



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

205

RSA-2319-2000 (O&M)
Date of decision : 08.05.2025

Ashok Kumar and others

..... Appellants

versus

Bishan Dass and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.S. Minhas, Advocate
for the appellants.

Mr. Kuldip Sanwal, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Defendants are in appeal.
2. Plaintiff filed suit for possession by way of specific performance of agreement to sell dated 27.05.1991 claimed to have been executed by defendant No.1-Dhian Singh in favour of the plaintiff, whereby he agreed to sell 7 kanal 11 marlas of land for total sale consideration of Rs.31,144/-. As per the plaintiff, an amount of Rs.10,000/- was paid as earnest money and the sale deed was to be executed on or before 05.07.1991. Plaintiff claims to have attended office of Sub Registrar Gurdaspur on 05.07.1991. However, the sale deed could not be executed as Dhian Singh-the vendor did not come present. Plaintiff thereafter claims to have served legal notice dated 03.03.1993 upon defendant No.1 asking him to come and execute sale deed in his favour in terms of agreement to sell dated 27.05.1991



within 15 days.

3. Suit was contested by the defendants denying execution of agreement to sell by defendant No.1. It was claimed by the defendants that the value of land is more than Rs.1,50,000/- per acre and no prudent person shall agree to sell the same @ Rs.30,000/- per acre. On the basis of the pleadings, following issues were framed:-

- “1. Whether defendant No.1 agreed to sell the disputed land to the plaintiff for a consideration of Rs.31144/- vide agreement dated 27.5.91 after receiving Rs.10000/- as advance money?OPP
2. Whether the plaintiff has always been ready and willing to perform his part of the contract? OPP
3. Whether the plaintiff is entitled to a decree for specific performance of agreement of sale? OPP
4. Whether the plaintiff is entitled to a decree for recovery of Rs.20,000/- as alternative relief? OPP
5. Whether the plaintiff being Govt, employee is not competent to purchase the property or enter into agreement to purchase the same before getting permission of the department? If so to what effect? OPD
6. Whether the suit is bad for mis-joinder of defendant No.2? If so to what effect? OPD.
7. Relief.”

4. Trial Court decided issue No.1 to 5 in favour of the plaintiff. However while granting relief, ordered decree of recovery of Rs.10,000/- i.e. refund of earnest money alongwith an amount of Rs.10,000/- as damages apart from interest @ 12% per annum from the date of agreement till realization of decretal amount.

5. Dissatisfied with the alternate relief, plaintiff filed appeal. The Lower Appellate Court decreed the suit filed by the plaintiff for main relief.



6. Mr. Manhas has assailed the findings recorded by the Courts below to submit that relief of specific performance is a discretionary relief. Trial Court having exercised discretion, Lower Appellate Court should not have interfered unless it is established that his discretion has been exercised perversely, arbitrarily or against judicial principles. Reliance is being placed ***K Prakash vs. B.R. Sampath Kumar***, reported as ***AIR 2015 SC 9***.

7. *Per contra*, Mr. Kuldip Sanwal, counsel for the respondent submits that the Trial Court denied main relief to the plaintiff, arbitrarily, merely for the reason that the plaintiff at the time of entering into agreement to sell was employed in Police Department and no permission was sought by him before entering into agreement to sell. Both the Courts having concurrently found that the defendant executed agreement to sell in favour of the plaintiff and that the plaintiff was ready and willing throughout, Trial Court has rightly granted main relief of specific performance in favour of the plaintiff.

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

9. The execution of agreement to sell stands proved. As per the plaintiff, he appeared before the office of Sub Registrar on the appointed date i.e. 05.07.1991. Thereafter, he served notice dated 03.03.1994 upon defendant No.1 and instituted instant suit on 08.04.1994. There is no averment as to what transpired from 05.07.1991 till 03.03.1994, when legal notice was served at the behest of the plaintiff on defendant No.1. The law pertaining to specific performance is well settled. Reference can be made to



following observations made by Supreme Court in the case of **K Prakash (supra)**:-

“15. Indisputably, remedy for specific performance is an equitable remedy. The Court while granting relief for specific performance exercise discretionary jurisdiction. Section 20 of the Act specifically provides that the court’s jurisdiction to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with the sound and reasonable judicial principles.

16. The King’s Bench in **Rookey’s Case [77 ER 209; (1597) 5 Co. Rep. 99]** it is said :

“Discretion is a science, not to act arbitrarily according to men’s will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the constitution entrusted with”

The Court of Chancery in **Attorney General vs. Wheat (1759) 1 Eden 177; 28 ER 652** followed the Rooke’s case and observed :

“the law is clear and courts of equity ought to follow it in their judgments concerning titles to equitable estates; otherwise great uncertainty and confusion would ensue. And though proceedings in equity are said to be secundum discretionem boni vin, yet when it is asked, vir bonus est quis? The answer is, qui



consulta partum, qui leges juraq servat. And as it is said in *Rooke's case*, 5 Rep. 99 b, that discretion is a science not to act arbitrarily according to men's will and private affection: so the discretion which is exercised here, is to be governed by rules of law and equity, which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court, not even the highest, acting in a judicial capacity is by the constitution entrusted with. This description is full and judicious, and what ought to be imprinted on the mind of every judge."

17. The principles which can be enunciated is that where the plaintiff brings a suit for specific performance of contract for sale, the law insists a condition precedent to the grant of decree for specific performance that the plaintiff must show his continued readiness and willingness to perform his part of the contract in accordance with its terms from the date of contract to the date of hearing. Normally, when the trial court exercises its discretion in one way or other after appreciation of entire evidence and materials on record, the appellate court should not interfere unless it is established that the discretion has been exercised perversely, arbitrarily or against judicial principles. The appellate court should also not exercise its discretion against the grant of specific performance on extraneous considerations or sympathetic considerations. It is true, as contemplated under Section 20 of the Specific Relief Act, that a party is not entitled to get a decree for specific performance merely because it is lawful to do so.



Nevertheless once an agreement to sell is legal and validly proved and further requirements for getting such a decree is established then the Court has to exercise its discretion in favour of granting relief for specific performance.”

10. In the considered opinion of this Court, the presence of the plaintiff before Sub Registrar on 05.07.1991 may prove his willingness, but the same does not prove his readiness. In terms of Section 16(c) of 1963 Act, plaintiff is under obligation to prove that he remained ready and willing to perform his part throughout. After 05.07.1991 till 03.03.1994, there is nothing on record that proves willingness of plaintiff to perform his part of agreement. Apart therefrom, so far as evidence regarding his readiness is concerned, the same has remained discrepant. There is no evidence on record to show that on the appointed date or thereafter plaintiff was in possession of the resources to honour his commitment.

11. In view thereof, this Court finds that the Trial Court rightly held him entitled for alternate relief and not for the main relief though for different reasons.

12. In terms of law laid down by Supreme Court in the case of **‘Pankajakshi vs. Chandrika’ (2016) 6 SCC 157**, the appeal before this High Court has to be dealt in accordance with Section 41 of the Punjab Courts Act. Framing of substantial question of law is not required.

13. In view of above, the present appeal is allowed. Judgment and decree passed by the Trial Court is maintained. The decree passed by the Lower Appellate Court is ordered to be set



aside. Plaintiff is held entitled for recovery of Rs.20,000/- alongwith interest @ 9% per annum from the date of filing of the suit till the date of actual realization.

- 14. Ordered accordingly.
- 15. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

08.05.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No