

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****116****RSA-970-2022 (O&M)****Date of decision: 24.07.2025****Udai Singh****...Appellant(s)****Vs.****Prem Pal and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Chanderhas Yadav, Advocate for the appellant.

NIDHI GUPTA, J.

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the appellant for specific performance and possession of the suit property, has been dismissed by both the Courts below.

2. It is *inter alia* submitted by learned counsel for the appellant that the learned Courts below were in patent error in dismissing the suit of the plaintiff as they failed to appreciate that plaintiff had duly proved his readiness and willingness to execute the contract. It is submitted that this is proven from the fact that appellant had admittedly served legal notice dated 01.09.2011 Ex.PW6/C and legal notice dated 07.03.2014 Ex.PW6/A to the respondents. Yet, defendants did not come forward to execute the Sale Deed. It is only in this circumstance that the plaintiff was left with no other option to file the present Civil Suit. However, the learned Courts below have erroneously construed it to mean that plaintiff



had failed to prove the readiness and willingness. It is submitted that the very fact that the appellant had served above said legal notices alongwith receipts are more than enough to prove the readiness and willingness of the plaintiff. It is submitted that in the first legal notice, it was clearly mentioned that the respondent was called upon to execute the Sale Deed within 15 days; and in the second notice, it was also mentioned to execute the Sale Deed within one month. Yet learned Courts below have wrongly given the findings that no period was mentioned in these notices. It is pointed out that in the interregnum the respondents had already sold the disputed property without the knowledge of the appellant. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

3. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant.

4. Briefly stated the facts as pleaded in the plaint are that on 17.02.2003 the defendants No. 1 to 5/respondents herein, had entered into an Agreement to Sell the suit property with the plaintiff for a total sale consideration of Rs.80,000/- out of which plaintiff had paid Rs.20,000/- as earnest money. Possession was to be handed over to the plaintiff at the time of execution of Sale Deed. It was the case of the plaintiff that in the meantime, defendants No.1 to 5 had sold the suit property to Smt. Maya Devi/ defendant No.6 vide registered Sale Deed



dated 13.06.2011 for a total sale consideration of Rs.2,50,000/-. When the plaintiff had discovered about the execution of the Sale Deed, he had sent above said legal notices to defendants No. 1 to 6 to execute the sale deed, but no use. Hence plaintiff had filed the present suit on 07.07.2014.

5. The aforestated facts speak for themselves. For an Agreement to Sell dated 17.2.2003, the appellant/plaintiff has filed the suit on 7.7.2014. For performance of the said Agreement of 2003, the appellant has issued legal notices dated 01.09.2011 Ex.PW6/C and dated 07.03.2014 Ex.PW6/A; and that too only after execution of the impugned sale deed dated 13.06.2011. Therefore, the plaintiff has been correctly nonsuited.

6. Besides, PW6 Ranbir Singh Advocate has admitted that legal notice dated 07.03.2014 Ex.PW6/A has been addressed to defendants No. 1 to 5; but the postal receipts of dispatch of legal notice were produced only with respect to defendants No. 1 and 6. PW6 has further deposed that legal notice dated 01.09.2011 Ex.PW6/C was addressed to defendants No. 1 to 5 but postal receipt was produced only with respect to defendant No.1. PW6 further deposed that he could not tell as to whether he had sent legal notice to the other persons or not. As such there is no question of the same mentioning any date or time on which the defendants were called upon to be present in the Tehsil office for execution of the Sale Deed. Moreover, a clear finding has been given that reading of the said notices shows that it merely calls upon the defendants to execute the Sale Deed and the said notices do not specify any date on which the plaintiff



shall make himself available in the office of Sub Registrar for execution of Sale Deed.

7. Even no evidence has been produced by the plaintiff to prove that he had approached the office of Sub Registrar Rewari for execution of Sale Deed on the dates allegedly specified by him in the legal notices. Thus, plaintiff had miserably failed to establish his readiness and willingness to perform his part of the contract. As per recent judgment of the Hon'ble Supreme Court in '**R. Shama Naik vs. G. Srinivasiah**' 2024 **INSC 927**, two specific ingredients are required to establish readiness and willingness: (a) presence in the Tehsil; (b) demonstrate availability of funds. However, the present plaintiff has failed to demonstrate both requirements.

8. Furthermore, the facts reveal that the Scribe is not known to any of the executant. He has not obtained signature of identifier Lal Chand Lamberdar in his record. He has also not stated that the contents of Agreement were read and explained to parties. Thus, in fact, even the Agreement to Sell Ex.PW5/1 remained unproved.

9. Furthermore, the Agreement to Sell was a contingent contract between the parties as it has been agreed between them that Sale Deed will be executed after the decision of the suit pending at that time. The very fact that the appellant claims to have issued notice dated 01.09.2011 Ex.PW6/C establishes that he had knowledge at that time about the conclusion of litigation regarding the suit land. When the appellant had issued second notice dated 07.03.2014, the appellant was



aware that the defendants No.1 to 5 had already sold the suit land vide Sale Deed dated 13.06.2011; whereas the Agreement in question Ex.PW5/1 is of the year 2003. It is established position of law that litigant is required to be vigilant in respect of his right.

10. Last but not the least, learned counsel for the appellant is unable to meet the query of this Court that as per established position in law, this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. In this regard, reference is made to the judgment ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc Id # 2034559***

11. The Hon'ble Supreme Court, in the case of ***Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71***, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:

"16. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."



12. The counsel for the appellant has not been able to make out any error in law or procedure in the present case. As such, the present Appeal deserves to be dismissed on this short ground itself. In the conspectus of the above facts as well, this Court is not inclined to interfere in the concurrent judgments and decrees of the learned Courts below.

13. The present Regular Second Appeal is hereby **dismissed**.

14. Pending applications, if any, stand disposed of.

24.07.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No