

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

Reserved on: 28.10.2025
Pronounced on: 11.11.2025

RSA-2147-2015(O&M)**Smt. Sukhwinder Kaur****...Appellant(s)****Vs.****Sandeep Kaur & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Argued by:- Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Vijay Veer Singh, Advocate
for the appellant.

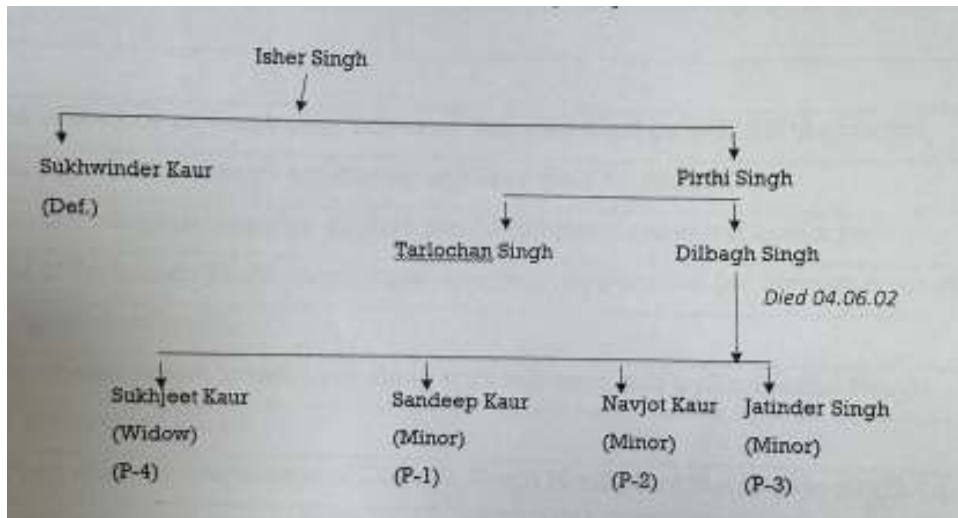
Mr. Som Nath Saini, Advocate
Mr. Amit Saini, Advocate
for the respondents.

*********NIDHI GUPTA, J.**

Present second appeal has been filed by the defendant against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the respondents/plaintiffs for possession by way of specific performance of Contract of Sale dated 01.07.1999, permanent injunction, and in the alternate for recovery of Rs.6 lakh, has been decreed by both the Courts below.



2. To correctly appreciate the dispute between the parties, the following family pedigree table reproduced hereinbelow, shall be useful: -



3. Brief facts of the case as pleaded in the plaint are that the defendant had agreed to sell the suit property to Dilbagh Singh vide Contract of Sale dated 01.07.1999. It was pleaded that Dilbagh Singh had died on 04.06.2002 leaving behind his legal heirs/plaintiffs. As such, the plaintiffs were legally entitled to get the Contract of Sale enforced in their favour. It was pleaded that intention of the defendant had become mala fide and instead of getting Sale Deed executed in favour of the plaintiffs, she was threatening to alienate, transfer the land in dispute to some other person. As such, present suit was filed on 23.07.2002.
4. Upon notice, the defendant had filed written statement resisting the suit by stating that she is owner in possession of the suit land



measuring 12 bighas 10 biswas. Vide Agreement to Sell dated 01.07.1999, her brother Prithi Singh had agreed to purchase the said land from her for total sale consideration of Rs.6 lakh on behalf of his son Dilbagh Singh. Rs.3 lakh was paid as earnest money by Prithi Singh to the defendant at the time of execution of Agreement to Sell. However, subsequently, the said Agreement was cancelled between defendant and Prithi Singh by way of Writing dated 17.11.1999, vide which Prithi Singh had also received back the earnest amount of Rs.3 lakh from her, in presence of attesting witnesses. The writing regarding the cancellation of Agreement to Sell dated 01.07.1999 is typed on the back of first page of the Agreement at the instance of Prithi Singh and defendant; contents of which were read over to both of them by the Typist and which were stated to be true and correct by both; whereafter, they had put their respective signatures in Punjabi in the presence of attesting witnesses Mewa Singh and Kartar Singh, who had also affixed their signatures upon the said Writing dated 17.11.1999. Accordingly, dismissal of the suit was prayed for.

5. On the basis of pleadings of the parties, following issues were framed on 16.05.2011:-

- “1. Whether the plaintiffs are entitled for specific performance of contract of sale as prayed for?OPP.*
- 2. Whether the plaintiffs are entitled for permanent injunction as prayed for?OPP.*



3. *Whether the plaintiffs are ready and willing to perform their part of contract or in the alternative entitled for recovery of Rs. 6acs as prayed for? OPP.*

4. *Whether the plaintiffs have not come to the court with clean hands and have suppressed the material facts from the court?OPD.*

5. *Whether the plaintiffs have no locus standi to file the present suit?OPD.*

6. *Whether the suit of the plaintiffs is time barred?OPD.*

7. *Whether the plaintiffs have no cause of action to file the present suit?OPD.*

8. *Relief"*

6. Vide judgment and decree dated 11.02.2012, learned Civil Judge (Junior Division), Rajpura had decreed the suit of the plaintiff with costs *"for possession by way of specific performance of contract of sale dated 1.7.1999 regarding the land measuring 12 bighas 10 biswas as more fully described in the head note of the plaint situated within the revenue estate of village Khaspur Tehsil Rajpura, District Patiala. The defendant is directed to get the sale deed executed in favour of the plaintiffs after receiving balance sale consideration and to hand over the vacant possession of the property in dispute to the plaintiffs failing which the plaintiffs shall be at liberty to proceed as per law. The suit of the plaintiffs is further decreed for permanent injunction restraining the defendants from alienating, transferring or otherwise encumbering the land in dispute in any*



manner...". The appeal filed by the defendant was dismissed by the learned Additional District Judge, Patiala vide judgment and decree dated 03.12.2014. Hence, present second appeal by the defendant.

7. It is inter alia submitted by learned Senior Counsel for the appellant/defendant that it is admitted fact on record that Prithi Singh had entered into Agreement to Sell on behalf of his son Dilbagh Singh. Admittedly, the said Agreement does not even bear the signatures of Dilbagh Singh and carries the signature of Prithi Singh. Admittedly, it was Prithi Singh who had paid the earnest money of Rs.3 lakh. Thus, for all intents and purposes, it was an Agreement/understanding between the sister and brother/ defendant and Prithi Singh respectively; and Dilbagh Singh had nothing to do with the same. However, the Courts below had decreed the suit of the plaintiff primarily on the ground that Prithi Singh was not authorised to cancel the Agreement to Sell as Dilbagh Singh/vendee had not authorised Prithi Singh to do so. It is argued that this reasoning is incorrect as Dilbagh Singh had never paid the earnest money of Rs.3 lakh to the defendant nor he was present at the time of execution of Agreement to Sell dated 01.07.1999. Plaintiff-Respondent No.4/widow of Dilbagh Singh was well aware of the fact that Agreement to Sell already stood cancelled in view of the Writing dated 17.11.1999; and pursuant to which Prithi Singh had even received back the earnest amount of Rs.3 lakh



in cash from the appellant on 17.11.1999 itself. It is submitted that therefore there was no occasion or ground for the plaintiffs to seek enforcement of the Agreement.

8. Ld. Senior Counsel further submits that suit of the plaintiffs could not have been decreed also on the ground that they had failed to prove their readiness and willingness to perform the agreement. It is submitted that much reliance has been placed upon the Affidavit of Attendance of Dilbagh Singh in the Tehsil Office on target date of 20.7.1999. However, admittedly, the original of the said Affidavit has not been produced by the plaintiffs. Only a photocopy was produced which cannot be taken into evidence. Even no application was moved by the plaintiffs for leading secondary evidence.

9. It is further argued that the Courts below have wrongly and illegally held that since deceased Dilbagh Singh has not given General Power of Attorney to his father Prithi Singh, therefore, in that situation, Prithi Singh cannot cancel the Agreement to Sell. The Ld. Courts below while recording the above said finding fell in error because the said Dilbagh Singh has not even signed the agreement to sell Ex.P-7. His father has signed on his behalf as Dilbagh Singh was in Dubai at that time and similarly the agreement to sell Ex.P-7 was cancelled by Prithi Singh with the consent of Dilbagh Singh. This factum was also proved from the behaviour of



Dilbagh Singh because as per the agreement to sell Ex.P-7 the sale deed was to be executed on or before 20.07.1999 and Dilbagh Singh remained alive till 04.06.2002 but he did not file any suit for specific performance till 2 years 10 months and 14 days because the appellant is the real aunt of Dilbagh Singh and he (Dilbagh Singh) had cancelled the agreement to sell Ex.P-7 through his father and accepted the earnest money. As such he had not filed any suit but later on his brother Trilochan Singh with bad intention and with a view to grab the property of the appellant filed the present suit. But the Ld. Courts below without considering the evidence and circumstances of the case wrongly and illegally decreed the suit. As such the findings recorded by the Ld. Courts below are not sustainable in the eyes of law and is liable to be set aside.

10. It is further submitted that the Ld. Courts below wrongly and illegally held that the appellant has not pressed issue No. 5 to 7 whereas the counsel for the appellant has specifically pleaded in the grounds of appeal and pressed these issues at the time of arguments but the Ld. Courts below wrongly and illegally observed that the appellant has not pressed these issues. Moreover, as per the agreement to sell Ex.P-7, the sale deed was to be executed on or before 20.07.1999 and the present suit has been filed on 23.07.2002 i.e. after 3 years 3 days. Thus, the suit of the plaintiffs is time barred. But surprisingly the Ld. Courts below is silent on this vital



aspect of the case, rather, while deciding issue No.6 regarding limitation, the Ld. Courts below has simply written that issue No.5 to 8 are not pressed and no evidence has been led. However, they failed to appreciate that no special evidence is required as the dates are borne on Ex.P-7 and it is question of law, which can be decided by the court, even without pleading to this effect. As such the findings recorded by the Ld. Courts below are erroneous and arbitrary and are liable to be set aside.

11. Ld. Senior counsel for the appellant further submits that the Ld. Courts below fell in error while decreeing the suit of the plaintiffs by relying upon their pleadings as well as evidence because neither the pleadings nor the evidence of the plaintiffs can be read because initially the suit was filed by Tarlochan Singh on behalf of Plaintiff Nos. 1 to 3 being legal guardian and plaintiff No. 4 was impleaded as Proforma Defendant No. 2. Later on the plaintiff No.4 Smt. Sukhjot Kaur filed an application for transposing her as plaintiff No.4 and further she made a prayer in the application that she be allowed to contest the suit on behalf of the minors being mother and she also levelled allegations against Tarlochan Singh by saying that his interest is against the interest of the minors. Her application was allowed, and she was impleaded as plaintiff No.4 in the main suit but she neither signed the pleadings on behalf of the minors nor for herself. As such there is no pleading on behalf of the minors as well as on behalf of



plaintiff No.4. The said point was duly argued before the Ld. Courts below but the Ld. Courts below failed to consider the arguments in the judgments.

12. Learned Senior counsel accordingly prays for setting aside of the impugned judgments and decrees of the Courts below.

13. Per contra, learned counsel for the respondents/plaintiffs vehemently opposes the submissions made on behalf of learned Senior Counsel for the appellant and submits that the arguments now raised by learned Senior Counsel in respect of limitation etc. are being raised for the first time before this Court. It is submitted that in any event, the arguments raised on behalf of the appellant are meritless in view of the fact that the target date was 20.07.1999, which was a holiday being a Saturday. The Civil Suit was verified on 20.07.2002. 21.07.2002 was a Sunday. Therefore, suit was filed on 23.07.2002; and therefore, suit was not time barred. Moreover, there is no question of Civil Suit being time barred even as per Section 9 of the Punjab General Clauses Act, 1956.

14. On merits, learned counsel for the respondents submits that in Paras 4 and 5 of the plaint, the plaintiff has very clearly stated that Dilbagh Singh was ready and willing to perform the contract. It is for this reason that he had come to India and had gone to the Sub-Registrar on 20.07.1999. This fact is duly proved from his Affidavit of Attendance (Ex.P10). It is further clearly stated in Para 4 of the plaint that Dilbagh Singh



had also brought the remaining amount of sale consideration of Rs.3 lakh along with him for execution of the Sale Deed and other sundry expenses. Learned counsel refers to the averments made in Para 5 of the plaint to submit that Dilbagh Singh had waited in the Office of Sub-Registrar on 20.07.1999 from 9 am to 5 pm and it was the defendant No.1 who had not turned up. Dilbagh Singh had also got his affidavit prepared to mark his presence on 20.07.1999, which was got attested from the Executive Magistrate, Rajpura. It is submitted that therefore, argument of learned Senior Counsel that the Affidavit of Attendance was merely a photocopy and could not be taken into evidence, is misplaced as the Affidavit dated 20.07.1999 had been duly attested by the Executive Magistrate, Rajpura. It is submitted that it has also been stated in the plaint that after the death of Dilbagh Singh, Tarlochan Singh uncle of the plaintiffs and real brother of Dilbagh Singh had also been ready and willing to perform the contract and get the Sale Deed executed in favour of the minor plaintiffs on payment of balance sale consideration to defendant No.1. Moreover, it was proved on record that Dilbagh Singh was in India on target date of 20.07.1999 from his passport (Ex.P11).

15. It is submitted that learned Senior Counsel can raise no objection to the filing of photocopy of Ex.P10 with the plaint also on the ground that the original Affidavit of Attendance was in the possession of



Tarlochan Singh. In this regard, learned counsel refers to the deposition of Tarlochan Singh wherein he has stated that *"I am not aware if original Affidavit of Attendance is with him."* It is contended by learned counsel for the respondents that accordingly, Tarlochan Singh has not denied that he is in possession of the original Affidavit of Attendance. It is further submitted that secondary evidence could not have been led in respect of the Affidavit of Attendance as the same is not a public document. It is reiterated that Ex.P10 was with Tarlochan Singh and therefore, attested copy was attached and no error can be found in the same.

16. It is submitted that Tarlochan Singh in his evidence has further admitted that defendant had also not come to India after 01.07.1999. It is submitted that if that was so, then how could the Agreement have been cancelled in November 1999 in the absence of the defendant. It is argued that therefore, the appellant cannot plead that plaintiff was not ready and willing to execute the Agreement as defendant herself was not in India to execute the Sale Deed. Furthermore, defendant has also been failed to prove how earnest money was returned. Prithi Singh has failed to prove sale of land at Shahbad. As such, even the alleged cancellation of Agreement is put in shadow of doubt.



17. Learned counsel for the respondents further relies upon the findings as recorded by the learned trial Court in Paras 9 and 10 of its judgment dated 11.02.2012 which read as follows:-

“9. Rival contentions of both the sides have been heard and the case file has been perused with due care and circumspection. This court is of the considered view that the plaintiffs have successfully discharged the onus of proving all these issues in their favour. The agreement to sell Ex.P7 is duly admitted by the defendants. The facts which are admitted need not to be proved. Regarding readiness and willingness the plaintiffs have proved on file Ex.P8 which is the photocopy of the affidavit regarding marking of attendance in the office of Executive Magistrate on 20.7.2002. The objection of the learned counsel for the defendant regarding mode of proof this document is a photocopy is not maintainable, Since this document was placed on record by Tarlochan Singh himself. Tarlochan Singh and Prithi Singh summoned as witnesses in this case by Sukhjeet Kaur. However, they did not support of the case of the plaintiffs and were declared hostile. In the opening lines of his examination in chief PW-1 Tarlochan Singh denied the fact of having filed this suit on behalf of plaintiffs no. 1 to 3. However, in contradiction to his statement he admitted his signatures on the power of attorney filed by Advocate H.R. Agnihotri as Ex. P1. He has also admitted his signatures at points B to F on Ex.P2 to Ex. P6 respectively. Therefore, the fact that Tarlochan Singh filed the suit on behalf of minors is established In his cross-examination by the plaintiffs (since he



was declared hostile) he has admitted the execution of Ex.P7. He has identified the signatures of his father Prithi Singh on Ex. P7. He has also identified the signatures of defendant on Ex.P7. He has admitted the fact that after the bhog ceremony of Dilbagh Singh children of Dilbagh Singh never resided with him. PW-2 Prithi Singh has stated that Dilbagh Singh came to India in July, 1999. He has further stated that he sold the land belonging to Tarlochan Singh at village Shahbad in order to pay the earnest money with respect to Ex.P7. PW-1 has stated that his father sold his land at village Shahbad to return the earnest money of Rs. 3lacs in order to cancel Ex.P7. In his further cross-examination PW-1 denied the fact that Dilbagh Singh came to India in July, 1999 which is in clear contradiction with the statement of PW-2. PW-1 also denied his signatures at point A to F. Had the signatures not been of Tarlochan Singh he would have left no stone unturned to prove the same by examining handwriting expert. PW-2 in his cross-examination has admitted the agreement Ex.P7. However, he has denied the signatures of his son on Ex.P1 to Ex. P6. He has admitted that in the year 1999 both his sons used to reside with him jointly. He has further stated that he purchased two killas of land at village Shahbad in the name of Dilbagh Singh. On the other hand, he has stated that he sold land belonging to Tarlochan Singh at village Shahhad to Pay token money in respect of agreement Ex.P7 which was executed in favour of Dilbagh Singh. However, no proof of existence of sale of any land at village Shahbad has been proved on record. It is also strange on the part of the father to sell land of one son and keep



purchasing land in the name of other son without consideration to whom he had already given land. PW-1 has deposed that Sukhwinder Kaur never came to meet them after December 1999. However, PW-2 has deposed that Sukhwinder Kaur who resides in Canada keeps visiting him. She has visited him 4-5 times after 1.7.1999. However, in the later part of his statement he admitted that when the case was filed photocopy of agreement Ex.P8 and copy of affidavit ,Ex.P10 were also filed. He has admitted the signatures of Sukhwinder Kaur as Ex.P9. He has admitted the fact that Dilbagh Singh never executed any power of attorney in his favour during his lifetime. He has further stated that Ex.P7 was cancelled on 17.11.1999 by mutual understanding.

10. *Since Ex.P7 has been duly proved on record and it is executed in favour of Dilbagh Singh only Dilbagh Singh had the right to cancel it. Prithi Singh admitted in his cross-examination that Dilbagh Singh never executed any power of attorney in his favour. So the writing regarding the cancellation Ex.D1 has no value in the eyes of law. Moreover, it appears that it has been executed afterwards in order to deprive the children of Dilbagh Singh of their rights. Undoubtedly this suit was filed by Tarlochan Singh as discussed above and when Sukhjeet Kaur was transposed as the plaintiff in this suit Tarlochan Singh and Prithi Singh turned hostile. Therefore, they did not support the case of the plaintiffs. Moreover, it appears that Tarlochan Singh in connivance with his father Prithi Singh and DW-1 Sukhwinder Kaur had filed this suit with malafide intention. Regarding readiness and willingness the arguments of the*



learned counsel for the defendant did not hold any weight. Since this document was filed by Tarlochan Singh along with the main suit. The original affidavit is presumed to be in his custody and has been withheld to defeat the rights of the plaintiffs. From the other oral as well as the documentary evidence it has also been proved that Dilbagh Singh rang up his paternal aunt Sukhwinder Kaur regarding Ex.P7 which was to be executed on 1.7.1999 and then came to India on 16.7.1999 and got marked his attendance in the office of Executive Magistrate on 20.7.1999 which proves that Dilbagh Singh was always ready and willing to perform his part of contract. No proof has been furnished by Tarlochan Singh and Prithi Singh regarding the sale of any land for payment of earnest money to Sukhwinder Kaur. Further more, no proof has been furnished by Sukhwinder Kaur regarding return of money. Moreover, no proof of any income source has been furnished by Tarlochan Singh and Prithi Singh as an amount of Rs. 3lacs was considered to be a very huge long back in the year 1999. Therefore, it is evident that Dilbagh Singh who had gone to Dubai to earn money used to send money to his father for purchasing the land, that is why the land was being purchased in his name alone. A bare perusal of Ex. P7 reveals that on the first page there is cutting on line 8. A close perusal of this line reveals that earlier name of Prithi Singh was mentioned which was then deleted and name of Dilbagh Singh was written. The cutting bears the signatures of Sukhwinder Kaur which shows the clear intention of the parties that the agreement was executed in favour of Dilbagh Singh as intended to.”



18. Ld. counsel accordingly prays for dismissal of the Appeal.

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

20. I have heard learned counsel and perused the case file in detail.

I have given my thoughtful consideration to the rival submissions advanced on behalf of both the parties. I find merit in the submissions advanced on behalf of the appellant.

21. The Id. Courts will have decreed the suit of the plaintiffs on the ground that Prithi Singh had no authority to cancel the Agreement in question, as Dilbag Singh had not executed any Power of Attorney in favour of Prithi Singh authorising him to do so. However, the said reasoning of the learned Courts below is patently incorrect in view of the admitted fact that the Agreement dated 01.07.1999 was entered into between the defendant and Prithi Singh on behalf of his son Dilbagh Singh, who was resident of Dubai. Admittedly, the Agreement in question bears the signatures of only Prithi Singh and not Dilbagh Singh. It is also admitted fact on record that Dilbagh Singh had executed no Power of Attorney/GPA in favour of Prithi Singh authorising him to execute the said Agreement on his behalf. This glaring fact has been totally overlooked by the learned Courts below in decreeing the suit of the plaintiffs. In this situation, the reasoning of the learned Courts below that since the Agreement (Ex.P7) was executed in favour of Dilbagh Singh, “.....*only Dilbagh Singh had the right to cancel it.*



Prithi Singh admitted in his cross-examination that Dilbagh Singh never executed any power of attorney in his favour. So the writing regarding the cancellation Ex.D1 has no value in the eyes of law...”, is patently misconceived and erroneous. It is but trite that as Dilbagh Singh had executed no GPA authorising Prithi Singh to execute the Agreement, similarly no GPA was required from Dilbagh Singh to authorise Prithi Singh to cancel the said Agreement. If the aforesaid reasoning of the Courts below were to be applied, then the Agreement itself was invalid; as it was executed by Prithi Singh without GPA from Dilbagh Singh. If Prithi Singh was authorised to execute the Agreement on behalf Dilbagh Singh without Power of Attorney in his favour, then Prithi Singh cannot be held to not be authorised to cancel the said Agreement for lack of General Power of Attorney. What is cheese for the gander is cheese for the geese.

22. The next argument of the respondents has been that the readiness and willingness of Dilbagh Singh to perform the Agreement was proved from his Affidavit of Attendance dated 20.7.1999 Ex.P-10, which was duly attested by the Executive Magistrate. However, admittedly, the original of the said Affidavit has not been produced by the plaintiffs. Only a photocopy has been brought on record. Even no application was moved by the plaintiffs for secondary evidence. It is established position in law that a photocopy of a document is not admissible in evidence. The Hon’ble



Supreme Court in **Smt. J. Yashoda v. K. Shobha Rani, (SC) : Law Finder Doc**

ID # 128669, held that: -

“A. Evidence Act, Sections 63 and 65 – Secondary evidence – Photostat copies of original cannot be received as secondary evidence in terms of Section 63 of Evidence Act.”

23. Thus, plaintiffs are unable to prove presence/readiness and willingness of Dilbag Singh on 20.7.1999.

24. It is reiterated that the Ld. Courts below wrongly and illegally relied upon Ex. P-10 which is a photocopy of the affidavit regarding marking of attendance in the office of Executive Magistrate by deceased Dilbagh Singh on 20.07.1999 and held that the plaintiffs were ready and willing to perform their part of agreement on the basis of Ex.P-10. These findings of the Ld. Courts below is not sustainable because firstly the Ex. P-10 is a photocopy of the affidavit, original of the same was not produced before the Court. As such the same cannot be read in evidence. Secondly, the plaintiffs have not sought the permission for proving Ex.P10 by way of secondary evidence i.e. to prove the photocopy. The failure of the plaintiffs to file application for secondary evidence in order to prove the Affidavit of Attendance (Ex.P10) in terms of Sections 65 and 67 of the Evidence Act is fatal to their case. Thirdly, no witness from the office of Sub Registrar, was summoned to prove the genuineness of Ex. P-10. As such Ex.P-10 is reduced to wastepaper, which cannot be read in evidence. It is well settled law that



mere marking of an exhibit on the document does not dispense with its proof. The Ld. courts below by ignoring the well settled law have based its findings of readiness and willingness only on the document Ex.P-10 which cannot be read in evidence.

25. To prove the readiness and willingness of Dilbagh Singh to execute the Sale Deed, plaintiffs have also relied upon Ex.P-11 which is a photocopy of the passport of Dilbagh Singh, to prove that Dilbagh Singh came to India from Dubai on 20.07.1999. Again, the original of the same was not produced before the court nor the permission to read the above said document as secondary evidence was taken from the court. As such Ex.P-11 also cannot be read in evidence. The plaintiffs failed to prove the factum that on 20.07.1999, the deceased Dilbagh Singh was present in India. In such suspicious circumstances the Ld. Courts below wrongly and illegally held that Dilbagh Singh appeared before the Sub Registrar. This finding of the Ld. Courts below is wholly erroneous and against the law and facts.

26. In any event, mere presence of Dilbagh Singh in the Tehsil Office is not sufficient to prove his readiness and willingness to perform the contract. In this regard, reference is made to a recent judgment of the Hon'ble Supreme Court in '**R. Shama Naik vs. G. Srinivasiah**' 2024 INSC 927, wherein it is held that to establish readiness and willingness two specific ingredients are required to be fulfilled: (a) presence in the Tehsil; (b)



demonstrate availability of funds. In the present case, except for a bald statement made by the plaintiffs in the plaint to the effect that Dilbagh Singh was present in the office of the Sub-Registrar on 20.07.1999 with the balance sale consideration, there is nothing on record to substantiate the said averments. It has been categorically held by the Hon'ble Supreme Court in the aforementioned judgment that not just a statement, but concrete evidence is to be led to prove the availability of the balance sale consideration. Even the source of the funds has to be disclosed, and the availability of the funds has to be proved. However, plaintiffs have not produced even a smidgen of evidence to show that balance sale consideration was available with Dilbagh Singh on target date. A perusal of Ex.P10 shows that all that has been stated in the Affidavit by Dilbagh Singh is that he was present and waiting in the Tehsil Office with the money, and defendant did not turn up. However, it has nowhere been stated by Dilbagh Singh as to how much money he was waiting with and what was the source of the said money and what was the mode of payment of the balance sale consideration. Even in the plaint mere averment to this effect has been made, which is not sufficient as per law. Even otherwise, the said averment in the plaint has been made by the plaintiffs on behalf of Dilbagh Singh; and not by Dilbagh Singh himself. As such, the said averment cannot be relied upon; especially in the absence of any proof to this effect. Plaintiffs have



utterly failed to prove the readiness and willingness of Dilbagh Singh to perform the Agreement. As such, the courts below were in error in decreeing the suit on the ground that plaintiffs were ready and willing.

27. Furthermore, the Courts have utterly ignored the fact that the Agreement stood cancelled between Prithi Singh and the defendant vide Writing dated 17.11.1999 (Ex.P9). A perusal of the impugned judgments and decrees shows that the learned Courts below have totally failed to deal with the issue of cancellation of the Agreement vide writing dated 17.11.1999. The Courts below have failed to consider that it has nowhere been denied by the plaintiffs that they were not aware of the said Writing. The Courts below have failed to consider that despite the fact that the Agreement stood cancelled on 17.11.1999, Dilbagh Singh had not filed any suit for specific performance till his death on 04.06.2002. The instant suit has been filed by the LRs of Dilbagh Singh on 23.07.2002 *after* his death on 04.06.2002. These were all important factors which had to be considered before decreeing the suit.

28. As regards the issue of limitation, the learned trial Court had duly framed issue No.6 in respect of limitation which reads as follows:-

“6. Whether the suit of the plaintiffs is time barred?OPD.”

29. The findings of the learned trial Court in respect of Issue no.6 are in Para 13 of its judgment dated 11.02.2012, which reads as follows:-



“13. Onus to prove these issues were upon the defendant. Neither it led any evidence in support of these issues nor was pressed at the time of arguments. Hence these issues are also decided in favour of the plaintiff and against the defendant.”

30. However, the said reason is tenuous as strictly speaking, no evidence was required in the present case to prove that suit is barred by limitation; as it is very clear that since suit is filed on 23.07.2002 i.e. 3 years 3 days after the target date of 20.07.1999. As pointed out by learned Senior Counsel for the appellant, the dates speak for themselves. Argument of the plaintiffs that 20.7.2002 being Saturday and 21.7.2002 being Sunday, suit was filed on 23.7.2002, is liable to be rejected as it is also admitted that suit was verified by the plaintiffs on 20.7.2002. In this regard, reference need also be made to judgment of a Coordinate Bench of this Court in '**Sant Ram vs. Brij Mohan Kaura and another**' **Law Finder Doc Id # 120449**, wherein it is held that if the suit is filed after a long unexplained delay, even if the suit was filed within limitation, the Court will consider its effect and may grant alternate relief of refund of earnest money.

31. The Courts below have further held that the Agreement to Sell (Ex.P7) stood duly proved from the admission made by the defendant to the effect that the said Agreement bore her signatures. However, in this regard, no adverse inference could have been drawn against the defendant as it is no one's case that there was no Agreement. At no stage has the



defendant denied the Agreement. However, mere admission of the Agreement would not vest in the plaintiffs a right to get the same enforced, as the attendant circumstances noted herein, have to be taken into account.

32. It is also to be noted that originally, the Civil Suit was filed only by the minor plaintiffs no.1 to 3/children of Dilbagh Singh under the guardianship of Tarlochan Singh son of Prithi Singh/paternal uncle of the plaintiffs; and Sukhjeet Kaur widow of Dilbagh Singh was arrayed as pro-forma defendant No.2 in the Civil Suit. Subsequently, Sukhjeet Kaur had got herself transposed as plaintiff No.4. It is intriguing to note that in this regard, the learned trial Court has blown hot and cold in the same breath. In Para 10 of the impugned judgment dated 11.02.2012, the learned trial Court has recorded that “...Moreover, it appears that Tarlochan Singh in connivance with his father Prithi Singh and DW-1 Sukhwinder Kaur had filed this suit with malafide intention. Regarding readiness and willingness the arguments of the learned counsel for the defendant did not hold any weight. Since this document was filed by Tarlochan Singh along with the main suit. The original affidavit is presumed to be in his custody and has been withheld to defeat the rights of the plaintiffs...”. Therefore, on the one hand, the trial court is stating that Tarlochan Singh had filed the suit with malafide intention in connivance with his father Prithi Singh in order to get the Agreement executed; and simultaneously it is stating that the original



affidavit of Attendance was retained by Tarlochan Singh to defeat the rights of the plaintiffs. It is but trite that in case the original Affidavit of Attendance was in the possession of Tarlochan Singh then why would he not attach the same with the Civil Suit since as, as already stated by the plaintiffs, Tarlochan Singh had himself attached the photocopy of the Affidavit of Attendance. On the other hand, it is also being stated on behalf of the plaintiffs that suit was filed at the back of Sukhjeet Kaur/plaintiff No.4. On the face of it, the said findings are contradictory. However, all the said findings have been upheld by the learned First Appellate Court without demur and without recognising or considering the inherent contradiction in the same. From the above, it is also patent that the impugned judgments are based on conjectures, surmises, and presumptions.

33. The argument of the Id. counsel for the respondent that Tarlochan Singh has stated that defendant did not come to India after 01.07.1999 and therefore, how could Agreement had been cancelled on 17.11.1999 is also factually incorrect as the trial Court in Para 9 of its judgment dated 11.02.2012 has recorded that PW1/Tarlochan Singh "*has deposed that Sukhwinder Kaur never came to meet them after December 1999...*". Therefore, Tarlochan Singh has deposed that defendant did not meet him after December 1999, and not after July 1999. Moreover, trial Court has also recorded in the said Para 9 of its judgment that as per PW2



Prithi Singh, Sukhwinder Kaur who resides in Canada keeps visiting him and that she had visited him 4-5 times after 01.07.1999. Thus, it is proved that defendant was present to get the Agreement cancelled on 17.11.1999.

34. Accordingly, in the facts and circumstances of the present case, reference may be made to the following case law: –

35. The judgments of the Hon'ble Supreme Court in **Ashok Dulichand v. Madhavlal Dube, (SC) : Law Finder Doc ID # 106616**; and **Zarina Siddiqui v. A. Ramalingam alias R. Amarnathan (SC) : Law Finder Doc ID # 630062**, wherein it is held that: -

“A. Specific Relief Act, 1963, Section 20 - Agreement for sale of property for L 40,000/- - Suit for Specific Performance filed in the year 1980 - Suit remained pending in different Court and ended in favour of vendee (Plaintiff) in the year 2014 and Supreme Court passed a decree of Specific performance in favour of plaintiff - During long years prices of property escalated - Considering the phenomenal increase in price during the period the matter remained pending in different courts, plaintiff to pay a sum of L 15 lakhs in addition to amount already paid (L 56,000/-).

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C. Evidence Act, 1872, Sections 63 and 66 - Xerox copy of document - Proof of - Defendant executed power of attorney in favour of his brother, but not producing the original in court - Plaintiff producing xerox copy of the same - Defendant



admitting his signatures on the power of attorney - No further proof is required to prove the same - Held :-

(i) When the xerox copy of power of attorney produced by the plaintiff in evidence and the signature and the contents of the said power of attorney were admitted by the defendant, there was no question of proving the said document as required under the Evidence Act.

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25. It is well settled that remedy for specific performance is an equitable remedy. The Court while granting decree of specific performance exercises its discretionary jurisdiction. Section 20 of the Specific Relief Act specifically provides that Court's discretion to grant decree of specific performance is discretionary but not arbitrary. Discretion must be exercised in accordance with sound and reasonable judicial principles.

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*33. Similarly, in the case of **K.S. Vidyadnam (supra)**, this Court on facts found that there was a total lapse and negligence for a period of more than 2 years from the side of the plaintiff in taking any step to perform his part of contract under the agreement and there was gross violation of the terms of the agreement which required him to pay the balance, purchase the stamp paper and then seek for execution of the sale deed. Further the delay was coupled with substantial rise in price, which brought about a situation where it would not be equitable to give the relief of specific performance to the plaintiff. With due respect, this decision is also not applicable in the facts of the present case."*



36. A judgment of the Hon'ble Supreme Court in **Saradamani Kandappan v. S. Rajalakshmi (SC) : Law Finder Doc ID # 267028**, wherein it is held as under:-

*“28. Till the issue is considered in an appropriate case, we can only reiterate what has been suggested in **K.S. Vidyanadam (supra)** :*

(i) Courts, while exercising discretion in suits for specific performance, should bear in mind that when the parties prescribe a time/period, for taking certain steps or for completion of the transaction, that must have some significance and therefore time/period prescribed cannot be ignored.

(ii) Courts will apply greater scrutiny and strictness when considering whether the purchaser was 'ready and willing' to perform his part of the contract.

(iii) Every suit for specific performance need not be decreed merely because it is filed within the period of limitation by ignoring the time- limits stipulated in the agreement. Courts will also 'frown' upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean a purchaser can wait for 1 or 2 years to file a suit and obtain specific performance. The three year period is intended to assist purchasers in special cases, as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser.”



37. Reliance may also be placed upon another judgment of the Hon'ble Supreme Court in **Satya Jain (D) Thr. Lrs. v. Anis Ahmed Rushdie (D) Thr. Lrs. (SC) : Law Finder Doc ID # 405034**, wherein it is held as under:-

*"25. The principles of law on the basis of which the readiness and willingness of the plaintiff in a suit for specific performance is to be judged finds an elaborate enumeration in a recent decision of this Court in **J.P. Builders and another v. A. Ramadas Rao and another, 2011(1) R.C.R.(Civil) 604 : 2011(1) R.A.J. 88 : (2011)1 SCC 429**. In the said decision several earlier cases i.e. in **R.C. Chandiok v. Chuni Lal Sabharwal, (1970)3 SCC 140, N.P. Thirugnanam vs. Dr. R. Jagan Mohan Rao, 1995(2) R.C.R.(Rent) 647: 1995(3) R.R.R. 190 : (1995)5 SCC 115 and P.D' Souza v. Shondriilo Naidu, 2004(3) R.C.R. (Civil) 668 : (2004)6 SCC 649** have been noticed. To sum up, no straitjacket formula can be laid down and the test of readiness and willingness of the plaintiff would depend on his overall conduct i;e. prior and subsequent to the filing of the suit which has also to be viewed in the light of the conduct of the defendant. Having considered the matter in the above perspective we are left with no doubt whatsoever that in the present case the Plaintiff No. 1 was, at all times, ready and willing to perform his part of the contract. On the contrary it is the defendant who had defaulted in the execution of the sale document. The insistence of the defendant on further payments by the plaintiff directly to him and not to the Income Tax authorities as agreed upon was not at all justified and no blame can be attributed to*



the plaintiff for not complying with the said demand(s) of the defendant.”

38. Reliance may also be placed upon judgment of Hon’ble Supreme Court in **Jaswinder Kaur v. Gurmeet Singh, (SC) : Law Finder Doc ID # 853012**, wherein it is held as under:-

“12...The trite legal position is this that reasons of trial court and first appellate court have to be considered including evidence actively without that judgment of reversal cannot be passed in second appeal. It was incumbent upon the High Court to consider legality of the finding of non-readiness and willingness of plaintiffs which is of sine qua non for passing decree in a suit for specific performance in part or as a whole. However, High Court could not have simpliciter inferred readiness and willingness by making passing observation that it has to be seen in the facts and circumstances of the case. No positive finding had been recorded by the High Court with respect to readiness and willingness of the plaintiffs merely by making payment of part consideration it could not have inferred. In our opinion, no readiness and willingness could have been inferred even if it is assumed that High Court by aforesaid passing observation intended to hold that the plaintiffs were ready to perform their part by making payment of part consideration on 31.1.1990, readiness and willingness has to be seen in the context of the entire agreement not with respect to portion of contract. Plaintiffs had stated that they had borrowed the amount but had failed to produce the



accounts indicating that in fact money was borrowed as stated by the plaintiff for effecting the purchase.”

39. Reliance may further be placed upon judgment of Allahabad High Court in **Wasim Ahmad v. Hajit Shamsuddin (Allahabad) : Law Finder Doc ID # 340082**, wherein it is held as under:-

“12. Even if everything stated by the plaintiffs is taken to be correct, still discretionary relief of specific performance cannot be granted particularly in view of the inordinate delay in filing suit (even if the suit is held to be within time).”

40. Thus, in view of the discussion above, keeping in mind the above noted facts, and the legal position, the present Second Appeal is **allowed**. The impugned judgments and decrees of the learned Courts below are set aside.

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

11.11.2025
Sunena

(Nidhi Gupta)
Judge

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