

**RSA-5705-2014 (O&M)  
and connected case**

**1**

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

**1.RSA-5705-2014 (O&M)**

Naresh Kumar

....Appellant

Versus

Tarsem Devi and others

..Respondents

**2.RSA-5717-2014 (O&M)**

Rajnish Chopra and others

....Appellants

Versus

Tarsem Devi and another

..Respondents

Date of decision: 08.09.2022

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Amit Arora, Advocate for the appellant  
in RSA-5705-2014

Mr. Puneet Jindal, Sr. Advocate with  
Mr. Kunal Mittal and  
Mr. Parminder Singh Kanwar, Advocates for  
the appellants in RSA-5717-2014

Mr. Amit Jhanji, Sr. Advocate with  
Ms. Eliza Gupta, Advocate and  
Mr. Akhil Mahajan, Advocate for respondent no.1

**ANIL KSHETARPAL, J (Oral)**

1. The Regular Second Appeal in the States of Punjab,  
Haryana and Union Territory, Chandigarh are governed by Section 41 of  
the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil  
Procedure, 1908, as held by a five Judge Bench of the Supreme Court in

**Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6**

**SCC 157.**

2. By this order, two Regular Second Appeals i.e RSA-5705 and 5717 of 2014 shall stand disposed of.

3. These two Regular Second Appeals have been filed assailing the concurrent findings of facts, arrived at by the courts below, while decreeing the suit for possession by way of specific performance of the agreement to sell filed by Smt. Tarsem Devi (respondent no.1 in both the appeals). While admitting the appeals for regular hearing, the following substantial questions of law were proposed by the appellants:-

*“1. Whether in the facts and circumstances of the case, findings of the court below that execution of agreement of sale dated 28.8.2000 has been proved and the plaintiff is entitled to decree for possession by specific performance can be sustained being contrary to evidence on record and based on misreading and ignoring material evidence on record?*

*2. Whether findings of the courts below that plaintiff was ready and willing to perform her part of agreement suffers from perversity being contrary to evidence on record?*

*3. Whether findings of the courts below that defendants No.2 to 4 are not proved to be bonafide purchasers can be sustained in the facts & circumstances of the case?*

*4. Whether judgments & decree of the courts below suffers from perversity being contrary to and based on misreading and ignoring*

*material evidence on record and, therefore, unsustainable?”*

4. The parties shall be referred to by their names in order to avoid confusion. Sh.Naresh Kumar was the owner of the suit property. He on receipt of Rs.2,00,000/- as earnest money out of the total sale consideration of Rs.4,00,000/- executed an agreement to sell on 28.08.2000, in favour of Smt. Tarsem Devi. The plaintiff claims that she paid Rs. 50,000/- on 28.12.2000 whereas another sum of Rs.50,000/- was paid on 02.03.2001. As per the agreement to sell, the sale deed was to be executed and registered on 15.06.2001. However, Sh. Naresh Kumar sold one shop out of the suit property to his sister late Smt. Sushma Chopra, whereas the roof rights of the three shops were sold in favour of defendants no. 3 and 4 (Sh.Manjit Singh and Sh.Ranjit Singh sons of Sh.Gurcharan Singh). The plaintiff filed the suit on 31.03.2001 before the agreed date for execution of the sale deed.

5. Sh. Naresh Kumar, while filing the written statement, denied the execution of the agreement to sell. Whereas defendant no.2, 3 and 4 while filing the separate written statements claimed to be bonafide purchasers. The defendant no.2 also claimed that the agreement to sell is forged. In order to prove her case, Smt. Tarsem Devi herself appeared as PW1 and examined PW2 Vijay Kumar Guleria, PW3 Charanji Lal, PW4 Subhash Chander Mahajan, PW5 Sh.Jaswant Singh, PMG-II, Judicial Record room, Gurdaspur, PW6 Suvir Mahajan, Advocate.

6. On the other hand, the defendants examined DW1 Rajnish

Chopra son of late Smt. Sushma Chopra, DW2 Krishan Chand, DW3 Naresh Kumar and DW4 Sh.Manjit Singh.

7. Both the courts, on appreciation of the evidence, have held that the execution of the agreement to sell and the readiness and willingness on the part of the plaintiff has been proved, therefore, she is entitled to decree for possession by way of specific performance of the agreement to sell.

8. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbooks of both the appeals and the record of the courts below, which was also requisitioned.

9. Learned senior counsel representing Sh.Naresh Kumar-defendant no.1 contends that the plaintiff-Smt. Tarsem Devi, has failed to prove her financial capacity and in fact, she is Aunt of Sh.Parveen Kumar, who is instrumental in getting all the documents signed. It has been submitted that Smt. Tarsem Devi, admittedly, did not withdraw the amount from any Bank. A huge payment of Rs.3,00,000/- has been projected to have been paid by her though she only runs a tailoring shop from her house. While elaborating, he submits that Smt. Tarsem Devi has been projected as prospective buyer although Sh.Parveen Kumar (the neighbour of Sh.Naresh Kumar) has got Sh.Naresh Kumar's signatures on the various blank papers. He further contends that both the courts have erred in heavily relying upon a deed of settlement dated 14.10.2003 between Smt. Tarsem Devi and Sh.Naresh Kumar, particularly when Sh.Naresh Kumar was not confronted with the same. While drawing the attention of the Court to the details of both the marginal witnesses on the

agreement to sell and to various other documents, he contends prove that all the afore-referred parties are related to each other. Learned counsel very heavily relies upon a recent judgment of the Supreme Court in **U.I. Krishna Murthy vs.A.M.Krishna Murthy 2022 (3) RCR (Civil) 479** to contend that there is a distinction between readiness and willingness. He submits that '*readiness*' means the capacity of the plaintiff to perform the contract whereas '*willingness*' relates to the conduct of the plaintiff. He further contends that Sh.Naresh Kumar is a simple person and therefore, the relief of specific performance should not be granted.

10. On the other hand, learned senior counsel representing Smt. Tarsem Devi has submitted that Sh.Naresh Kumar is a Graduate. He has shifted to Jalandhar, whereas, the property is located in Gurdaspur. He, while drawing the attention of the Court to the deposition of Sh.Naresh Kumar, submits that he is a businessman who is presently running a shop in Jalandhar and therefore, he cannot be called a gullible person. He further emphasizes that the plea of defendant no.2 to 4 is also not borne out particularly when Sh.Naresh Kumar transferred one shop in favour of his sister late Smt. Sushma Chopra-defendant no.2, whereas, Sh.Sandeep Chopra son of Smt. Sushma Chopra is a witness to the sale deeds in favour of Sh.Manjit Singh and Sh.Ranjit Singh. While drawing the attention of the Court to the criminal complaint filed by Sh.Naresh Kumar against Sh.Ranjit Singh and Sh.Manjit Singh, he submits that Sh.Naresh Kumar has admitted the execution of the agreement to sell with Smt. Tarsem Devi in the aforesaid criminal complaint. The stamp papers for execution of the agreement to sell were purchased by

Sh.Naresh Kumar himself. Sh.Naresh Kumar is working as a partner with his sister Smt. Sushma Chopra.

11. Before analysing the arguments of the learned counsel representing the parties, it is appropriate to have a careful look at the agreement to sell dated 28.08.2000 Ex.P2 on the record. On a perusal thereof, it is evident that the agreement to sell is scribed on non-judicial stamp papers of Rs.25/- running into two leafs/pages. It is evident that Sh.Naresh Kumar has signed the first page on the left hand margin whereas on the second page, he has signed where the recitals in the agreement to sell come to an end. Sh.Naresh Kumar has signed the document with free flow of pen in English language. In his handwriting, he has also acknowledged the receipt of Rs.2,00,000/-. The agreement to sell is written in Gurmukhi/Punjabi language, which is the local language of the State of Punjab. On 28.12.2000, Sh.Naresh Kumar while receiving Rs.50,000/- has, in his own handwriting, acknowledged this fact. Subsequently, on 21.03.2001, Sh.Naresh Kumar, once again, acknowledged in writing the receipt of another sum of Rs.50,000/-. Both the receipts are witnessed by Sh. Ashok Kumar and Sh. Subhash Mahajan.

12. It is also evident that Sh.Naresh Kumar filed a criminal complaint in the court of Chief Judicial Magistrate against Sh.Gurcharan Singh Bedi, Sh.Manjit Singh and Sh.Ranjit Singh. Sh.Ranjit Singh and Sh.Manjit Singh are subsequent purchasers of roof rights of the three shops. In this complaint, he has admitted the execution of the agreement to sell in favour of Smt. Tarsem Devi.

13. Moreover, during the pendency of the suit, Sh.Naresh Kumar on 14.10.2003 received an additional amount of Rs.60,000/-to enter into a settlement with Smt. Tarsem Devi (plaintiff). No doubt, S.Naresh Kumar was not confronted with the aforesaid agreement dated 14.10.2003, however, Sh.Naresh Kumar appended his signatures on the deed of settlement, which was arrived at during the pendency of the suit.

14. Now, let us proceed to examine the arguments of the learned counsel representing Sh.Naresh Kumar. The first argument is with regarde to lack of evidence of the financial capacity. It may be noted here that out of the total sale consideration of Rs.4,00,000/-, Smt. Tarsem Devi has already paid Rs.3,60,000/- to Sh.Naresh Kumar. Thus, she was only required to pay the remaining sum of Rs.40,000/-. She, while appearing in evidence, has stated that she is running a tailoring shop and her husband, who was serving in the Army, has retired and is receiving pension. Moreover, Smt. Tarsem Devi filed the suit on 31.03.2001 i.e before the agreed date for execution of the sale deed. She, while filing the plaint, has asserted that she was always ready and willing to honour the agreement and she had has the capacity to pay the remaining amount. While appearing in evidence, she has reiterated the aforesaid facts. In these circumstances, both the courts have also recorded the aforesaid finding. Thus, there is no substance in the argument of the learned counsel representing Sh.Naresh Kumar. It may be noted here that conduct of Sh.Naresh Kumar is not above board or free from suspicion. It has come in evidence that after execution of various documents including the sale deeds, Sh. Naresh Kumar filed

criminal complaints and denied the execution of any contracts between the parties. It has come in evidence that in the year 1998, he executed a registered lease deed of the property in question in favour of Sh.Parveen Kumar. He has already shifted from Gurdaspur to Jalandhar, which is a much bigger city when compared with Gurdaspur. As per his own admission, he is carrying the business of crockery items at Jalandhar since 1998 which also includes the time period when he executed the lease deed. He also admits that he is a partner in Raj Hardware Store alongwith his sister. He also admits that he has executed a power of attorney in favour of Sh.Parveen Kumar on 26.10.1999. He further admits that Sh.Ranjit Singh (defendant no.3 ) is his representative who is handling the litigation on his behalf. He filed a complaint through his counsel Sh.Suvir Mahajan.

15. In these circumstances, it would not be appropriate to hold that Smt. Tarsem Devi did not had/have the financial capacity or she failed to prove the same before the lower courts. This Court has carefully read the judgment passed by the Supreme Court in **U.A.Krishna Murthy (supra)**. In that case, after the oral agreement to sell in November, 2002, the writing dated 11.11.2002 was executed to confirm the oral agreement. Whereas the suit was filed on 17.10.2005 i.e. after a period of nearly three years. In that context, the Supreme Court held that the plaintiff failed to prove the readiness and willingness on his part. No doubt, the Court, while relying upon the judgment passed in **His Holyiness Acharya Swami Ganesh Dass ji vs. Sita Ram (1996)** 4 SCC 526 drew a distinction between readiness and willingness to

perform a contract however, in the present case, Smt. Tarsem Devi has proved her financial capacity, particularly when she has already paid 90% of the total payment.

16. The next argument of the learned counsel has some substance, however, if we examine all the documents collectively/cojointly, it is evident that after receipt of another sum of Rs.60,000/-, Sh. Naresh Kumr has entered into a settlement. As already noticed, it is evident that Sh.Naresh Kumar appended multiple signatures on the agreement to sell, the endorsements dated 28.12.2000 as well as 22.03.2001. His signatures are also available on the copy of the criminal complaint (Ex.P7) filed by him. He admits his signatures on the aforesaid criminal complaint. The sale deeds executed by Sh.Naresh Kumar have also come on record. In these circumstances, failure of the learned counsel representing the plaintiff to confront Sh.Naresh Kumar with the deed of settlement would not be fatal to her case.

17. Learned counsel representing the L.Rs of defendant no.2 and 3-4 contends that they are bonafide purchasers. It may be noted here that defendant no.2 is Sh.Naresh Kumar's sister. Further, Sh.Rajnish Chopra while appearing in evidence, has admitted that Sh.Manjit Singh and Sh.Ranjit Singh used to accompany Sh.Naresh Kumar when he was appearing in a case under the Negotiable Instruments Act, 1881. He is also a witness to the sale deed executed in favour of Sh.Manjit Singh and Sh.Ranjit Singh. The trial court has noticed as many as six circumstances to prove that neither defendant no.2 nor defendant no.3 and 4 are bonafide purchasers. They had knowledge of the prior contract

between Sh.Naresh Kumar and Smt. Tarsem Devi.

18. Now, let us proceed to analyse the proposed questions of law noticed in the order dated 13.07.2017. As regards the question no.1 it is evident that the agreement to sell has been proved by Smt. Tarsem Devi as well as the scribe Sh.Vijay Kumar Guleria and Sh.Chiranji Lal, whereas, the endorsements have been witnessed by Sh.Sudesh Kumar. Therefore, the agreement to sell is proved, particularly when Sh.Naresh Kumar has appended multiple signatures on the agreement to sell as well as the endorsements while receiving the instalments of the sale consideration.

19. As regards the question no.2, the matter has already been examined and requires no further elaboration. As regards the question no.3, the same has also been examined in detail and requires no reiteration.

20. As regards the question no.4, it may be noted that the learned counsel representing the appellant has failed to draw the attention of the court to any substantive misreading or non-consideration of material evidence produced by the parties. It may be noticed here that Sh.Naresh Kumar, while filing the written statement, has denied the execution of the agreement to sell but when he appeared in evidence, he has taken a different stand while contending that he has appended the signatures on blank papers, which have subsequently been misused. As already noticed, on careful perusal of the agreement to sell Ex.P2, the agreement to sell has been signed after it has been scribed particularly when the stamp papers were purchased by Sh.Naresh Kumar on

28.08.2000. Moreover, on the first page, the signature is appended on the left hand margin, whereas, on the second page, the signature acknowledging the receipt of the earnest money is appended after the recitals of the agreement to sell come to an end. Sh.Naresh Kumar has also signed on documents dated 28.12.2000 and 21.03.2001 acknowledging the receipt of Rs.50,000/- each.

21. Consequently, finding no merit, both the appeals are dismissed with costs.

22. All the pending miscellaneous applications, if any, shall also stand disposed of.

08.09.2022

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(ANIL KSHETARPAL)  
JUDGE**