



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-504-2016(O&M)

Mahender Singh

...Appellant(s)

Vs.

Rakesh Singh

...Respondent(s)

The date when the judgment is reserved	28.11.2025
The date when the judgment is pronounced	05.12.2025
The date when the judgment is uploaded on the website	
Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full Judgment

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. Munish Gupta, Advocate
for the appellant.

Mr. P.R. Yadav, Advocate
for the respondent.

NIDHI GUPTA, J.

The defendant is in Second Appeal against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiff/respondent for specific performance of Agreement to Sell dated 17.07.2006, has been decreed by both the Courts below.

2. It was the pleaded case of the respondent in the plaint that the appellant/defendant had entered into an Agreement to Sell dated



17.07.2006 with the plaintiff to sell land measuring 24 kanal 0 marla for total sale consideration of Rs.8,55,000/-. At the time of execution of Agreement to Sell, the defendant had received Rs.1,50,000/- as earnest money. It was pleaded that after execution of Agreement to Sell, the plaintiff had again made payment of Rs.2,50,000/- to the defendant on 25.07.2006 as part payment of sale consideration. In respect of this, an endorsement was made by the defendant on the back of Agreement to Sell, in the presence of witnesses. Thus, defendant had received total of Rs.4,00,000/- as earnest money. Target date for execution of Sale Deed was on or before for 31.12.2006. However, as 30.12.2006 and 31.12.2006 were public holidays, the plaintiff had gone to the Tehsil Office on 29.12.2006 to execute the Sale Deed along with balance sale consideration and other expenses. It was pleaded that plaintiff had waited for the defendant from 9 am till 5:30 pm. However, the defendant had failed to come present. The plaintiff had got his presence marked by swearing an affidavit before the Sub-Registrar, Mahendergarh. Thereafter, plaintiff had contacted the defendant who had stated that he would execute the Sale Deed on 01.01.2007. Since 01.01.2007 was a public holiday, plaintiff had remained present in Office of Sub-Registrar again along with balance sale consideration and other expenses on 02.01.2007. However, defendant again failed to come present. The plaintiff again got his presence marked by way of affidavit. It was pleaded that despite repeated requests, the



defendant had refused to execute the Sale Deed. Hence, plaintiff had instituted the present suit on 01.02.2007.

3. Upon notice, the defendant had put in appearance and resisted the suit by filing written statement inter alia stating therein that the Agreement to Sell dated 17.07.2006 and receipt of earnest money of Rs.1,50,000/-were admitted. It was also admitted that target date was fixed to be on or before 31.12.2006. It was however denied that defendant had received further payment of Rs.2,50,000/- on 25.07.2006. It was denied that plaintiff was always ready and willing to perform the contract. It was contended that the plaintiff had failed to prove that he had the financial capacity to execute the contract. It was averred that failure of plaintiff to show possession of balance sale consideration would amount to forfeiture of the earnest money and consequent cancellation of the Agreement to Sell. On the contrary, defendant always remained ready and willing to perform his part of the contract and had got his presence marked before the Sub-Registrar on 29.12.2006 as also on 02.01.2007. It was averred that a Legal Notice dated 19.01.2007 was also served by the defendant upon the plaintiff thereby cancelling the Agreement. Accordingly, dismissal of the suit was prayed for.

4. On the basis of pleadings of the parties, following issues were framed: -



- “1. Whether the defendant received an amount of Rs. 2,50,000/- as earnest money in pursuance of agreement to sell dated 17.7. 06?OPP*
- 2. Whether the plaintiff still ready and willing to perform his part of contract? OPD*
- 3. If issue no. 1 is proved, whether the plaintiff is entitled for specific performance of contract on the ground as alleged? OPD*
- 4. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 5. Whether the plaintiff has no cause of action to file the present suit? OPD*
- 6. Whether the plaintiff is estopped from filing the suit by his own act and conduct? OPD*
- 7. Whether the plaintiff has not come in the court with clean hands? OPD*
- 8. Whether the defendants are entitled for special costs under Section 35A CPC? OPD*
- 9. Relief”*

5. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the trial court decided issues No.1 to 3 in favour of the plaintiff and against the defendant; issues No.4 and 5 were also decided in favour of the plaintiff and against the defendant; and issues No.6 to 8 were decided in favour of the plaintiff and against the defendant. Accordingly, vide judgment and decree dated 22.11.2012, the learned Additional Civil Judge (Senior Division), Mahendergarh had decreed the suit of the plaintiff *“to the effect that plaintiff is held entitled to relief of specific*



performance of agreement to sell dated 17.7.06 Ex. P1 and defendant is directed to execute the sale deed...".

6. The Civil Appeal filed by the defendant was dismissed by the learned Additional District Judge, Narnaul vide judgment and decree dated 22.07.2015. Hence, present Second Appeal by the defendant.

7. It is inter alia submitted by learned counsel for the appellant that it is admitted fact on record that vide the Legal Notice dated 19.01.2007 served by the appellant upon the respondent, the appellant had cancelled the Agreement to Sell dated 17.07.2006. It is submitted that in this view of the matter, the suit of the plaintiff in its present form was not maintainable - inasmuch as it was incumbent upon the plaintiff to first seek a declaration that the Agreement to Sell dated 17.07.2006 is valid, and that the cancellation of Agreement by the defendant is bad. It is further submitted that even if such an issue was not framed by the learned trial Court, it is open to this Court to examine this aspect, the same being a jurisdictional fact. In support of his contention, learned counsel relies upon judgment of Hon'ble Supreme Court in **I.S. Sikandar (D) By Lrs. v. K. Subramani (SC) : Law Finder Doc ID # 494000**, wherein it is held that:-

"17. Answer to Point No. 1

The first point is answered in favour of the defendant No. 5 by assigning the following reasons :

It is an undisputed fact that there is an Agreement of Sale executed by defendant Nos. 1-4 dated 25.12.1983 in favour of



the plaintiff agreeing to sell the schedule property in his favour for a sum of ₹ 45,000/- by receiving an advance sale consideration of ₹ 5,000/- and the plaintiff had further agreed that the remaining sale consideration will be paid to them at the time of execution of the sale deed. As per Clause 6 of the Agreement of Sale, the time to get the sale deed executed was specified as 5 months in favour of the plaintiff by the defendant Nos. 1-4, after obtaining necessary permission from the competent authorities such as the Urban Land Ceiling Authority and Income Tax Department for execution and registration of the sale deed at the cost and expenses of the plaintiff. If there is any delay in obtaining necessary permission from the above authorities and the payment of layout charges, the time for due performance of agreement shall further be extended for a period of two months from the date of grant of such permission. In the instant case, permission from the above authorities was not obtained from defendant Nos. 1-4. The period of five months stipulated under clause 6 of the Agreement of Sale for execution and registration of the sale deed in favour of the plaintiff had expired. Despite the same, the defendant Nos. 1-4 got issued legal notice dated 06.03.1985 to the plaintiff pointing out that he has failed to perform his part of the contract in terms of the Agreement of Sale by not paying balance sale consideration to them and getting the sale deed executed in his favour and called upon him to pay the balance sale consideration and get the sale deed executed on or before 18.3.1985. The plaintiff had issued reply letter dated 16.3.1985 to the advocates of defendant Nos. 1-4, in which he had admitted his default in performing his part



of contract and prayed time till 23.05.1985 to get the sale deed executed in his favour. Another legal notice dated 28.03.1985 was sent by the first defendant to the plaintiff extending time to the plaintiff asking him to pay the sale consideration amount and get the sale deed executed on or before 10.04.1985, and on failure to comply with the same, the Agreement of Sale dated 25.12.1983 would be terminated since the plaintiff did not avail the time extended to him by defendant Nos. 1-4. Since the plaintiff did not perform his part of contract within the extended period in the legal notice referred to supra, the Agreement of Sale was terminated as per notice dated 28.03.1985 and thus, there is termination of the Agreement of Sale between the plaintiff and defendant Nos. 1-4 w.e.f. 10.04.1985. As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale and consequential relief of decree for permanent injunction is not maintainable in law. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non existing Agreement of Sale is wholly unsustainable in law. Accordingly, the point No. 1 is answered in favour of the defendant No. 5.

18. Answer to Point No. 2



Even if we assume that the Agreement of Sale dated 25.12.1983 is subsisting, we have to answer point No. 2 in favour of defendant No. 5 for the following reasons :-

It would be very much relevant for us to extract Clause 6 of the Agreement of Sale which reads thus:

"The time fixed for execution and completion of the sale transaction is five months from the date of the agreement of sale. The first parties have agreed to get the necessary permission for registration from the competent authorities such as the Urban Land Ceiling authorities and Income Tax Authority within the said period of five months at the cost and expenses of the Second Party. The Second Party has agreed to pay the necessary layout and conversion charges of the suit property to the concerned authorities. The first party have further agreed with the second party that if in case the necessary permission from the aforesaid authorities is delayed and as a consequence thereof the payment of layout charges is delayed, the time for due performance of the agreement shall stand extended for a further period of 2 months from the date of grant of such permission."

*This position of law is well settled by this Court in the Constitution Bench judgment in **Smt. Chand Rani (dead) by LRs. v. Smt. Kamal Rani(dead) by LRs., 1993(2) R.R.R. 46 : (1993)1 SCC 519**; wherein this Court has held that it is well settled principle of law, that in a case of sale of immovable property, time is not the essence of the contract. However, If the parties agreed to a specified time in the agreement to perform their part of the contract, then time is the essence of the contract and parties shall adhere to the same.*



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28. *The learned High Court Judge has gravely erred in reversing the findings of fact recorded on the issue Nos. 3, 4 and 5 by the trial court in favour of the defendants. He has also failed to take into consideration the very important aspect of the matter, namely, that the Agreement of Sale in favour of the plaintiff was terminated and he had not sought declaratory relief to declare that the termination of agreement in the original suit is bad in law and therefore the suit for specific performance is not maintainable. Even assuming for the sake of argument that agreement was subsisting, the suit for specific performance is not maintainable in law in view of the breach of the terms and conditions of the agreement by the plaintiff. Keeping in view the purpose for which the Agreement of Sale was executed and the time stipulated in the agreement as per clause 6 of the agreement, the contract should have been complied with within seven months including the extended period and that has not been done by the plaintiff. The findings recorded by the trial court on issue Nos. 4 and 5 and with regard to the readiness and willingness on the part of the plaintiff, the appellate court should have exercised its discretionary power under subsections (1) and (2) of Section 20 of the Specific Relief Act, and for this reason also we hold that the grant of the decree for specific performance by the High Court in the impugned judgment is wholly unsustainable in law. The trial court has come to the right conclusions on the contentious issues framed by it and has held that even though Agreement of Sale is proved, the plaintiff is not entitled for the decree of specific performance in respect of the suit schedule property in*



view of the findings of fact and reasons recorded in the contentious issues by it in its judgment and we are in agreement with the same.” (Emphasis added)

8. Learned counsel takes this Court through the development of law in this regard and refers to judgment of the Hon’ble Supreme Court in **“R. Kandasamy (Since Dead) & Others Vs. T.R.K. Sarawathy & Another” (2025) 3 SCC 513**, wherein it is held as under:-

*“40. Having held thus, allowing the appeal is the inevitable result. However, before we part, there seems to be a discordant note struck by the decision in **A. Kanthamani** while distinguishing **I.S. Sikandar**, which could create uncertainty and confusion. It is, therefore, considered worthwhile to attempt and clear the same.*

*41. A comprehensive reading of the two decisions reveals that in a fact scenario where the vendor unilaterally cancels an agreement for sale, the vendee who is seeking specific performance of such agreement ought to seek declaratory relief to the effect that the cancellation is bad and not binding on the vendee. This is because an agreement, which has been cancelled, would be rendered non-existent in the eye of the law and such a non-existent agreement could not possibly be enforced before a court of law. Both the decisions cited above are unanimous in their approval of such legal principle. However, as clarified in **Kanthamani**, it is imperative that an issue be framed with respect to maintainability of the suit on such ground, before the court of first instance, as it is only when a finding on the issue of maintainability is rendered by the trial court that the same can be examined by the first*



or/and second appellate court. In other words, if maintainability were not an issue before the trial court or the appellate court, a suit cannot be dismissed as not maintainable. This is what **Kanthamani** holds.

42. The aforesaid two views of this Court, expressed by coordinate Benches, demand deference. However, it is noticed that this Court in **Kanthamani** had not been addressed on the effect of non-existence of a jurisdictional fact (the existence whereof would clothe the trial court with jurisdiction to try a suit and consider granting relief) i.e. what would be its effect on the right to relief claimed by the plaintiff in a suit for specific performance of contract.

43. In **Shrisht Dhawan v. Shaw Bros.**, an interesting discussion on "jurisdictional fact" is found in the concurring opinion of Hon'ble R.M. Sahai, J. (as his Lordship then was). It reads: (SCC pp. 551-52, para 19)

"19... What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject-matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. In **Raza Textiles** it was held that a court or tribunal cannot confer jurisdiction on itself by



deciding a jurisdictional fact wrongly." (emphasis supplied)

44. *Borrowing wisdom from the aforesaid passage, our deduction is this. An issue of maintainability of a suit strikes at the root of the proceedings initiated by filing of the plaint as per requirements of Order 7 Rule 1 CPC. If a suit is barred by law, the trial court has absolutely no jurisdiction to entertain and try it. However, even though a given case might not attract the bar envisaged by Section 9 CPC, it is obligatory for a trial court seized of a suit to inquire and ascertain whether the jurisdictional fact does, in fact, exist to enable it (the trial court) to proceed to trial and consider granting relief to the plaintiff as claimed. No higher court, much less the Supreme Court, should feel constrained to interfere with a decree granting relief on the specious ground that the parties were not put specifically on notice in respect of a particular line of attack/defence on which success/failure of the suit depends, more particularly an issue touching the authority of the trial court to grant relief if "the jurisdictional fact" imperative for granting relief had not been satisfied. It is fundamental, as held in Shrisht Dhawan, that assumption of jurisdiction/refusal to assume jurisdiction would depend on existence of the jurisdictional fact. Irrespective of whether the parties have raised the contention, it is for the trial court to satisfy itself that adequate evidence has been led and all facts including the jurisdictional fact stand proved for relief to be granted and the suit to succeed. This is a duty the trial court has to discharge in its pursuit for rendering substantive justice to the parties, irrespective of whether any party to the lis has raised or not. If the jurisdictional fact does not exist, at the time of settling the*



issues, notice of the parties must be invited to the trial court's prima facie opinion of non-existent jurisdictional fact touching its jurisdiction. However, failure to determine the jurisdictional fact, or erroneously determining it leading to conferment of jurisdiction, would amount to wrongful assumption of jurisdiction and the resultant order liable to be branded as ultra vires and bad."

(Emphasis added)

9. The above-said judgments have been reiterated by the Hon'ble Supreme Court in subsequent judgment of **"Sangita Sinha Vs. Bhawana Bhardwaj & Others"** 2025 SCC OnLine SC 723.

10. It is next submitted by learned counsel for the appellant that the plaintiff had also failed to prove his readiness and willingness because the plaintiff had failed to demonstrate the availability of funds. It is submitted that by way of the Affidavit of Attendance before the Sub-Registrar, the plaintiff had only marked his presence and had not proved that he was in possession of the balance sale consideration. It is contended that for this reason as well, relief of specific performance could not have been granted to the respondent. To elaborate his argument, learned counsel refers to the Affidavit of Attendance of the plaintiff of 29.12.2006 (Ex.PW5/B) to submit that although the plaintiff has stated therein that he had purchased Stamp Papers however, in actual fact, no Stamp Papers were purchased by the plaintiff, which is proved from the fact that no Stamp Vendor had been examined.



11. Ld. Counsel further submits that even otherwise, reading of the said affidavits clearly show that the plaintiff has nowhere averred that he had with him the balance sale consideration at the relevant point of time; and, therefore, also, the observation of the Ld. Courts below that plaintiff remained ready and willing, is without any basis and de hors illegal and liable to be set aside.

12. It is submitted that even presence of the plaintiff in the Office of Sub-Registrar on 29.12.2006 and 02.01.2007 as alleged, has not been proven. It is submitted that although the respondent has produced the Affidavits of Attendance (Ex.PW5/B and Ex.PW5/C). However, the same have been sought to be proved by examining PW5 Krishan Kumar, Office Kanungo. It is contended that the said Affidavit could not have been got proved by examining the Office Kanungo; rather the Registration Clerk or the Sub-Registrar himself ought to have been examined to get the same proved. Thus, as the finding on the issue of readiness and willingness is based on the said Affidavits, which have not been proved in due course of law, the said findings in favour of the respondent are liable to be set aside.

13. Moreover, the learned Courts below lost sight of the fact that the appellant had remained present on 29.12.2006 as well as on 02.01.2007 before the Sub-Registrar and had duly got his presence marked; whereas the plaintiff never appeared before the said Authority. Therefore, the defendant was always ready and willing to execute the Sale Deed, and it



was the plaintiff who never came forward. As such, bona fide of the appellant is proved from the fact that he had got his presence marked; and thereafter, also got served Legal Notice dated 19.01.2007 informing the plaintiff that Agreement to Sell has come to an end and earnest money of Rs.1,50,000/- stands forfeited.

14. Ld. Counsel elaborates to further submit that said legal notice was issued on 19.01.07 and after receipt of the same, in order to counter, legal notice is shown to have been sent by plaintiff to the appellant on 22.01.2007 asking him to come present before the Office of Sub Registrar on 05.02.2007 and get sale deed executed. However, the intent of the respondent is evident from the fact that even before 5.2.2007, the respondent had filed the instant suit on 01.02.2007 itself i.e. prior to 05.02.07 (stipulated date as per notice dated 22.01.07). Since the suit had been filed even prior to the stipulated date, as per notice got issued by plaintiff, the suit was itself premature and, therefore, no relief in favour of respondent could have been granted.

15. Learned counsel lastly submits that even the findings of the learned Courts below qua payment of Rs.2,50,000/- and endorsement obtained thereupon, are liable to be set aside as it is the clear case of the appellant that plaintiff had obtained the said endorsement from the defendant by fraud. It is accordingly prayed that the impugned judgments and decrees be set aside.



16. Per contra, learned counsel for the respondent/plaintiff vehemently opposes the submissions advanced on behalf of the appellant. In respect of the argument of the appellant regarding the jurisdictional aspect and maintainability of the Civil Suit, it is contended by learned counsel for the plaintiff that such a declaration is necessitated only when it is found by the Courts that the Agreement to Sell has been violated by the parties. It is contended that in other situations, such as the present one, it is not necessary to seek a decree of declaration.

17. In continuation of the said argument, learned counsel for the respondent submits that a perusal of the Legal Notice dated 19.01.2007 shows that defendant had cancelled the Agreement on the purported ground that on the target dates of 29.12.2006 and 02.01.2007, the respondent did not come present in the Office of the Sub-Registrar. Learned counsel submits that the said ground for cancellation of Agreement does not exist, as DW5 Registration Clerk has deposed that plaintiff was present on the said dates in the Office of the Sub-Registrar. It is submitted that therefore, as the very purported ground for cancellation of Agreement is negated, there was no question of seeking a declaration regarding the validity of the Agreement.

18. Learned counsel for the respondent further submits that as regards the financial capacity of the plaintiff to pay the balance sale consideration, it is contended that admittedly, the plaintiff had paid



Rs.1,50,000/- as earnest money on the date of execution of Agreement to Sell on 17.07.2006 itself. Within a week thereafter, the plaintiff had also paid an additional sum of Rs.2,50,000/- to the defendant on 25.07.2006. Payment of the said money is proved from the endorsement dated 25.07.2006 which duly bears the signature of the defendant, and has also been proved from the evidence of the Handwriting Expert. It is submitted that therefore, much before the target date, the plaintiff had paid about 50% of the total sale consideration to the defendant. It is contended that accordingly, it does not require proving that if the plaintiff could arrange almost 50% of the sale consideration within 10 days of the Agreement, then he would have the capacity to arrange the remaining funds by the target dates of 29.12.2006/02.01.2007 in a period of six months.

19. Learned counsel further submits that it is a clear recital in the Agreement in question that possession was handed over to the respondent/plaintiff at the time of execution of the Agreement itself. Even PW1 has clearly stated that plaintiff is in cultivating possession of the suit land. It is pointed out that there is no denial to this fact by the appellant in the written statement or even in the Legal Notice dated 19.01.2007 issued by the defendant to the plaintiff. It is submitted that it is only in his examination-in-chief that the defendant has stated that plaintiff has surrendered possession. Learned counsel argues that if the Agreement to Sell had in actuality been cancelled, the possession of the suit property with



the respondent would not have continued; and the appellant would have taken this plea in the written statement itself or in the Legal Notice. However, appellant has mentioned regarding surrender of possession for the first time only in his examination-in-chief; which is beyond the pleadings. It is submitted that therefore, for this reason also, the appellant cannot raise the plea of jurisdictional aspect and maintainability of the suit.

20. As regards Stamp Paper, learned counsel for the respondent submits that it was never stated by the respondent in the Affidavit of Attendance that he had purchased the Stamp Papers. It is contended that what has been stated by the respondent is that he had brought the necessary expenses for purchase of Stamp Papers. It is reiterated that the financial capacity of the respondent to pay the balance sale consideration is established from the fact that respondent had paid about 50% of the sale consideration to the appellant within one week of the Agreement to Sell; and therefore, capacity of the respondent to generate the remaining 50% of the total sale consideration within six months cannot be doubted.

21. Learned counsel further submits that the Legal Notice dated 19.01.2007 had been issued by the appellant only to frustrate the Agreement to Sell. It is admitted that respondent had issued Legal Notice dated 22.01.2007 to the appellant, in which he had mentioned that target date to register Sale Deed as 05.02.2007. However, the respondent was constrained to file the Civil Suit on 01.02.2007 itself as, as stated in Para 7



of the plaint, one day prior thereto i.e. on 31.01.2007 the appellant had refused to execute the Sale Deed; because of which the respondent did not wait for 05.02.2007 and forthwith filed the suit on 01.02.2007. Learned counsel accordingly prays for dismissal of the present appeal.

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

23. I have heard learned counsel for the parties and perused the case file in great detail. I have given my very thoughtful consideration to the rival submissions advanced on behalf of both the parties; and I find merit in the submissions advanced on behalf of the respondent.

24. Due execution of the Agreement to Sell (Ex.P1) has been proved from testimony of PW3 Ved Prakash (Deed Writer and Scribe of Agreement to Sell); and testimony of PW1 Satender, PW2 Sawai Singh attesting witnesses of the Agreement to Sell. Moreover, execution of Agreement to Sell (Ex.P1) has not been disputed by defendant in his written statement or in his testimony. Rather defendant while appearing as DW4 has categorically admitted execution of Agreement to Sell and receipt of earnest money.

25. Learned counsel for the appellant has placed great reliance upon the judgments of the Hon'ble Supreme Court in **I.S. Sikandar (Supra)**, **R. Kandasamy (Supra)**, and **Sangita Sinha(Supra)**, to argue that as per the said judgments, it was incumbent upon the respondent to first seek a declaration that the cancellation of the Agreement by the appellant was



bad; and therefore, the Agreement is valid; and therefore, the suit is maintainable. However, in the facts and circumstances of the case, the ratio decidendi of the abovesaid enunciations of law would not be applicable. The appellant has cancelled the Agreement for the ostensible reason as given in Para 2 of the said Legal Notice dated 19.01.2007 (Ex.D7), which reads as follows: -

“2. That my client has always remained wiling and ready to get the sale deed registered in favour of you on receipt of the balance sale consideration amount as per agreement dated 17.07.2006. As 30/31.12.2006 and 01.01.2007 being holidays, the office of Sub Registrar, Mohindergarh was closed, therefore, my client before and after the said dates i.e. on 29.12.2006 and 02.01.2007 came present in the office of Sub Registrar, Mohindergarh and got marked his presence and my client remained present on both the dates from 9 AM till 5 PM in the office of sub Registrar, Mohindergarh but you did not come present. In view of this, you have not complied with the terms and conditions of the agreement to sell and, therefore, in view of the terms and conditions contained in the agreement to sell, the earnest money i. e. Rs. 1,50,000/- (One lac fifty thousand) paid by you stands forfeited and the agreement to sell stands cancelled and now my client is not bound by the said Agreement to Sell.”

(Emphasis added)

26. Thus, the only ground on which the appellant cancelled the Agreement is that the respondent did not come present in the Office of the Sub-Registrar, Mahendergarh on 29.12.2006 and 02.01.2007. However, the



said reason of the appellant is contrary to the evidence on record. First and foremost, the presence of the respondent in the Tehsil Office is proved from his Affidavits of Attendance before the Sub-Registrar on 29.12.2006 (Ex.PW5/B - at page 251 of the LCR); and on 02.01.2007 (Ex.PW5/C - at page 257 of the LCR), which have been duly attested by the Sub-Registrar-cum-Executive Magistrate, Mahendergarh.

27. Besides the above conclusive proof of presence of the respondent in the Tehsil on target date, the fact that respondent was present in the Tehsil Office on the said dates is also proved from the testimony of DW1 Devender Kumar, Registry Clerk, Sub-Registrar, Mahendergarh (at page 211 of the LCR) who has categorically stated in his cross-examination that:-

"It is correct that affidavit dated 29.12.2006 Rakesh Singh son of Mahabir Singh has been seen on the file for attendance which is attested by Naib Tehsildar Sh. O.P. Yadav which is Ex. PW-5/B. I have seen affidavit dated 02.01.2007 of Rakesh Son of Mahabir Singh which is attested by Sh. O.P. Godara Tehsildar Mahendergarh and the same is PW-5/C. I identify signatures of both the officers on the above affidavits. It is correct that plaintiff Rakesh Singh was present in the office of sub Registrar Mahendergarh on 29.12.2006 and 02.01.2007. It is wrong that defendant Mahender Singh was not present on that day and his presence has been wrongly attested."

(Emphasis is mine)



28. Thus, defendant witness DW1 Registry Clerk himself has verified the presence of the plaintiff in the Office of the Sub-Registrar on the target dates. As such, the sole ground on which the appellant had sought to cancel the Agreement to Sell, is nullified. Thus, the very premise on which jurisdictional error is alleged by the appellant, is non-existent. In this circumstance, no declaration as contended, was required to be sought, as it is proven from the evidence on record that the unilateral cancellation of Agreement by the appellant was based on incorrect facts. Thus, suit of the plaintiff was very much maintainable.

29. Furthermore, the defendant has vehemently denied receiving further payment of Rs.2,50,000/- from the plaintiff on 25.07.2006. However, a perusal of the endorsement (Ex.P2 - at page 236 of the LCR) clearly shows that the same bears the signature of the appellant at three points Mark A1, Mark D2 and Mark Q1. The said endorsement also bears the signatures of the 2 witnesses Satinder Singh son of Partap Singh and S.S. Rathore. In fact, a bare perusal of Ex.P2 with naked eye would reveal that the said endorsement appears to have been written in the hands of the appellant himself. Furthermore, the signature of the appellant at Mark A is just below the stamp borne on the said endorsement. It would therefore appear that the appellant had himself written and endorsed receiving the payment of ₹2,50,000 from the respondent on 25.7.2006.



30. Most importantly, defendant himself has admitted receiving the said amount of ₹2,50,000/- from the respondent in Para 2 of his written statement (at page 47 to 65 of the LCR), in the following manner: -

“..... the defendant used to take liquor with plaintiff on certain occasions and taking undue advantage in case plaintiff has obtained the endorsement from defendant regarding payment of Rs. 2,50,000/- same is not binding on the defendant...”

31. Thus, the defendant himself has admitted receipt of the said amount of ₹2,50,000/- from the plaintiff.

32. The fact that the appellant had received Rs.2,50,000/- from the respondent on 25.07.2006, is also proved from the evidence of PW1 Satinder Singh. PW1 has stated in his cross-examination that *“It is wrong that on 25.07.2006 no payment was made under the Agreement.”* In his examination-in-chief (Ex.PW1/A), PW1 has stated that:-

“2. That the defendant on the basis of above agreement to sell received Rs. 2,50,000/- in cash from the plaintiff and on the back of the above agreement to sell wrote the same and put his signature. The writing is Ex. P-2 which has been witnessed by me and Savai Singh Rathore and we have put our signatures as witnesses. Thus, the defendant has received total amount of Rs. 4, 00, 000/- (Rs.1,50,000/- on 17.04.2006 at the time of agreement and Rs.2,50,000/- on 25.07.2006) in our presence and the remaining sale consideration was agreed to pay at the time of registry.”

33. Even PW2 Sawai Singh has categorically stated in his cross-examination that *“The writing for payment of more amount was made on*



25.07.2006 and the same was regarding Rs.2.5 lakhs. Today I have got prepared my affidavit (Ex.PW2/A) myself which is fully correct....” Further, Law is well settled that in absence of cross-examination on a point, statement on that point in examination-in-chief is to be taken to be true.

34. Admittedly, even Handwriting Expert was examined by the respondent to prove the signatures of the defendant upon the endorsement (Ex.P2). PW8 Sh. V.B. Kashyap, Handwriting and Fingerprint Expert proved his Report as Ex.PW/B in which it was concluded that the disputed signatures are of defendant Mahender Singh. There is nothing on record that Ex.P2 is result of fraud and misrepresentation. Admittedly, no evidence in rebuttal has been led by the appellant to rebut the said report of the Handwriting Expert produced and examined by the respondent, as per which the endorsement (Ex.P2) bore the signatures of the appellant.

35. This fact is further fortified from a reading of the cross-examination of the defendant as DW4 (at page 220-221 of the LCR), which reveals that necessary suggestions were put by the plaintiff to the defendant/DW4 regarding receipt of the amount of Rs.2,50,000/- on 25.07.2006, which have been duly denied by the defendant. A suggestion has also been put by the plaintiff to the defendant regarding possession as well, which has also been denied by the defendant. However, given the above admission of the defendant in the written statement as also the above-noted evidence in respect of these facts, nothing would hinge on the



said denials and the same are merely perfunctory, superficial and routine in the course of cross-examination.

36. Thus, it is unequivocally established on record that the appellant had received ₹2,50,000/- from the respondent on 25.7.2006. From this fact, the continuing readiness and willingness of the respondent/plaintiff to perform the contract is amply established on record. From the above fact, the financial capacity of the respondent to generate the balance sale consideration is also established.

37. In respect of readiness and willingness of the plaintiff to perform the contract, it has been contended by the appellant that the plaintiff was not in possession of the balance sale consideration as it is not so stated in his Affidavits of Attendance (Ex.PW5/B and PW5/C). It is also submitted on behalf of the appellant that it is proved on record that the respondent was not ready and willing to perform the contract from the fact that although he has stated in his Affidavit of Attendance (Ex.PW5/B and Ex.PW5/C) that he had bought the Stamp Papers, however, he has failed to examine any Stamp Vendor. The said argument of the appellant is misconceived as a perusal of the Affidavit of Attendance of 29.12.2006 (Ex.PW5/B - at page 251 of the LCR) and 2.1.2007 (Ex.PW5/C - at page 257 of the LCR) shows that what has been stated therein is that *"The deponent is present with balance sale consideration and expenses for stamp etc."*. Therefore, it has nowhere been stated by the plaintiff that he had bought



the Stamp Papers. All that has been stated is that the respondent is present with balance sale consideration and other expenses for Stamps etc. Presence of the respondent in the Tehsil Office on the dates 29.12.2006 and 02.01.2007 already stands proved from the evidence of DW1 Registry Clerk.

38. Plaintiff as PW7 has further categorically averred that he was possessed with balance sale consideration and other expenses for execution and registration of Sale Deed at the time when he appeared before Sub-Registrar on 29.12.2006 and 02.01.2007; and said fact has not been rebutted by anything brought on record by defendant to show that plaintiff was not possessed of requisite balance sale consideration.

39. So far as plea of defendant that plaintiff is taking benefit of fact that defendant while in company of plaintiff used to take drink, might have obtained his signature and then converted the same into endorsement, in this regard defendant has not been able to establish the manner and circumstances under which an inference can be drawn to believe this plea of defendant. From oral and documentary evidence led by plaintiff, it is duly proved that in pursuance of Agreement to Sell, plaintiff had made payment of Rs.2,50,000/- to defendant as sale consideration. It is well settled law that when cross-examination on the material and relevant points is missing then it is presumed to be admitted. Defendant has not led any evidence to prove manner and circumstances under which and on which specific date the alleged fraud was played upon him by plaintiff. Therefore, plaintiff has



led sufficient evidence to prove the payment of earnest money as well as execution of Agreement to Sell (Ex.P1). Defendant has failed to establish on record his readiness and willingness to perform the contract on his part. Merely by producing affidavits of attendance readiness and willingness of defendant to perform the contract cannot be established.

40. Furthermore, it is also relevant to note that the plaintiff has categorically stated in Para 7 of the plaint that:-

*“7. That cause of action for the suit has accrued in favour of the plaintiff and against the defendant from **refusal on yesterday** and on dated 17.07.2006 of agreement to sell and on dated 31.12.2006 and dated 29.12.2006 and 02.01.2007 within the jurisdiction of the Ld. Court...”*

41. Present suit for specific performance of Agreement to Sell (Ex.P1) has been instituted on 01.02.2007 i.e. only a month after the last date fixed for execution and registration of Sale Deed in terms of Ex.P1 is another indicator of readiness and willingness of plaintiff to perform his part of contract. Having regard to the fact that contract pertains to immovable property; and Legal Notice (Ex.D7) regarding forfeiture is defective and suffers from concealment of material facts; and Legal Notice (Ex.P3) was issued by plaintiff to defendant immediately after last date fixed for execution and registration of Sale Deed; and fact that present suit for specific performance of Agreement to Sell has been filed promptly, thus, even from the subsequent conduct of the plaintiff it becomes apparent that



plaintiff remained ready and willing to perform his part of contract. Filing of present suit on 01.02.2007 cannot be said to be premature. At any rate, defendant in the present suit has not disclosed any intention to execute Sale Deed in favour of plaintiff after institution of suit till expiry of period in the Notice (Ex.P3) and said contention is entirely misconceived. Contention of defendant that plaintiff is carrying on the business of property dealing, there are neither pleadings nor evidence to this effect. It would therefore appear that Sale deed could not be executed only on account of default on part of defendant.

42. As regards the question of **possession**, a perusal of the Agreement to Sell dated 17.07.2006 (Ex.P1 - at page 235 of the LCR) shows that there is a clear recital therein that *"Therefore the first party has handed over possession to the second party at the spot."* Terms and conditions of Agreement to Sell (Ex.P1) and recital regarding delivery of possession have not been specifically disputed by defendant either in written statement or in his testimony while appearing as DW4 and shall therefore, be deemed to have been admitted. Further, defendant as DW4 deposed that on account of non-execution of Sale Deed in terms of Agreement to Sell, Agreement to Sell stood cancelled and plaintiff surrendered the possession in favour of defendant which is clear admission on part of defendant that possession of suit land in terms of Agreement to Sell had indeed passed from defendant to plaintiff. This writing in the Agreement to Sell regarding delivery of



possession to the plaintiff is further substantiated from the evidence of PW1 Satinder Singh, who in his testimony (at page 161 of the LCR) has stated that *“Jaydaad Mutaida Rakesh Muddai Ka Kast-v-Kabja hai.”* i.e. the plaintiff is in cultivation and possession of the suit land. Admittedly, the writing in the Agreement to Sell has not been denied by the defendant either in the Legal Notice or in the written statement. It is only in his examination-in-chief that the defendant has stated for the first time that the plaintiff has surrendered possession. It is but trite that if the plaintiff had indeed surrendered possession; then this plea would have been taken by the defendant firstly in the Legal Notice and then in the written statement. Clearly therefore, the examination-in-chief of the defendant is beyond the pleadings and is therefore, not admissible. Even otherwise, no details have been given by the appellant as to when, where, how, and in what manner plaintiff had surrendered possession.

43. The plaintiff in his cross-examination as PW7 has stated that:

“And possession of the disputed land was handed over at the spot and from that date till date my cultivation and possession is continuing.

2. That the defendant on the basis of above agreement to sell dated 17.07.2006 Ex. P-1 received Rs. 2, 50, 000/- in cash from the me and in the presence of the witnesses Savai Singh and Satender Singh the amount was received in cash and the defendant in his own handwriting has written on the back of agreement Ex. P-1 in his own hand which is Ex.P-2 and thus the



defendant has received a total amount of Rs.4 lacs in cash and it has been agreed that remaining would be paid at the time of registration xxxx....”

44. In the above noted circumstances, it would be apposite to refer to judgment of the Hon’ble Supreme Court in **A. Kanthamani v.**

Nasreen Ahmed, (SC) : Law Finder Doc ID # 833982, wherein it is held that:-

“43. First, the plaintiff had pleaded the necessary requirements of Section 16 (c) of the Specific Relief Act, 1963 read with the requirement of Forms 47, 48 and Article 54 of the Limitation Act in the plaint; Second, the defendant did not dispute the execution of agreement with the plaintiff and, in fact, entered in correspondence with the plaintiff for incorporation of some clauses therein; Third, the plaintiff proved her readiness and willingness to perform her part of agreement and also proved her financial capacity to purchase the suit property by adducing adequate evidence; Fourth, the plaintiff had paid more than ₹ 2 lacs to the defendant prior to execution of sale deed in terms of agreement dated 05.03.1989 and was, therefore, required to pay balance sum of ₹ 1,47,200/- to the defendant; Fifth, on admitted facts, therefore, the plaintiff had paid more than 50% of the sale consideration to the defendant before the due date of execution of sale deed; Sixth, the plaintiff had also proved that she had the requisite financial capacity to pay the balance sale consideration to the defendant inasmuch as she had arranged the funds by obtaining loan from the LIC; Seventh, the plaintiff filed the suit immediately on expiry of the period within 10 days to show her readiness and willingness to purchase the property; and Eighth, once it was held that the defendant committed breach in avoiding to execute the agreement, whereas the plaintiff performed her part of agreement and was ready and willing to perform her part, the Trial Court was justified in exercising its discretion in favour of the plaintiff by passing a decree for specific performance of agreement against the defendant.”



45. It is my view, that the facts and circumstances of the present case are identical to that of the aforementioned case of **Kanthamani supra**. Thus, relief of specific performance cannot be denied to the plaintiff.

46. Even otherwise, the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559**; has held that this Court in 2nd Appeal, has limited jurisdiction to interfere in the concurrent findings.

47. In view of the above discussion, present appeal is **dismissed**.

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

05.12.2025

Sunena

(Nidhi Gupta)
Judge

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