

2024:PHHC:133937



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

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RSA-408-1995 (O&M)

Date of Decision : 14.10.2024

GURMAIL SINGH AND OTHERS

.... Appellants

VERSUS

UJJAGAR SINGH AND OTHERS

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P.S. Punia, Advocate for the appellants.

Mr. Sunil Chadha, Senior Advocate with
Ms. Sonia Monga, Advocate for respondents No.1 to 3.

Mr. M.S. Saini, Advocate for respondents No.4 and 5.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the plaintiff-appellants No.1 to 3 and defendant-appellant No.4, namely, Karnail Singh challenging the judgment and decree dated 03.09.1994 passed by the First Appellate Court whereby the judgment and decree dated 10.11.1990 passed by the Trial Court decreeing the suit of the plaintiff-appellants No.1 to 3 was reversed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants No.1 to 3 filed a suit for specific performance of the agreement dated 23.07.1981 alleged to have been executed by defendant-respondents No.1 to 3, namely, Ujjagar Singh, Maghar Singh and Bant Singh in favour of plaintiff-appellants No.1 to 3, namely, Gurmail Singh, Jasmail Singh and Ajmer Singh and defendant-appellant No.4, namely, Karnail Singh qua land measuring 27 Kanals 10 Marlas comprised in Khewat No.261/262 Khatauni

No.307/308, Rect. No.40, Killa No.14/1, 15/4, 16/2, 17/1, Rectangle No.31, Killa No.20, Khasra No.374 as per jamanbandi for the year 1978-79 situated in Village Jhammat, Tehsil and District Ludhiana. It was averred in the plaint that an agreement to sell was entered on 23.07.1981 for a total sale consideration of ₹60,000 out of which an amount of ₹6,000 was paid as earnest money. The sale deed was to be executed on 30.05.1982, however, subsequently, the dates were extended and eventually the target date was fixed as 20.06.1984. It was further the contention that the plaintiff-appellants No.1 to 3 were always ready and willing to perform their part of the contract, however, defendant-respondents No.1 to 3 did not execute the sale deed and later sold the land in dispute to defendant-respondents No.5 and 6 vide sale deed dated 09.01.1985 and another portion of the land in dispute was sold to defendant-respondents No.7 to 10 vide sale deed dated 26.12.1984. Hence, the present suit.

3. Notice was issued to the defendant-respondents. The suit was contested only by defendant-respondents No.1 to 3 who filed their written statement and admitted the agreement to sell as well as receipt of the earnest money. They further admitted that the dates for execution of the sale deed was extended from time to time, however, it was the stand taken by defendant-respondents No.1 to 3 that the plaintiff-appellants No.1 to 3 did not have the balance sale consideration and that they were never ready and willing to perform their part of the contract. Defendant-appellant No.4 filed his separate written statement admitting the contents of the plaint and prayed that the suit of the plaintiff-appellants No.1 to 3 be decreed.

4. Replication was filed denying the contents of the written statement filed by defendant-respondents No.1 to 3 and reiterating those of the plaintiff.

5. On the basis of the pleadings of the parties the following issues were framed :

- i) Whether the plaintiffs are entitled to the specific performance of the agreement to sell dated 23.07.1981 regarding the execution of the sale deed in their favour ? OPP
- ii) Whether the suit is not maintainable in the present form ? OPD
- iii) Relief.

6. The Trial Court vide judgment and decree dated 10.11.1990 decreed the suit of the plaintiff-appellants No.1 to 3. Aggrieved by the same an appeal was preferred by defendants No.6 and 7, namely, Baldev Singh and Ranjit Singh (respondents No.5 and 6 herein). The appeal was allowed vide judgment and decree dated 03.09.1994 on the ground that the plaintiff-appellants No.1 to 3 were never ready and willing to perform their part of the contract. Hence, the present regular second appeal by the plaintiff-appellants No.1 to 3 and defendant-appellant No.4.

7. Learned counsel for the plaintiff-appellants No.1 to 3 and defendant-appellant No.4 would contend that the possession of the suit land was with one Nikka Singh with whom the defendant-respondents No.1 to 3 had litigation and since they could not get possession within the stipulated

time, the period for performing the contract was extended on four different dates. It is further the contention that the plaintiff-appellants No.1 to 3 were always ready and willing to perform their part of the contract and that the defendant-respondents No.1 to 3 never took possession and rather sold the land in dispute in favour of some one else.

8. *Per contra*, learned senior counsel appearing on behalf of defendant-respondents No.1 to 3 would contend that the Appellate Court has rightly allowed the appeal inasmuch as there was nothing on the record to even remotely suggest that the plaintiff-appellants No.1 to 3 were ever ready and willing to perform their part of the contract. Though the contract date was extended to 20.06.1984, however, there is nothing on the record to suggest that the plaintiff-appellants No.1 to 3 appeared before the Sub-Registrar concerned on the said date. It is further contended that no legal notice was ever served upon the defendant-respondents No.1 to 3 calling upon them to execute the sale deed and in absence thereof it has rightly been found by the First Appellate Court that the plaintiff-appellants No.1 to 3 were never ready and willing to perform their part of the contract.

9. Learned counsel appearing on behalf of defendants, namely, Baldev Singh and Ranjit Singh (defendants No.6 and 7 in the suit), who are respondents No.5 and 6 herein, would contend that though no written statement was filed by the said defendants, however, the plea of readiness and willingness could be raised by any of the defendants including the subsequent purchasers. In support of his arguments, learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Kadupugotla**

Varalakshmi V/s Vudagiri Venkata Rao & Ors. [2021 (2) RCR (Civil) 246].

10. Heard.

11. In the present case the only dispute is qua the readiness and willingness on the part of the plaintiff-appellants No.1 to 3 to execute the sale deed within the stipulated period of time. Admittedly the plaintiff-appellants No.1 to 3 did not appear before the Sub-Registrar concerned on the extended date i.e. 20.06.1984. No legal notice was ever served upon defendant-respondents No.1 to 3 calling upon them to execute the sale deed. In the absence of any evidence to even remotely suggest that the plaintiff-appellants No.1 to 3 were ready and willing to perform their part of the contract, no fault can be found with the judgment and decree passed by the First Appellate Court.

12. It is trite that even a subsequent purchaser can challenge the issue of readiness and willingness. The Hon'ble Supreme Court in the case of **Kadupugotla Varalakshmi** (supra) has held as under :

'8. It must be stated here that the principles laid down in Jugraj Singh and Another (supra) were not accepted by a larger Bench of this Court. The relevant discussion in paragraph 6 in the case of Ram Awadh (Dead) by Lrs. and Others vs. Achhaibar Dubey and Another [(2000) 2 SCC 428] was as under:

"6. The obligation imposed by Section 16 is upon the court not to grant specific performance to a

plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh case [(1995) 2 SCC 31] is erroneous.”

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10. However, the fact remains that the entire perspective with which the matter was considered by the High Court was clearly erroneous and as the observations made by the High Court in paragraph 76 disclose, the High Court went on the footing that it was not open to the appellant i.e. subsequent purchaser to raise any submissions on the issue of readiness and willingness.

Thus, the judgment under challenge clearly fell in serious error.”

13. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

14.10.2024

Aman Jain

(ALKA SARIN)

JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No*