff is required to at least prove that he has the capacity and was prepared to perform his part of the contract. From the statement of the attesting witness who has been examined by the plaintiff himself, it is clear that the plaintiff had no resources.

Besides, when the veracity of the statement made by the plaintiff in examination-in-chief was challenged in the cross-examination, he refused to divulge the required information. Once, the plaintiff refused to divulge the information, the Court should have drawn adverse inference against him. The plaintiff is required to prove that he has always been ready and willing to perform the essential terms of the contract. In such circumstances, he was required to disclose with regard to availability of the balance sale consideration which was more than Rs.27,74,375/- because the amount of stamp duty and registration fee was over and above the balance payment. Once, the plaintiff has not only failed to disclose but has refused to disclose, it is a appropriate case where the Court draws adverse inference against the plaintiff.

Moreover, the plaintiff did not take immediate steps to seek specific performance of the agreement to sell particularly when he gained knowledge of the cancellation of the agreement in November, 2005. He, in fact did not take any step for a period of 2 years and 9 months even after coming to know that third party rights have intervened. Keeping in view the aforesaid facts, the suit filed by the plaintiff suffers from delay and laches. It is well settled that the relief of specific performance of the agreement to sell was a discretionary relief at the time when the suit was filed. Same was the position when the trial Court as well as the First Appellate Court decided the suit and the appeal. No doubt by a recent amendment in the year 2018, Section 20 of the 1963 Act has been substituted. Besides, the relief of specific performance of the agreement to sell continues to be an equitable relief. Once it is proved that the plaintiff himself is guilty of delay and laches, then that itself is sufficient to disentitle him from the equitable relief.

With regard to question No.1, it has come in evidence that the plaintiff and defendant No.3 and 4 are residing in the same village where the land in dispute is located. Both the Courts after appreciation of the evidence have found that the defendants are not proved to be bonafide purchasers. In the considered view of this Court, the defendants No.2 to 3 have failed to prove they had no knowledge of the agreement to sell. Learned counsel representing the appellant also failed to draw the attention of the Court to any substantive error in the findings of fact on this aspect. Hence, question No.(i) is answered against the appellants in RSA-2846-2013.

As regard, question No.(ii), this Bench after discussing various aspects has already held that the suit for specific performance suffered from

delay and laches. Hence, question No.(ii), is answered in favour of the appellant.

In respect of, question No.(iii), the same also stands answered in view of the foregoing discussion in favour of the appellant.

With regard to, question No.(iv), it has been found that the plaintiff failed to prove his readiness and willingness. Hence, question No.(iv), is also answered in favour of the appellant.

Question No.(v), is with regard to the discretion under Section 20 of the 1963 Act. This Bench has already discussed the aforesaid aspect and, therefore, need no reiteration. Hence, question No.(v), is also answered in favour of the appellant.

Consequently, the decree for possession by way of specific performance of agreement to sell is substituted with the decree to refund Rs. 1,00,000/- along with interest at the rate of 12% per annum. The amount recoverable shall remain 1st charge on the property agreed to be sold.

In view of the aforesaid discussion, the decree and both the appeals are partly allowed.

All the pending miscellaneous applications, if any, are also disposed of.

08th September, 2021

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**(ANIL KSHETARPAL)
JUDGE**

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