



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
227

RSA-279-2013(O&M)
Date of decision: 27.08.2025

Mahabir & Others

...Appellant(s)

Vs.

Satbir

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Sukriti Gupta, Advocate
Mr. Saarib Aggarwal, Advocate
for the appellants.

Mr. Sumeet Jain, Advocate
for the respondent.

NIDHI GUPTA, J.

Present appeal has been filed by the defendant against the judgment of reversal and decree dated 31.08.2012 passed by Id. District Judge, Gurgaon whereby the appeal filed by the respondent/plaintiff against the dismissal of his suit for specific performance by the Id. Trial court, has been allowed.

2. Brief facts of the case are that the defendant was owner of suit land measuring 15 kanal 9 marla as per Jamabandi for the year 2000-01. Vide Agreement to Sell dated 25.02.2005, the defendant had agreed to sell the said land to the plaintiff for total sale consideration of Rs.6,56,625/- of which



Rs.60,000/- was received by the defendant as earnest money. Remaining amount was to be paid by the plaintiff at the time of execution of Sale Deed on or before 24.05.2005. It was the pleaded case of the plaintiff that the defendant had become dishonest and failed to perform his part of the contract. Accordingly, plaintiff had served legal notice dated 29.04.2005, and again on 31.05.2005 and again on 15.06.2005 upon the defendant. The plaintiff had even come present in the office of Sub-Registrar on 24.05.2005 and on 15.06.2005 for execution of Sale Deed. The plaintiff had then discovered that defendant intends to dispose of the suit land to some other person and wants to play fraud. Hence, present suit was filed on 21.07.2005.

3. Upon notice, suit was resisted by the defendant by filing written statement inter alia denying the Agreement to Sell. It was alleged that the Agreement is false, frivolous and that the defendant had never executed the said alleged Agreement nor received any earnest money and same was a result of fraud. Accordingly, dismissal of the suit was prayed for.

4. Replication was filed by the plaintiff rejecting the averments made in the written statement and reiterating those made in the plaint.

5. On the basis of pleadings of the parties, following issues were framed vide order dated 22.10.2009: -

“1. Whether the defendant executed an agreement dated 25.2.2005 in favour of the plaintiff to sell the suit land detailed in para No.1 of the plaint for total sale consideration of Rs.6,56,



625/- and received an amount of Rs. 60,000/- as earnest money?

OPP

2. Whether the plaintiff has always been ready and willing to perform his part of agreement dated 25.2.2005 and he is still ready and willing to do so? OPP

3. Whether the plaintiff is entitled to decree for possession by way of specific performance of agreement to sell dated 25.2.2005 with consequential relief of permanent injunction?

OPP

4. Whether the suit is not maintainable? OPD

5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD

6. Whether the plaintiff is stopped from filing the present suit by his own act, conduct, acquiescence, omission, admission and latches etc.? OPD

7. Relief”

6. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, Id. trial Court vide judgment and decree dated 17.03.2010 had dismissed the suit of the plaintiff. However, the Id. lower Appellate Court vide judgment dated 31.08.2012, has allowed the appeal of the plaintiff by decreeing the suit of the plaintiff for specific performance of the Agreement to Sell (Ex.PW1/A) and directing the defendant to execute and get the Sale Deed registered in favour of the plaintiff on receipt of balance sale consideration within one month. Hence, 2nd appeal by the defendant.

7. It is inter alia submitted by learned counsel for the defendant that the learned trial Court had dismissed the suit of the plaintiff by giving a



categoric finding that the plaintiff had failed to prove his readiness and willingness to perform his contract. It is submitted that it is only by way of additional evidence produced by the plaintiff before the learned lower Appellate Court that the said finding of the learned trial Court was reversed. Learned counsel contends that however, the learned lower Appellate Court was in error in permitting the plaintiff to lead additional evidence as the said additional evidence was already in the knowledge and possession of the plaintiff during trial; and no cogent reasons had been given by him for non-production thereof before the learned trial Court. It is contended that if the plaintiff was negligent in producing evidence, he could not be permitted to fill-up the lacuna in his case. It is submitted that accordingly, the learned lower Appellate Court could not have allowed the plaintiff to lead additional evidence; and resultantly, suit of the plaintiff could not have been decreed.

8. It is further submitted that the evidence produced by the defendant has not been considered by the learned lower Appellate Court in decreeing the suit of the plaintiff. In this regard, learned counsel refers to evidence of Shish Pal (PW4), Deed Writer, who had admitted that although as per Rule, he was required to maintain register and enter the drafted documents yet the Agreement (Ex.PW1/A) and receipt were not signed by him or even drafted by him. Even the said documents were not entered in his Register. It is submitted that accordingly, the District Judge had erred in law in accepting the appeal and decreeing the suit without considering the



statement of PW4. Learned counsel accordingly prays that the impugned judgment and decree of the learned lower Appellate Court be set aside.

9. Per contra, learned counsel for the respondent/plaintiff vehemently opposes the submissions made on behalf of the defendant and submits that the learned trial Court has even given a categorical finding that the Agreement in question stood proved in accordance with law. Yet, the trial Court had non-suited the plaintiff only on the ground that plaintiff was unable to prove his readiness and willingness to perform the contract. However, the said findings of the learned Trial Court are misguided; and were accordingly reversed by the learned lower Appellate Court for cogent reasons.

10. It is pointed out that the learned trial Court had held that the plaintiff had failed to prove his readiness and willingness only on the ground that the plaintiff had produced photocopies of the Affidavits of Attendance dated 24.05.2005 and 15.06.2005 (Ex.PW1/E and Ex.PW1/F respectively). Learned counsel submits that by way of 'additional evidence' before the learned lower Appellate Court, the plaintiff had only produced original copies of the said Affidavits and other related documents, which were therefore accepted by the lower Appellate Court. Thus, not only was the Agreement proved on record; but also, the plaintiff had succeeded in proving his readiness and willingness to perform the contract, and demonstrated availability of the balance sale consideration. It is submitted that it is only keeping in view the above-said facts that the learned lower Appellate Court



had decreed the suit of the plaintiff. Therefore, the impugned judgment and decree suffer from no error, and the present appeal deserves to be dismissed.

11. No other argument is made on behalf of the parties.

12. I have heard learned counsel; perused the case file in detail; and given my thoughtful consideration to the rival submissions made on behalf of the parties. I find no merit in the submissions made on behalf of the appellant/defendants.

13. The relevant facts in chronological order are as follows: –

25.02.2005: The Agreement to Sell dated 25.02.2005 **Ex.PW1/A** (at page 173 of the LCR) was executed between plaintiff Satbir and defendant Sikari, for Suit land measuring 15K 9M for total sale consideration of ₹6,56,625/–.

25.02.2005: Payment of earnest money of ₹60,000/- was proved to have been made vide receipt dated 25.2.2005 **Ex.PW1/B** (at page 179 of the LCR).

29.04.2005: Plaintiff sent Legal Notice **Ex.PW1/C** (Pg 181 LCR) through counsel for proposed date of 24.05.2005 for execution of sale deed.

24.05.2005: Plaintiff, accordingly, executed Affidavit of Attendance **Ex.PW5/A** (Pg 149) before Sub-registrar.

31.05.2005: **Ex PW1/D (Pg 189)**: Legal Notice is issued by plaintiff for proposed date of 15.06.2005 for execution of sale deed.

15.06.2005: **Ex PW1/E/PW5/B** (Pg. 137): Affidavit executed by Plaintiff.



01.07.2005: Another Legal Notice (Pg. 151) dated 1.7.2005 issued by the plaintiff for proposed date of 15.07.2005 for execution of sale deed. The Postal Receipt in respect of the said Legal Notice is at Pg 163 of LCR.

15.07.2005: **Ex PW1/F** (Pg. 199): Affidavit executed by Plaintiff.

18.07.2005: Refusal to execute sale deed by defendant.

21.07.2005: Suit for Specific Performance filed by plaintiff.

28.10.2005: Upon notice, the first Written Statement is filed by the appellant/defendants through Rajneesh Aggarwal Advocate in which the Agreement to sell and Earnest Money are denied by defendant. It was further pleaded that the documents were prepared for ration card.

03.03.2006 & 22.03.2006: **Ex.PW10/1** (Pg. 185 LCR): Another Sale deed is executed by the appellant in favour of third persons Khazani Devi and Sharbati Devi in respect of land, measuring 73 kanal 14 marla at Village Raiseena, for which he received consideration of Rs 30 Lakhs.

15.09.2008: Application for amendment of written statement filed by the appellant was allowed on 20.08.2009.

15.09.2008: (Pg 85 LCR): Appellant filed amended Written Statement through Sh. SK Rao Advocate denying the Agreement to Sell and Earnest Money; and pleading Fraud by plaintiff, Gaurav Jain, Bir Singh. Defendant further pleaded that the Documents had been prepared for enhancement of pension at Shop of Gaurav Jain. The defendant further denied the legal



notice; while admitting his Thumb impression. The defendant also averred that he was hard of hearing and had no necessity of selling the suit land.

23.10.2009: (Pg 95 LCR): Replication is filed by the plaintiff.

17.03.2010: The Trial Court dismissed the suit of the respondent/plaintiff primarily on the ground that the documents/ affidavits/notices though produced by the plaintiff were not proved on record; and that no bank statements had been produced by the plaintiff. Accordingly, Issues no. 2 & 3 (readiness/willingness) were decided against plaintiff. However, returned finding that the Agreement in question was proved.

13.04.2010: Civil Appeal filed by plaintiff.

17.03.2011: Plaintiff moved Application for additional evidence on 29.07.2010, which was allowed on 17.03.2011; pursuant to which the plaintiff examined PW5 to PW11; and RW1 was examined by the Defendant.

The plaintiff also produced the originals of the following documents:

31.05.2005 Legal Notice

15.06.2005 Affidavit executed

01.07.2005 Legal Notice

15.07.2005 Affidavit executed

These documents were on trial court record but as originals were not produced, the trial court had not relied upon them.

05.10.2011: The defendant Sikari expired.

31.08.2012: The Civil Appeal filed by the plaintiff was allowed, and the Suit was decreed in favour of plaintiff.



27.09.2012: Hence, present second appeal by the defendant.

14. As noted above, the learned Trial Court even while dismissing the suit vide judgment dated 17.03.2010, had specifically recorded a categorical finding that the execution of the Agreement to Sell dated 25.02.2005 Ex PW1/A (at page 173 of the LCR) between plaintiff Satbir and defendant Sikari stood proved on record. Payment of earnest money of ₹60,000/- was proved to have been made vide receipt dated 25.2.2005 Ex.PW1/B (at page 179 of the LCR). The plaintiff Satbir (PW-1), attesting witness Bir Singh (PW-2), Bharat Bhushan (PW-3), and the scribe/Deed Writer Shish Pal (PW-4) were examined and their testimonies established the execution of the Agreement to Sell. Even the defendant himself had admitted his thumb impression on the Agreement to Sell and related documents. The Trial Court accordingly recorded a clear finding in favour of the plaintiff on Issue No. 1 regarding execution of the Agreement. Significantly, the said finding of the Trial Court on the due execution of the Agreement to Sell was never assailed and has thus, attained finality.

15. It is also necessary to note that in the original written statement filed by the defendants through counsel Rajneesh Aggarwal, they had taken the stand that the disputed documents were prepared only for the purpose of obtaining a ration card. However, after change of counsel, an amended written statement was filed through Shri S.K. Rao, Advocate, wherein this stand was materially altered, and it was now alleged that the documents



were executed for enhancement of pension, at the shop of Gaurav Jain. This complete shift in defence demolishes the credibility of the appellants' case, exposes the falsity of their allegations, and shows that the plea of fraud or misrepresentation is an afterthought introduced to defeat the lawful Agreement to Sell. The settled law is that fraud must be specifically pleaded and strictly proved by the party alleging it. However, the defendants led no evidence to discharge this onus. Mere bald allegations or contradictions in testimony cannot substitute for proof. In his cross-examination, the defendant categorically stated that he has never seen the shop of Gaurav Jain, nor has he gone to his shop - "*Mene Gaurav Jain ki dukan na dekhi na hi main iski dukan par gaya hun*" (at Page 277 of the LCR). This admission directly contradicts the defence plea that the documents in dispute were fraudulently prepared at the shop of Gaurav Jain. The defendant's own testimony thus nullifies his case and establishes that the defence of fraud is false and concocted. Consequently, the defence of fraud was rightly rejected; and the Appellate Court was correct in decreeing the suit for specific performance.

16. It is also to be noted that despite alleging fraud and fabrication of documents, the defendants never lodged any police complaint or initiated criminal proceedings against the plaintiff or the alleged conspirators. The complete absence of any contemporaneous complaint renders the plea of fraud wholly unbelievable and an afterthought. This omission reinforces the



genuineness of the Agreement to Sell and undermines the defence set up by the appellants.

17. Further, in the scenario that the defendants had categorically denied execution of the Agreement and pleaded fraud, as a natural corollary to the above, it would follow that defendants had therefore themselves asserted that the question of readiness and willingness did not arise. It is my clear view that having denied execution of the agreement altogether and having set up a plea of fraud, the defendants are estopped from later questioning the plaintiff's readiness and willingness. Once the defence is that no agreement was ever executed, the issue of readiness and willingness does not legitimately arise. It is a settled proposition of law that once the defence is of fraud or denial of execution, the plea of readiness and willingness becomes redundant. I am supported in my above view by judgment of this Court in **Sant Singh v. Amarjit Singh (Punjab and Haryana) : Law Finder Doc ID # 671030**, wherein it has been held that: -

*"3. I am afraid, the aforementioned submission of learned counsel for the appellant-defendant sans merit, for the simple reason that appellant-defendant in the written statement denied the execution of the agreement to sell. It is cardinal/settled proposition of law that a person who denies the execution and registration of the sale deed, cannot be permitted to raise the plea of readiness and willingness. Reference invited to the judgment of **Jora Singh v. Lakhwinder Kumar and others 2011(1) RCR (Civil) 130**.*



4. As far as, the hardship is concerned, the said plea is also fallacious, for the reason, that no such pleadings/averments have been taken in the written statement. The stand taken by the appellant-defendant was that though he had signed the document, but Naresh Kumar, attesting witness obtained his signatures on the blank paper, but the fact remains, that the signatures were not on the blank paper but on the stamp paper. The plea of defendant-appellant is also falsified. It has also come on record that the defendant-appellant in cross examination admitted his signatures on the agreement to sell and he did not examine the document expert to disbelieve the plea of fraud much less his signatures. On the contrary, the respondent-plaintiff has proved the readiness and willingness on 01.05.2006 as the target date was fixed as 01.05.2006."

18. However, notwithstanding the above, in any event, the plaintiff has independently proved his presence before the Sub-Registrar on the due dates, supported by affidavits and notices, and stated in cross-examination about availability of funds in account, which establishes his continuous readiness and willingness to perform the contract. These documents have already been referred to hereinabove. Importantly, no cross-examination or suggestion was put to the plaintiff on the aspect of readiness and willingness. Thus, the appellants cannot approbate and reprobate by shifting stands.

19. It has been contended on behalf of the appellant/defendants that plaintiff proved his readiness and willingness from the documents produced by him as additional evidence. It has been contented that the First



Appellate Court erroneously allowed application for additional evidence, permitting plaintiff to prove legal notices and other documents. It has been argued that this was impermissible as it allowed plaintiff to fill lacuna in evidence. However, the said argument is not available to the appellants as they are estopped from objecting to leading of additional evidence by the plaintiff; in view of the fact that after the Lower Appellate Court had allowed additional evidence, the plaintiff had examined PW5 to PW11; whereafter, the defendants had cross-examined them and even led rebuttal evidence through RW1. Thus, having fully participated in the process, the defendants are now estopped from objecting to the allowance of additional evidence in this Regular Second Appeal.

20. Thus, the reasoning of the learned trial Court in non-suiting the plaintiff as contained in Para 15 of the impugned judgment dated 17.03.2010, is erroneous. The relevant extract of para 15 reads as follows: -

“15...The plaintiff has also not placed on record original copies of alleged affidavit dated 24.5.2005 and 15.6.2005 and he has just placed on record photocopies thereof Ex. PW1/E & Ex. PW1/F respectively. The plaintiff has also not examined Sh. Bhim Singh, Numberdar of village Nimora who allegedly identified the plaintiff on the alleged affidavit dated 24.5.2005 and 15.6.2005. No official from the office of Sub Registrar/Executive Magistrate, Sohna has been examined by the plaintiff to prove that any of the aforesaid affidavits was attested by the then Executive Magistrate, Sohna. It is well settled law that mere marking of a document as exhibit does not dispense with its mode of proof...”



21. However, the said reasoning of the learned trial Court is untenable. A perusal of order dated 17.03.2011 shows that application for bringing on record the additional evidence has been allowed by the Additional District Judge for the reasons as recorded in Para 13 thereof, which reads as follows: -

“13. Having heard the learned counsel for the parties and going through the case law referred, I am of the view that the additional evidence sought to be led is necessary to substantiate the cause of justice. The photocopy of the notice dated 29.4.2005 Ex. PW1/C, carbon copy of notice dated 31.5.2005 Ex. PW1/D and photocopies of both the affidavits Ex. PW1/E and Ex. PW1/F were made the part of his affidavit tendered by the plaintiff in his evidence. Since, exhibition of the documents was not objected by the defendant, the plaintiff did not lead any evidence to prove the execution of those documents whereas those documents were not perse admissible in evidence. Had the plaintiff placed on the file original documents, those would have also not been read into evidence in absence of their formal proof. I feel that to dismiss the suit of the plaintiff only on the ground that execution of these documents was not proved in accordance with law, would be so hard and in a way it would amount to denial of justice to the defendant on a technical ground. So far sale deed dated 6.3.2006 executed by the defendant is concerned, specific case of the plaintiff is that he came to know about execution of said sale deed only after the decision of the suit by the learned trial court. Therefore, both the applications are allowed and the plaintiff is allowed to place on the file all the



original documents and to prove the same including dispatch of the notices to the defendant in accordance with law.”

22. I find no error in the above, said reasoning/order dated 17.3.2011, whereby plaintiff has been permitted to bring on record additional evidence. Moreover, by way of additional evidence, the plaintiff had only sought to bring on record the originals of the documents already produced. In such a situation, there is no error by the learned first Appellate Court in allowing the application of the plaintiff for additional evidence.

23. Consequentially, the following evidence was led by the parties:

Plaintiff evidence

PW1 (Pg 219): Satbir Plaintiff

PW2 (Pg 235) : Bir Singh – Attesting Witness

PW3 (Pg 253) : Bharat Bhushan – Stamp Vendor

PW4 (Pg 257) : Shish Pal – Scribe

Defendant evidence

DW1 (Pg 269): Shikari

DW2 (Pg 281) : Mahabir

Additional Evidence before Appellate Court

By plaintiff

PW5: Bhim Singh- **Lambardar**

PW6: Ashok Kumar -**Reader to Tehsildar**

PW7: Vikas Yadav- **Reader to Tehsildar**

PW8: Sandeep Yadav -**Reg. Clerk post office**

PW9: Mohd Ishak- **Naib tehsildar**

PW10:Tika Ram- **Clerk**

PW11:Manjeet Singh -**witness sale deed dated 06.03.2006/22.03.2006**

By defendant

RW1: Bharat Bhushan stamp vendor



24. Resultantly, the only objection of the defendants to proving the readiness and willingness of the plaintiff, is baseless and misconceived. It is reiterated in this regard that no cross-examination of the plaintiff was conducted by the defendant as to whether he was ready or willing to perform the contract. It is also not denied by Id. Counsel for the appellant that the photocopies of the documents produced by the plaintiff before the trial court were not objected to by the defendants. As such, the deposition of the plaintiff as PW1 to the effect that he had gone to the office of Sub-Registrar with balance sale consideration as also to defray the expenses; and that it was the defendant who was not coming forward to perform his part of the contract, remains undisputed.

25. The plaintiff had further proved the availability of funds in his statement as PW1 that account number 22047831 of the plaintiff in the year 1990 was having funds of Rs.5 to 6 lakh. Plaintiff has stated in his cross-examination that he has an account in Sohna, Syndicate Bank since the year 1999. He also has another account in the same bank which is very old. He does not remember the account number of the year 1999. The account number of second account No. is 2031890. PW1 further stated that account number of the year 1990 is 22047831. On 25.2.2005 the amount lying in both the accounts was about Rs. 5-6 lacs.

26. Further, the argument of Id. counsel for the defendants that in passing the impugned judgment the Id. lower Appellate Court had ignored



the evidence of PW4 Deed Writer is misplaced. The record reveals that the Deed Writer (PW4) in his cross-examination has stated as follows: -

"I have been working as Deed Writer since 1990 and I got the licence for it in the year 1990. It is correct that according to rules, I have to maintain register and enter the documents drafted therein. It is correct that agreement Ex. PW1/A and receipt is not signed by me and I have never written on it that it was drafted by me. But it was in-fact drafted by me. I had not entered the agreement and receipt in my register and as per rule, I could not do so and I cannot draft a document and do not sign on it and do not enter it in my register. I do not know Sikari personally but I can identify him if he faces me. On that day, witnesses had identified him. I had written LTI Sikari on the agreement. It is correct that on the agreement page 3 I did not write LTI Sikari because it was computerized. I do not remember if I had checked the identification proof of Sikari. Voluntarily stated that the identity proof is general checked before the signature."

Thus, even this argument of the defendants is misconceived.

27. It may lastly be pointed out that the defence plea that defendant was hard of hearing, et cetera are falsified from the fact that defendant had himself executed on 6.3.2006 and got registered a Sale Deed on 22.03.2006 in favour of third parties, namely Khazani Devi and Sharbati Devi, in respect of land measuring 73 Kanals 14 Marlas in Village Raiseena, Tehsil Sohna, District Gurgaon, for a consideration of Rs. 30 Lakhs. The said transaction, evidenced by Ex. PW10/1, conclusively demonstrates that the



defendant was in a sound physical and mental state to execute conveyances and was acting out of necessity. The execution and registration of this Sale Deed shortly after the Agreement to Sell dated 25.02.2005 demolishes the plea that the defendant was incapable, infirm, or misled at the time of entering into the agreement. It further shows that there was no inadequacy of consideration, as the agreed rate in the suit transaction was proportionate to prevailing market values.

28. The Defendant himself appeared as DW1 before the Trial Court and faced cross-examination. His testimony nowhere established incapacity, unsoundness of mind, or lack of understanding. On the contrary, his evidence shows that he was in full senses and capable of deposing. The defence plea of infirmity or inability to comprehend the transaction thus stands falsified.

29. In face of the above said facts and circumstances, it is apposite to refer to the following case law which is relevant. Reference is made to a judgment of this Court in **Bhupinder Singh v. Karnail Singh, (Punjab and Haryana) : Law Finder Doc ID # 2667029**, wherein it is held as under:-

“15. Plaintiff propounded agreement to sell executed by the defendant dated 8th of March 1989. In order to prove the same, scribe of the agreement to sell, Balkar Singh appeared as PW-2. Balkar Singh proved copy of register Exhibit P-2 showing entry made by him at Serial No.121. Vidya Sagar, Stamp Vendor appeared as PW-1. He produced his Register. He proved that defendant Bhupinder Singh purchased stamp-paper for



execution of agreement. Entry was made at Serial No.5842 dated 7th of March 1989 in the Register against which defendant appended his signatures. The said stamp-paper was identified by him as the one used for scribing original agreement dated 8th of March 1989, Exhibit P-1. Attesting witness Jhirmal Singh (PW-3) fully established that Bhupinder Singh signed and executed agreement to sell, Exhibit P-1, in favour of the plaintiff after having heard and admitting the contents of the same and after receiving Rs. 5000/- as earnest money.

16. The defendant originally pleaded fraud without giving any details thereof. Apart from bald statement made in the written statement claiming that the agreement to sell was result of fraud and manipulation, neither were the particulars of the fraud played revealed, nor was any cogent evidence led to dislodge the agreement to sell.

xxx

19. Coming on to the plea w.r.t. readiness and willingness, the plaintiff proved his presence before the Sub Registrar on the appointed date by way of affidavit Exhibit P-3. Thus, so far as willingness is concerned, same stands proved. The present suit was filed within 2 months pleading readiness and willingness. In plaint, the plaintiff pleaded as under:

"6) That the plaintiff is ready and willing, was ready and willing and will remain ready and willing to execute the sale deed in his favour from the defendant after payment of balance sale consideration."

20. The response thereto in the written statement, reads as under:



"6. That the para No 6 is denied being wrong, false and baseless. The plaintiff has got no legal right or authority to get the sale deed executed."

21. Plaintiff Karnail Singh appeared as PW-4 wherein he specifically pleaded that he remained present on the appointed date in the premises of Sub Registrar, Dasua office from 9.00 am to 5.00 pm along with balance sale consideration. Defendant did not turn up. He further stated that he remained ready and willing to get the sale deed executed and is still ready and willing to get the sale deed executed in his favour on payment of balance sale consideration. He was cross-examined. Not even a suggestion was put to him that he was not ready or willing to get the sale deed executed or was not in possession of the finances to execute the sale deed."

30. Reliance is placed upon judgment of this Court in **Gurmail Singh v. Rajinder Kumar (P&H) : Law Finder Doc ID # 636915**, wherein it is held as under:-

"8. Learned counsel for the appellant has further made an attempt to raise argument that willingness and readiness of the plaintiff-respondents has not been proved; however, keeping in view the defence taken whereby execution of the agreement to sell in question has been denied, it was not open to the appellant to raise such an argument."

31. The judgment of this Court in **Hardeep Singh v. Sharanjit Kaur, (Punjab And Haryana) : Law Finder Doc ID # 1996358**, is also relevant wherein it is held as under:-



“8. The onus of proving the execution of agreement to sell was on the plaintiff. In order to prove the execution of the agreement to sell dated 09.09.2013, the plaintiff examined the marginal witness to the agreement to sell i.e. PW-2 Surjit Singh. Besides this, the plaintiff also examined PW-3 Vijay Guleria, who scribed the the agreement to sell. While stepping into the witness-box, both of these witnesses duly proved the execution of the agreement to sell, dated 09.09.2013 and nothing adverse came to the fore during their cross-examination. No doubt, the defendant alleged that the agreement to sell was a result of fraud and fabrication, however, he miserably failed to substantiate his plea of fraud and fabrication of the agreement to sell by way of any cogent evidence inasmuch as except for his bald assertion, the defendant did not place any material on record nor even examined any handwriting expert in support of his submissions.

9. The defendant, no doubt, asserted that since the father of the defendant had instituted a civil suit against the father-in-law of the plaintiff, which was decreed in favour of the father of the defendant and ever since then the plaintiff and her family had been eying the suit property, however, no judgment or order was produced by the defendant in support of his submissions. The readiness and willingness of a party to execute the contract being a matter of fact can be inferred from the conduct of the parties. The submissions made by the learned counsel that the defendant/plaintiff had miserably failed to show her readiness and willingness to execute the sale-deed by any cogent and convincing material, thus is devoid of any merit and deserves to be rejected.



10. As per the terms & conditions of the agreement to sell, the date fixed for execution of the sale-deed was 09.05.2014. The plaintiff went to the office of Sub-Registrar, Gurdaspur, along with balance sale consideration. The factum of the plaintiff going to the office of Sub- Registrar, Gurdaspur, stands corroborated by Ex.P2, which is an affidavit duly attested by the Executive Magistrate showing her presence. Since the defendant failed to turn up on 09.05.2014, the plaintiff served him with a legal notice (Ex.P3), asking him to come to the office of Sub-Registrar, Gurdaspur for the execution and registration of the sale-deed on 06.06.2014. Since the defendant yet again did not turn up for the execution and registration of the sale-deed on the given date, the plaintiff got her presence marked in the office of Sub-Registrar, Gurdaspur vide her affidavit dated 06.06.2014 (Ex.P4). The defendant failed to give any cogent reason during his deposition before the trial Court qua his non-appearance on 09.05.2014 and 06.06.2014 before the Sub-Registrar, Gurdaspur. From the conduct of the respondent/plaintiff, it is discernible rather it leaves no manner of doubt that she was always ready and willing to get the sale-deed executed.

11. Upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the conclusions so arrived at by the Courts below were either contrary to the record or suffered from any material illegality. Still further, no question of law, much less, substantial question of law arises for consideration in the present appeal. The appeal, being devoid of merit, is



accordingly dismissed. The judgments and decrees of the Courts below are affirmed.”

32. A judgment of the Andhra Pradesh High Court in **Veeramareddy Nagabhushana Rao v. Jyothula Venkateswara Rao, (A.P.)(DB) 2011 (1) CivCC 705**, wherein it is held as under:-

*“19. It appears, the terms of the agreement of sale between the plaintiff and the defendant is mainly intended to divide the land of the defendant into house plots, obtain an approved layout and sell house plots. The recitals show that the defendant agreed for division of the land into house plots and also apply to panchayat for approval of layout. It is well settled that specific performance of contract will ordinarily be granted even if there is default in carrying out the contract within the specified period having regard to the expressed stipulations of the parties, nature of property and other circumstances. It is one thing to admit the suit agreement of sale and to contend that the plaintiff has failed to establish readiness, but it is altogether a different thing to take a defence that the suit agreement of sale is fabricated and still require the plaintiff to establish readiness and willingness. Therefore the plea put forth by the defendant that he signed on blank papers and plaintiff fabricated the agreement of sale Ex.A-1 does not merit consideration. The facts in a latest decision of the Supreme Court in **Laxman Tatyaba Kankate v. Taramati Harischaandra Dhatrak** are an agreement to sell dated 8-1-1991 was entered into between the parties in terms whereof the defendant-appellant therein had agreed to sell the land ad-measuring 1H.60R of the land and that a sum of Rs. 10,000/- only was*



paid at that time. Though the defendants therein assured that they would execute the sale deed, they failed to do so, hence, notice was served and thereafter the plaintiff filed suit for specific performance and in the alternative for recovery of amount was filed before the trial Court, and that the trial Court partially decreed the suit dismissing his claim for specific performance and ordered for refund of earnest money with interest. On appeal, the lower appellate Court decreed the suit in its entirety granting decree for specific performance. The legality and correctness of the aforesaid decree was challenged before the High Court of Judicature at Bombay at its Aurangabad Bench and the same was confirmed. The appellant-defendant took pleas that there was rapid increase in the market value of the land, that they wanted to obtain loan and had agreed to sign certain papers by way of security, that the plaintiff on the pretext got certain blank papers signed and that there was no intention to sell the property in question that sale of suit was land was barred under Maharashtra Co-operative Societies Act, 1961. The Supreme Court considering those circumstances held that restriction placed by 1961 Act is conditional and goes once loan of the society is cleared, and bar to sale under re-settlement act also disappears once permission of Government is obtained, as Sections 13 and 20 of the Act protect the right of the plaintiff, decree passed for specific performance cannot therefore be faulted. It was further held by the Supreme Court as follows:-

"....The onus to prove that the respondent had obtained signatures of the appellants on blank papers on the pretext of advancing a loan of Rs. 2,000/- was entirely upon the appellant.



No evidence, much less cogent documentary and oral evidence was led by the appellants to discharge this onus. The averment has rightly been disbelieved and the plea was rightly rejected by the concerned Courts in the judgment under appeal. The appellants led no evidence and nothing was brought to our notice, even during the course of the hearing, to show that this plea could be accepted.."

*20. Once the defendant has failed to prove that the suit agreement of sale is fabricated, all other defences taken by him such as readiness and willingness of the plaintiff and there is no requirement of selling the suit schedule property are all being supplementary, based on which, equitable relief of decreeing the suit cannot be refused to the plaintiff when it is otherwise legal and justified to do so. Be that as it may, the defendant has also not raised any issue on the price of the suit schedule property being Rs. 2 lac per acre. Though it was contended by the learned counsel for the defendant that there is considerable increase in prices of land, that cannot be a ground for denying the decree for specific performance and the defendant has also not chose to lead any evidence on that aspect. Therefore, it has to be construed that there is no grievance from the defendant that the suit schedule property is being taken away for a paltry consideration. As per the evidence, the suit agreement of sale entered into on 13-2-1993 and the time fixed for performance is one year. Time begins to run from the expiry of period fixed for performance i.e. from 13-2-1994 and the suit was filed within three years from 13-2-1994. The Supreme Court in **Mademsetty Satyanarayana v. G.***



Yelloji Rao observed that delay in filing the suit itself should not disentitle grant of relief of specific performance.”

33. The Hon’ble Supreme Court in “**Muddasani Venkata Narsaiah (Dead) through Legal Representatives Vs. Muddasani Sarojana**” (2016) 12 SCC 288, has held as under:-

“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.

*16. In **Maroti Bansi Teli v. Radhabai**, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in A.E.G. Carapiet v. A. Y. Derderian has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in*



*cross-examination is one of essential justice and not merely technical one. A Division Bench of the Nagpur High Court in **Kuwarlal Amritlal v. Rekhlal Koduram** has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in **Karnidan Sarda v. Sailaja Kanta Mitra** has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff."*

34. Accordingly, in view of the above noted factual and legal position, the present appeal is hereby **dismissed**.

35. Pending application(s) if any also stand(s) disposed of.

27.08.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes