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

**104**

**RSA-4862-2018 (O&M)
Decided on : 12.07.2023**

Subash Chander and others

. . . Appellant(s)

Versus

Harinder Singh and others

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

PRESENT: Mr. Ashok Singla, Advocate,
Mr. Aakash Singla, Advocate and
Mr. Ankush Singla, Advocate
for the appellant(s).

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**SANJAY VASHISTH, J. (Oral)**

1. Present Regular Second Appeal (RSA) has been directed by the appellants/plaintiffs against the judgment and decree dated 27.02.2018, passed by the Court of Ld. Additional District Judge, Sangrur, whereby, judgment and decree dated 31.01.2013 , passed by the Court of Ld. Civil Judge (Sr. Divn.) Sangrur (in short 'Ld. Trial Court') was affirmed.

**PLEADED FACTS:**

2. There was an agreement to sell dated 24.04.2006 (Ex.P1) by virtue of which, respondent/defendant No.1 agreed to sell out 10K-7M of the land to the plaintiffs (appellants herein) for a total sale-consideration of Rs.5,35,00,000/- (Rs. 5.35 crores). The land in question was comprised in Khasra No.785/2, measuring 10K-7M, Khewat No.599, Khatoni No.1079, as per Jamabandi for the year 1999-2000, situated within the revenue estate of village Sangrur. Earnest money of Rs.40,00,000/- (Rs.40.00 lakhs) was paid by the plaintiffs/appellants to defendant No.1, and thus, balance amount of sale consideration to the tune of Rs.4,95,00,000/- (Rs.4.95 crores) was yet to

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be paid by the plaintiffs/appellants to defendant No.1. Target date for execution of sale-deed was agreed and fixed as 30.11.2006.

It appears that there was some doubt in the measurement of the total area, and therefore, as caution, clause 8 was stipulated in the agreement, which says as under:-

> *"8. That by calculating of the land physically physically being front is found short, than of 240 sq. yards, the amount deducted is @ Rs. 8615 per squ. Yards, and if found short at the back, the amount deducted is @ Rs.4307.56 per sq. yard, and the same amount is to be adjusted on the date of final payment i.e. 30.11.2016, and no amount is to be deducted, if the land area after physical calculation comes to 6210 sq yards."*

3. It is pleaded fact in the plaint that on 30.11.2006, plaintiffs had reached to the office of Sub-Registrar, Sangrur for getting sale-deed executed along with balance sale consideration and money for purchasing of stamp papers and other expenses also. He moved an application also there. However, despite the plaintiffs being available there from 09:00 a.m. to 05:00 p.m., defendant No.1 did not turn up. Thus, plaintiffs claimed a decree of possession by way of specific performance of agreement to sell.

On the other hand, defendant No.1 took a specific stand that on 30.11.2006, he remained present before the office of Sub-Registrar, Sangrur, but none of the plaintiffs came present along with balance sale consideration, requisite stamp fee as well as necessary expenditure, which was required to be incurred by the plaintiffs for execution and registration of sale-deed.

4. After completion of the proceedings, Ld. Trial Court framed

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total 13 issues, which are being reproduced hereunder:-

> *"1. Whether defendant no.1 entered into an agreement to sell dated 24.4.2006 in favour of the plaintiffs and received a sum of Rs.40,000/- as earnest money? OPP*
>
> *2. Whether the plaintiffs always remained ready and willing to perform their part of contract? OPP*
>
> *3. Whether the plaintiffs are entitled to recover double of earnest money with interest in the alternative? OPP*
>
> *4. Whether the plaintiffs are entitled to perpetual injunction restraining the defendant no.1 from alienating the disputed land? OPP*
>
> *5. Whether the suit is not maintainable in the present form? OPD*
>
> *6. Whether the plaintiffs are guilty of suppressing the real and material facts from the Court? OPD*
>
> *7. Whether the plaintiffs have no locus-standi and cause of action to file the present suit? OPD*
>
> *8. Whether the plaintiffs are estopped by their act and conduct from filing the suit? OPD*
>
> *9. Whether the suit is bad for mis-joinder of necessary parties? OPD*
>
> *10. Whether the agreement to sell is the result of misrepresentation? OPD*
>
> *11. Whether the agreement to sell dated 24.4.2006 stood rescinded as the plaintiffs were not ready and willing to perform their part of contract? OPD*
>
> *12. If issue No.11 is proved, then whether the earnest money of Rs.40 lacs stood forfeited? OPD*
>
> *12-A. Whether defendant no.1/counter claimant is entitled to the relief of declaration, as prayed for? OPD (defendant No.1)*
>
> *13. Relief."*

Accordingly, plaintiffs and defendant No.1 led their evidences in support of their pleadings.

5. Ld. Trial Court found that execution of agreement to sell (Ex.P1) has not been disputed by either side. Even there is no dispute about

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fixing of total amount of sale consideration and receiving of the earnest money by defendant No.1, or even fixing of the date of execution of sale-deed (target date) as 30.11.2006.

6. The specific case of the plaintiffs/appellants is that total area of land meant for sale was 10K-7M, as per the agreement, but said area was not complete on the spot, nor it was disclosed to the plaintiffs that at the time of agreement that there is lesser area on the spot.

In support of their contentions, plaintiffs/appellants proved one demarcation report (Ex.P8), according to which on the southern side, 5 karams of area was less and on the northern side 1½ karams area was falling short. In the eastern side, it was less by 2 karams and accordingly, Khasra No.785/2 was found less than 10K-7M. About the said report, respondent/defendant No.1 took an objection that the said demarcation was conducted in his absence, thus, same is not binding upon him. However, Ld. Trial court found that in the presence sheet, signature of Sh. Amandeep Singh, Advocate for defendant No.1 is appearing, which is unchallenged. Thus, it was found that land available on the spot was less than 10K-7M, that is mentioned in the revenue record as well as in the agreement to sell. Therefore, objection of conducting of demarcation of the area in the absence of defendant was found unsustainable.

7. To examine the issue of readiness and willingness, the court has tried to find out, if plaintiffs/appellants have brought any evidence of availability of the complete balance amount of Rs.4.95 crores on the date of execution of sale-deed i.e. 30.11.2006. Plaintiffs/appellants tried to prove on record an application, and affidavit, which were proved by an official - Satwant Kaur (PW8) from the office of Sub-Registrar. By

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producing the said witness, an attempt was made to prove the entry of attestation of affidavit of the plaintiffs/appellants at Sr. No.372. Application (Ex.DW1/C) was also proved by respondent/ defendant No.1 to prove a fact that in fact, he was present in the office of Sub-Registrar, and which is entered at Sr. No.371 on 30.11.2006 itself. Said entry was proved by respondent/defendant No.1 by producing Yadwinder Singh, clerk (PW2), from the office of Tehsildar.

8. Undoubtedly, it is proved that entry of serial number of application moved by respondent/defendant No.1 is prior in time to the entry of moving application by the plaintiffs/appellants. However, the important aspect would be that what evidence is available with the plaintiffs/appellants to prove that balance amount of sale consideration to the level of Rs.4.95 crores, was available with them, which indicates readiness and willingness. However, no such evidence has been adduced by the plaintiffs. Even, it is not found from the record that the requisite stamps had been purchased by the plaintiffs/appellants to show their readiness for performing their part of contract, even in compliance to the agreement to sell.

9. On the issue of readiness and willingness of making payment of such a huge balance sale consideration, plaintiffs/appellants were very much required to adduce some evidence to prove that from such and such sources, the requisite amount was acquired and was available with them for execution and registration of sale-deed on 30.11.2006, but there is not an iota of evidence led by the plaintiffs/appellants in this regard.

Findings given by Ld. Trial Court in para Nos. 28, 29, and also in para No.30 in support of issue No.3, says as under:-

*"28. In order to show his readiness and willingness, plaintiffs have*

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*also proved on record that they remained present in the office of Sub Registrar on the stipulated date i.e. 30.11.2006 with remaining balance sale consideration. In this regard, plaintiff no.1 has proved on record an application Ex.P12 and his affidavit Ex.P13. These documents have been got proved by the plaintiffs from an official of the Sub Registrar namely Satwant Kaur who brought the record showing the entries of attesting the affidavit of the plaintiffs at serial No.372. Defendant no.1 has also moved such application Ex.DW1/C to show his presence in the office of Sub Registrar which is entered at serial No.371 dated 30.11.2006 and got proved from DW-2 Yadwinder Singh, Clerk of Tehsildar Office. From this fact, it seems that the plaintiff got his affidavit entered subsequently when the defendant no.1 got marked his presence in order to create evidence. Even from the perusal of the application moved by the plaintiff, it is clear that he will be ready for getting the sale-deed executed after payment of balance sale consideration if the defendant no.1 gets no objection certificate from Improvement Trust, but there was no such condition in the agreement to sell. It shows that the plaintiffs created new conditions which were not there earlier and thus, the plaintiffs are at default for non-execution of the sale-deed on the stipulated date. As far as the conduct of the defendant no.1 is concerned, he also issued a legal notice prior to the stipulated date reminding the plaintiffs to be ready for the performance of the contract on the due date. He also issued notice after the stipulated date intimating the plaintiffs that the amount of earnest money will be forfeited in the given time if he does not come forward for execution of the sale-deed. These notices have been brought on the record as Ex.DW1/B and Ex.DW3/A respectively.*

*29. From the evidence discussed above, it is clear that it is the plaintiffs who have failed to perform their part of contract as they failed to pay the balance sale consideration on the stipulated date and even after the issuance of legal notice by the defendant no.1 and they have failed to establish that they were ready and willing to perform their part of agreement. Accordingly, issue No.1 is decided in favour of plaintiffs and against the defendants, whereas, issue No.2 is decided against the plaintiffs and in favour of the defendants.*

*Issue No.3*

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> *30. Onus to prove this issue was upon the plaintiffs. While deciding issue No.2, this Court has already come to the conclusion that plaintiffs were not ready and willing to perform their part of contract. Thus, they are not entitled to the alternative relief of earnest money also because as per the terms and conditions of the agreement, they were entitled to the refund of earnest money only if the defendant no.1 failed to perform his part of the contract, but it has taken place otherwise as the plaintiffs themselves have failed to prove their readiness and willingness to perform their part of agreement and thus, the sale-deed could not be executed due to their default. Hence, they are not entitled to refund of earnest money. Accordingly, this issue is decided against the plaintiffs and in favour of the defendants."*

10. This Court has also gone to the extent of examining the pleadings of the plaintiffs/appellants and contesting defendant No.1. In para No.12 of the plaint, it is specifically pleaded by the plaintiffs/appellants that they came present in the office of Sub-Registrar on 30.11.2006, along with balance sale consideration and money for the purchase of stamp papers and other expenses. For convenience, para No.12 of the plaint is reproduced as under:-

> *"12. That plaintiffs have already remained ready and willing to perform their part of the contract. The plaintiffs appeared before the office of Sub Registrar, Sangrur and submitted an application to the effect that they are ready to get the sale deed executed and attested in their favour as per the terms and conditions of the agreement dated 24.4.06. The plaintiffs came present in the office of Sub Registrar, Sangrur on 30.11.06 alongwith the balance sale consideration and money for the purchase of stamp papers and other expenses also. The plaintiffs remained present in the office of Sub Registrar, Sangrur from 9.00 AM to 5.00 PM. The defendant no. 1 neither got the No Objection Certificate, nor got the possession of the encroachment made by some third person of the property in dispute. The defendant no.1 has himself violated the conditions of the agreement dated 24.4.06."*

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On examining the written statement filed by defendant No.1, it is found that there is a specific stand in regard to the allegation of plaintiff that plaintiffs/appellants were never ready to execute/perform their part of contract. In this regard, specific stand has been taken by the defendant in para No.4 of the preliminary objection. Para No.4 of the preliminary objections says as under:-

> *"4. That the plaintiffs are estopped by their own act and conduct and acquiescence from filing the instant suit as they never remained ready to execute/perform their part of contract insptie of express readiness and willingness shown by the defendant no.1 by sending notice dated 27-11-2006 and thereafter remaining present before the office of Sub Registrar Sangrur in order to execute the sale deed qua land in question. The time is the essence of the contract and once the time has elapsed then the plaintiffs cannot claim the relief based upon the equity and on the basis of agreement."*

11. Even in para No.12 of the written statement, there is a specific stand taken by defendant No.1 that plaintiffs/appellants were not present at the Sub-Registrar office and not possessed with sufficient amount on the concerned date, and no particular argument in that regard has been pleaded. For convenience, para No.12 (reply on merits) of the written statement of defendant No.1 is also reproduced hereunder:-

> *"12. That para no. 12 of the plaint is wrong and is denied. No part of the same is admitted to be correct. It is denied that the plaintiffs remained present at the office of Sub Registrar Sangrur with balance sale consideration and requisite stamp fee and along with necessary expenses for the execution of sale deed in terms of the agreement dated 24-4-2006. Whereas the defendant no. 1 remained present at the office of Sub Registrar Sangrur on 30-11-2006 for the purpose of execution of sale deed in terms of the agreement dated 24-4-2006 and marked his presence when no body had turned up to 5 P.M. on*

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*30-11-2006 on behalf of plaintiffs in spite of having received express notice for the date of the execution of sale deed qua the land in question through a written registered notice dated 27-11-2006. The alleged affidavit of presence for the plaintiffs in the office of Sub Registrar Sangrur is procured document in order to safe guard their interest and make the plea justifiable. Moreover one of the Plaintiffs namely Parwinder Bajaj is working as Notary Public in Tehsil Complex of Sangrur where the office of Sub Registrar Sangrur is also situated therefore the plaintiffs ought to notice the presence of the defendant no.1 for execution of sale deed qua the land in question but they have deliberately ignored the presence of defendant no. 1 in the office of Sub Registrar Sangrur, as they were not ready and willing t9 perform their part of agreement.* ***It is pertinent to mention here that no particular regarding the fact that the plaintiffs possessed sufficient amount on the above mentioned date on their presence of sub Registrar Sangrur have not been pleaded neither in the plaint nor in the application or affidavit allegedly got attested by them before the Executive Magistrate Sangrur.*** *It is also important to mention here that the plaintiffs also did not plead in the plaint that they possessed sufficient money to pay balance sale consideration to the answering defendant and also having sufficient to money to pay for the execution and registration of the sale deed in their favour. Moreover the facts of the case shows that in fact the plaintiffs are not interested in the execution of the sale deed or in the enforcement of the agreement but only to put up the matter on one pretext or the other and to create false evidence to fore stall the rights of the answering defendant and to keep him a dole drum. The plaintiffs have taken contrary stand at different stages. In the affidavit and application by the plaintiffs before the Sub Registrar Sangrur it has been alleged by them that the answering defendant is not in possession of entire property under agreement in that event if it was so it was no necessary for them before the Sub Registrar but to represent to the answering defendant showing this infirmity but this was not done due to the reason that the plaintiffs intention was only to harass the answering defendant and to delay the execution of the sale deed so the above mentioned affidavit alleged by the plaintiffs about their present before the*

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*Executive is of no consequence and is in a series of manipulation of false evidence."*

12. Thus, in specific, issue No.2 was framed by Ld. Trial Court putting its burden to prove upon plaintiffs. For convenience, again said issue No.2 is reproduced herein-below:-

*"2. Whether the plaintiffs always remained ready and willing to perform their part of contract? OPP"*

13. Ld. Lower Appellate Court has also come to the conclusion that to hold dependents guilty, plaintiffs/appellants were at least, expected to satisfy the Court about their financial resources, especially, when there is a deal between the parties for a big amount of more than Rs.5.00 crores. Courts below expressed genuine doubt over the financial capacity of parties to make a deal of more than Rs.5.00 crores, by making payment of earnest money only to the tune of Rs.40.00 lakhs. Even nothing has been produced by the plaintiffs/appellants by producing the account-books for the concerned year i.e. 2006-2007.

14. Broadly speaking, plaintiffs/appellants completely failed in discharging their duty/onus of proving of issue No.2, which was their prime onus. Relevant findings recorded by Ld. Lower Appellate Court in para Nos. 14, 15 & 16, are reproduced as under:-

*"14. Ignoring even this aspect, before claiming any equity, plaintiffs were atleast bound to satisfy the court about their financial resources. The deal between the parties is for more than five crore. Only 40 lakhs were paid as earnest money. So plaintiffs should atleast prima facie convince this court that on 30.11.2006 they were in position to arrange this much of amount from their own income. They can not be allowed to speculate. Such a big amount can not be left at the discretion of plaintiffs to be arranged casually. Position would have*

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*been certainly different where plaintiffs could have established before the court that they had the money but had genuine doubts about the title of the property. Evidence of the plaintiffs and their cross examination is quite important to understand the financial capacity and capability of the plaintiffs.*

*15. PW-8 Subash Chander when cross examined claimed that his income tax return is about one and half lakhs per annum. He does not remember even amount of cash in hand in year 2006. He took the adjournment for producing income tax returns and account books which he did not produce as on 23.09.2011 on the date of cross examination he specifically said that he had not brought the account books of year 2006-07. It amounts to concealment of his resources. It gives hints as to the doubtful financial capacity of Subash Chander. It does not seem convincing to the court that with income of one and half lakhs he shall be in position to arrange such huge amount of Rs. Five crores on 30.11.2006. In subsequent cross examination, he even could not say how much amount was cash in their hand on the stipulated date. Though plaintiffs had claimed that he had contacted defendant no.1 on telephone but he is unable to tell the telephone number of the defendant. This also gives hint that plaintiffs never contacted defendant no.1 either through telephone or through registered notice. Had defendant no.1 would have been contacted beforehand, plaintiffs must be having in their possession some document or telephonic details to substantiate the facts.*

*16. This court also appreciated the evidence of PW Ramesh Bansal who was also plaintiff of the case. He claimed that his income for the relevant year is 5 to 6 lakhs per year. Again he could not give proof of capacity of plaintiffs to arrange amount of Rs. Five crore. To a categorical question as to the financial resources , this plaintiff had shown his ignorance claiming that he can not show the assets of other co-purchaser. So in the opinion of this court, plaintiffs by not examining another witnesses and by examining of Subash*

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*Chander, Ramesh Bansal miserably failed to establish financial resources to execute such a big deal. The inference which can be deduced is that such a huge amount could not be arranged by the plaintiffs and because of that on the date fixed for execution of the sale deed, such flimsy plea of acquisition by J.P.Nagar Extention were taken."*

15. In fact, plaintiffs/appellants tried to project a picture that the area was less than that agreed by defendant No.1 to sell out to the plaintiffs/appellants, and plaintiffs/appellants failed to get the area demarcated in advance from the date of execution and registration of sale-deed, therefore, plaintiffs/appellants cannot be burdened to lead any evidence to prove issue No.2.

16. To the understanding of this Court, such a plea is not tenable to the plaintiff, once there was a particular stipulation at Clause 8 of the agreement with a common understanding that area may be less, and in that eventuality, lesser amount was payable to the seller.

Moreover, plaintiffs/appellants could have moved an application to show their willingness for demarcation of the area or arrangement of the amount according to sale consideration. Making of no such attempt shows that the plaintiffs/appellants were never ready or willing to purchase the land in the absence of sufficient funds/amount of balance sale consideration.

17. Apart from the aforementioned issue, discussed in detailed by this Court, there is no escape with the plaintiffs/appellants to get away from the findings given by Ld. Lower Appellate Court in regard to the application moved by the plaintiffs before the Tehsildar. Finding given in para No.12 by the Ld. Lower Appellate Court is reproduced as under:-

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> *"12. The important thing to know in this case is whether from the circumstances of the case, it can be found that plaintiffs were ready and willing to perform their contract. The only evidence brought by the plaintiffs to prove readiness and willingness is Ex.P11 and Ex.P12. Ex.P11 is an application made by plaintiffs to Tehsildar. As per this application para no.4, plaintiffs have introduced a new clause that defendant no.1 has not obtained any no objection certificate from improvement trust, Sangrur. But this court is unable to agree with this conditional application before Tehsildar to demonstrate their readiness and willingness. In the original agreement to sell, there was nothing required to be done on the part of defendant no.1 to obtain no objection certificate from improvement trust, Sangrur. In this application before Tehsildar, plaintiffs have also claimed that they sent a registered notice to defendant no.1 for taking this* ***no objection certificate but surprisingly this registered notice and postal receipts have not been brought on record by plaintiffs****.* ***In the opinion of this court, this is nothing but an attempt on the part of the plaintiffs to introduce new clause at the fag end when as per agreement on 30.11.2006 sale deed was to be executed****. If at all plaintiffs wanted this certificate, they should have sent a registered notice which was not done."*

18. In the said application, it is claimed that a registered notice was sent to defendant No.1 for taking 'no objection certificate' but surprisingly, neither such registered notice nor the postal receipts were made available by the plaintiffs/appellants on record of the case, and thus, raising a new ground at this stage, would amount introducing a new clause at the fag-end, whereas, sale-deed was to be executed on 30.11.2006.

19. In support of his submissions, counsel for the appellants/plaintiffs places reliance upon the judgment of the Hon'ble Apex Court in ***Beemaneni Maha Lakshmi vs. Gangumalla Appa Rao (Since***

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***Dead) by LRs.*, 2019(3) RCR (Civil) 334**, *(Law Finder Doc ID # 1456756).* While relying upon the said judgment, he emphasizes upon para No.10, which says as under:-

> *"10. It is true that in Ex.A1, it was not specifically mentioned that vendor has to first get the land measured and only thereafter the vendee has to pay the balance sale consideration. It is also true that as per Ex. A1 – agreement to sell the vendee was required to deposit the balance sale consideration within a period of three months from the date of execution of the agreement. However, at the same time, it was the specific case on behalf of the plaintiff – vendee that it was also agreed that the vendor has to execute the sale deed after measuring the suit land. The aforesaid is as such admitted by the vendor – the defendant, not only in reply to the notice dated 14.04.1987 but as well in her deposition. In the reply to the notice on 14.04.1987, the defendant has specifically admitted that the sale deed should be executed after measuring he land and after arriving at the consideration for the land that was arrived at on measurement. Even in the cross−examination, the defendant – vendor who has been examined as DW1 has specifically admitted that at the time of execution of the agreement, it was settled to get the land measured and to arrive at the consideration and to deliver the original sale deed. It has also come on record that no measurement was carried out at any point of time, more particularly after the execution of the agreement to sell. Thus, till the land was measured and the final amount was arrived at, there was no obligation on the part of the vendee – the plaintiff to deposit/pay the balance sale consideration. It is required to be considered along with the fact that all throughout the vendee was insisting that the original sale deed in favour of the vendor be given to the vendee and that the final certificate issued by the Land Tribunal be shown and given to the vendee. It is an admitted position that copy of the sale deed was not given to the vendee. However, it was the case on behalf of the defendant – vendor that the plaintiff was informed that the original sale deed is produced in the court in the proceedings initiated by Y.Somayya Choudary – predecessor in title and therefore the vendee may get the copy from that court. Nothing is on record on*

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*which date the vendor delivered to the vendee the land ceiling papers. At this stage, it is required to be noted that the land in question was subjected to the land ceiling proceedings. It has come on record that the vendor – defendant purchased the suit property by sale deed dated 6.10.1971 from one Y. Somayya Choudary – the husband of the sister of the vendor. From the evidence, it appears that Y. Somayya Choudary was also claiming the ownership over the land in question. Dispute was that Y. Somayya Choudary executed the sale deed in favour of the defendant – vendor with a view to see that the land is not declared as excess land under the Land Ceiling Act. It has come on record that the Land Tribunal held in favour of the vendor and the transaction in her favour was found to be bonafide. However, the said Y. Somayya Choudary was also continued to claim the ownership which was not accepted by the land Tribunal. That is why, the vendee – the plaintiff was insisting to deliver the land ceiling papers. The conduct on the part of the plaintiff – vendee to insist for the original sale deed in favour of the vendor and the delivery of the land ceiling papers was natural. Any prudent person who was to purchase the property would definitely insist for the title papers, so as to be satisfied that the title is clear. Before the learned trial Court, the defendant did not produce any final order/certificate issued by the Land Tribunal, which came to be produced for the first time before the High Court along with the application for additional evidence under Order 41 Rule 27 of the CPC. The High Court permitted the appellant to produce the proceedings of the Land Reforms Tribunal dated 20.11.1976. The same came to be considered by the High Court and observed that Ex. B1 is a xerox copy of a certified copy of the order dated 20.11.1976 of the Land Reforms Tribunal. The High Court has also observed that the relevant portion of the certified copy (Ex. B1) which contain the details relating to the date when the copy application was filed; when the stamps were called for and when the copy was made ready are not available in Ex. B1. The High Court has also observed that if they are available, the date on which the copy application was made would have known. That on appreciation of evidence and considering the document Ex. B1, the High Court has specifically observed that it cannot positively be said that the original of Ex. B1*

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*was available with the vendor by the date of Ex. A1. Therefore, the High Court observed that the contention of the appellant that the respondent was shown the document relating to land ceiling clearance at the time of Ex. A1 cannot be believed or accepted. The aforesaid is the finding recorded on appreciation of evidence. Therefore, the learned trial Court and the High Court have specifically observed and held that the buyer insisted on the seller producing all the documents necessary for making out a complete chain of his/her title.*

*Therefore, on conjoint reading of Ex. A1 and the reply to the notice by the defendant dated 14.04.1987 and the cross−examination of the defendant – vendor, both the learned trial Court and the High Court have rightly observed and held that it was the appellant – vendor that did not perform her part of the contract. Once, the finding is recorded that it was the appellant – vendor that did not perform her part of the contract, thereafter as rightly observed by the High Court, the failure on the part of the vendee to "demonstrate" that he was having sufficient money with him to pay the balance sale consideration under Ex. A1 by the date of his evidence is not much of consequence. Even otherwise, it is required to be noted that the plaintiff deposited the entire balance sale consideration as directed by the learned trial Court within the extended period of time. It is required to be noted that as it was submitted on behalf of the defendant before the learned trial Court that the plaintiff does not have any capacity to pay the balance sale consideration, to test his bonafides the learned trial Court directed the plaintiff to deposit the balance sale consideration which the plaintiff did deposit. Merely because the said amount was deposited out of the fund/amount received by him by selling the property in the year 1993, by that itself cannot be presumed and/or inferred that at the time of execution of the agreement to sell and/or thereafter even at the time of the notice, the plaintiff was not having sufficient fund to pay the balance sale consideration. It is required to be noted that an agreement to sell is dated 30.12.1985 and the plaintiff was directed to deposit the amount in the year 1993. It is not expected from the plaintiff that he would continue to deposit the same with the bank all these years. What is required to be considered is as and*

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*when he is called upon to make the deposit, he has deposited the amount to show his bonafides or not? Therefore, as such, both the learned trial Court as well as the High Court have rightly passed a decree for specific performance."*

I find that said judgment is not applicable in the facts and circumstances of the present case. Counsel has failed to satisfy this Court that the circumstances in the present suit are quite similar as in the cited judgment. Moreover, in the cited judgment, there was a direction for depositing an amount by the Trial Court, which probably was an issue for consideration, but there is no such situation in the present case.

20. After hearing the counsel for the appellants/plaintiffs in detail and by examining the record with their able assistance, and also going through the well founded reasoning given by the Ld. Courts below, this Court is of the view that judgments & decrees passed by Ld. Courts below does not call for any interference, and thus, requires to be maintained. Even, counsel for the appellants/plaintiffs has failed to refer any law point or perversity arising from the impugned judgments passed by the Ld. Courts below.

As the appellants/plaintiffs completely failed to perform their specific part of contract, and for the reasons recorded herein-above, the instant **appeal being devoid of merits, stands dismissed**. The judgments & decrees passed by both the Courts below are **affirmed**.

**(SANJAY VASHISTH)**
**JUDGE**

**July 12, 2023**
*J.Ram*

*Whether speaking/reasoned: Yes/No*
*Whether Reportable: Yes/No*

JAWALA RAM
2023.07.21 18:58
I attest to the accuracy and
integrity of this document