



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

125

RSA-2783-2023 (O&M)

Date of decision : 14.10.2024

Harbans Singh**..... Appellant**

versus

Tarlochan Singh**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. A.P. Kaushal, Advocate
for the appellant.

Mr. Ashwani Kumar Chopra, Senior Advocate
with Mr. B.S. Nagar, Advocate and
Mr. Vidul Kapoor, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Defendant is in appeal aggrieved of the judgments and decrees passed by the Courts below, whereby the suit filed by the plaintiff seeking decree of possession by way of specific performance of agreement to sell dated 21.10.2013 stands decreed and affirmed in appeal.

2. Plaintiff filed suit claiming that defendant agreed to sell land measuring 40 kanal 15 marlas in his favour vide agreement to sell dated 21.10.2013. Defendant agreed to sell land @ Rs.7 lakhs per acre and Rs.13,65,000/- as earnest money and agreed to execute sale deed in favour of plaintiff on or before 12.05.2014 after getting the same released from bank. The agreement to sell was scribed by a regular petition writer and was entered in his register before the date of



execution of sale deed on 19.04.2014. Defendant extended the date for execution of sale deed from 12.05.2014 to 20.05.2015 and received further amount of Rs.3,35,000/-. Writing was got executed at the back of agreement to sell qua the same and the same was also witnessed by attesting witnesses to the agreement to sell. Even prior to 20.05.2015, again the date was extended to 20.04.2016 after defendant received another sum of Rs.3,75,000/-. On 18.04.2016, again the date for execution of sale deed was extended for another six months upto 13.10.2016. Plaintiff claimed that on 13.10.2016, he remained present in the office of Sub-Registrar waiting for the defendant to turn up. Attendance of plaintiff was got marked by way of affidavit which was attested by Sub-Registrar, Tapa. Plaintiff further claimed that he always remained ready and willing to perform his part, but the defendant having failed to perform his part, decree of possession by way of specific performance be granted.

3. Suit was resisted by the defendant, denying execution of agreement to sell and receipt of earnest money. Defendant claimed that the agreement to sell was forged and fabricated document which was without consideration. Defendant claimed that no man of ordinary prudence will agree to sell valuable land which can fetch price of Rs.40 lakhs per acre for meagre amount of Rs.7 lakhs per acre. It was claimed that there were some monetary transactions between the parties. Defendant used to borrow money from the plaintiff and plaintiff used to get signatures of the defendant on blank papers as security. It is those blank papers which have been misused to create the agreement to sell.

Defendant claimed that he borrowed Rs.11 lakhs from plaintiff at



different times and have returned the same to the plaintiff in the month of November, 2010 mortgaging his land with State Bank of India for Rs.9 lakhs and arranging another 2 Lakhs rupees.

4. Suit filed by the plaintiff was put to trial framing following issues:-

- “1. Whether plaintiff is entitled for specific performance as prayed for? OPP
2. Whether plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether plaintiff has no locus-standi and cause of action to file the present suit? OPD
4. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD
5. Whether suit is not maintainable in the present form? OPD
6. Whether plaintiff has not come to the court with clean hands and have concealed true facts from court? OPD
7. Whether agreement to sell dated 21.10.2013 is unregistered document? OPD
8. Whether the present suit has been filed just to harass the defendant? OPD
9. Relief.”

5. Plaintiff examined scribe Satnam Singh as PW-1, stamp vender Mukhtiar Singh as PW-2 and attesting witness Paramjit Singh as PW-4. He himself appeared as PW-3. Answering issue No.1, Trial Court held that the execution of the agreement to sell stood proved by examination of scribe, attesting witnesses and stamp vender. Defendant failed to prove his defence. Trial Court found that the signatures of the defendant were proved to have been appended in the register of the scribe which defendant failed to explain. Adverting to the issue of readiness and willingness, Trial Court held that the said issue was between Court and plaintiff. Plaintiff having proved affidavit with



respect to his presence in the office of Sub-Registrar and the defendant having denied execution of agreement to sell, is precluded from challenging and disputing the readiness and willingness of the defendant, the readiness and willingness of the plaintiff stood proved on record. Resultantly, Trial Court decreed the suit filed by the plaintiff. The aforesaid findings stand affirmed by the Appellate Court.

6. Learned counsel appearing for the appellant submits that from the repeated extensions to execute the sale deed, it is evident that the intent of the parties was not to transfer the property or to sell the land, but the real intent was to execute agreement to sell as a security to the monetary transaction. He submits that as per the case of the plaintiff, vide agreement to sell dated 21.10.2013, parties agreed to get the sale deed executed on or before 12.05.2014. The said deed was extended perpetually on three different occasions and the time gap between agreement to sell till execution of the sale deed got unusually extended upto 03 years which is incomprehensible. The said circumstance in itself is sufficient to reject the claim of the plaintiff. Counsel for the appellant further submits that there is no evidence on record to prove readiness of the plaintiff to perform his part. Courts below have wrongly ignored the said issue, holding that since defendant denied execution of agreement to sell, he is precluded from challenging the plaintiff on the said issue. He further refers to the testimony of the plaintiff-Tarlochan Singh, who appeared as PW-3 and submits that there is no evidence with respect to source of any fund to show that the plaintiff was indeed in control of the funds required to perform his part and thus ready.



7. *Per contra*, senior counsel appearing for the defendant submits that the agreement to sell was never denied specifically by the plaintiff. The denial was evasive. In terms of Order VIII Rule 3, defendant is required to deny or dispute the statements made in plaint categorically. An evasive denial amounts to admission of the allegation made in the plaint. Defendant having failed to plead and prove his defence, Courts below have rightly decreed the suit filed by the plaintiff. Counsel for the plaintiff further relies upon ratio of law laid down by Supreme Court in ***Sukhbir Singh and others vs. Brij Pal Singh and others 1997(2) SCC 200***, to submit that once it has been proved on record that buyer was present in the office Sub-Registrar for having sale deed executed and registered by a seller, it is explicit that buyer was ready and willing to perform his part of contract and had necessary funds. Further reference is being placed upon law laid down by Supreme Court in the case of ***Mrs. A. Kanthamani vs. Mrs. Nasreen Ahmed 2017(4) SCC 654, Jora Singh vs. Lakhwinder Kumar and others 2011(1) RCR (Civil) 130 and Lal Chand vs. Tek Chand 2012(3) PLR 736***. Mr. Chopra further relies upon ***Shivali Enterprises vs. Godawari (Deceased) Thr. Lrs. and others, 2022 SCC Online SC 1211***, to submit that second appeal is in a forum where the Court should re-examine or re-appreciate question of fact settled by the Trial Court or Appellate Court.

8. I have heard counsel for the parties and have carefully gone through the records of the case.

9. Following two issues arise for the consideration of this Court:-



(i) *Whether plaintiff proved execution of agreement to sell?*

(ii) *Whether the Courts below rightly held that once defendant denied execution of agreement to sell, he is precluded from disputing readiness and willingness of the plaintiff?*

10. So far as first question is concerned, this Court finds that a pure finding of fact has been recorded by the Courts below, holding that the plaintiff successfully proved execution of agreement to sell. Defendant claimed the same to be a result of fraud. However, no evidence was led by defendant to prove the defence. As a consequence thereof, this Court finds that the first issue having been rightly held and the same being pure finding of fact, no fault can be found with the findings recorded by the Courts below.

11. Coming on to the second issue, this Court finds that in terms of the settled proposition of law and as per the bare provision as contained under 1963 Act, de hors the defence of the defendant, a plaintiff seeking decree of specific performance needs to overcome statutory bar as contemplated under Section 16-C of the 1963 Act. Untill and unless, he successfully avers and proves that he has performed or was always ready and willing to perform the essential terms of the contract to be performed by him, he cannot succeed in his voyage seeking decree of specific performance of a contract. Reliance can be placed upon ratio of law laid down by Supreme Court in the case of ***J.P. Builders & another vs. A. Ramadas Rao & another, 2011 (1) SCC 429***, wherein the Supreme Court observed as under:-

“xx xx xx

9. The words "ready" and "willing" imply that the person was



prepared to carry out the terms of the contract. The distinction between "readiness" and "willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.

10. In ***N.P. Thirugnanan v. Dr. R. Jagan Mohan Rao & Ors., 1995(2) RCR (Rent) 647 : 1995(3) R.R.R. 190 : (1995) 5 SCC 115*** at para 5, this Court held:

"..... 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 alongwith other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. 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 always ready and willing to perform his part of the contract."

11. In ***P.D' Souza v. Shondriilo Naidu, 2004(3) RCR (Civil) 668 : (2004) 6 SCC 649*** paras 19 and 21, this Court observed:

"It is indisputable that in a suit for specific



performance of contract the plaintiff must establish his readiness and willingness to perform his part of contract. The question as to whether the onus was discharged by the plaintiff or not will depend upon the facts and circumstance of each case. No strait-jacket formula can be laid down in this behalf.... The readiness and willingness on the part of the plaintiff to perform his part of contract would also depend upon the question as to whether the defendant did everything which was required of him to be done in terms of the agreement for sale."

12. Section 16(c) of the Specific Relief Act, 1963 mandates "readiness and willingness" on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous "readiness and willingness" to perform the contract on his part from the date of the contract. The onus is on the plaintiff. It has been rightly considered by this Court in ***R.C. Chandiok & Anr. v. Chuni Lal Sabharwal & Ors., (1970) 3 SCC 140*** that "readiness and willingness" cannot be treated as a straight jacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non- compliance with this statutory mandate, the Court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. "Readiness and willingness" to perform the part of the contract has to be determined/ascertained from the conduct of the parties."

12. In view of above, this Court finds that the reliance placed by senior counsel on ratio of law laid down by Coordinate Bench in the case of ***Lal Chand (supra)***, is per incuriam and is not a good law.

There cannot be any dispute that the plaintiff successfully proved his



willingness proving his presence in the office of Sub-Registrar vide affidavit Ex.P-10. However, the evidence with respect to readiness is discrepant. Plaintiff apart from making specific statement and averment in the plaint with respect to his readiness and willingness, is also obliged to adduce necessary oral and documentary evidence to show the availability of funds. Plaintiff testified as PW-3. He made specific statement with respect to earnest money, claiming that the same was raised by selling tractor. He did not know the registration number of the tractor which he sold. He could not disclose the name of the purchaser or the village, purchaser resides in. He further claimed that he sold turmeric and earned considerable amount. He is unable to disclose name of any of the shops where he sells turmeric. He was specifically asked, whether he can produce the J form with respect to selling of produce of turmeric. He answered in negative. He admitted that he cannot produce any document with respect to sale of turmeric as claimed by him from the year 2013 to 2016.

13. In view of above, this Court finds that the Courts below erred in holding that the plaintiff proved his readiness to perform his part of the contract merely relying upon his affidavit which though proves his willingness, but not his readiness. Findings recorded by the Trial Court in para No.21 of the judgment are wrong. The sale proceeds of the tractor are releatable to the payment of earnest money and to availability of funds on the date of execution of sale deed. Apart from the bald statement made by the plaintiff claiming his readiness and willingness, there is no evidence adduced by him to prove that he was in capacity to perform his part of the contract. Thus, there being no



evidence regarding his readiness, Courts below erred in decreeing the suit filed by the plaintiff for main relief of decree of specific performance ignoring the mandate of Section 16(c) of 1963 Act.

14. As a sequel of discussion held hereinabove, the suit filed by the plaintiff qua main relief is ordered to be dismissed. However, since execution of the agreement to sell and the extensions thereafter stand proved. Plaintiff is held entitled for alternate relief of recovery of Rs.20,75,000/- (Rupees Twenty Lakh Seventy Five Thousand only) alongwith interest @ 8% per annum from the date of filing of the suit till the date of judgment and decree passed by this Court. Plaintiff is further held entitled for interest @ 6% per annum for the time period post date of decree till the date of actual realization.

15. In view of above, present appeal is allowed.

16. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

14.10.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : Yes