

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

**Reserved on 1st of September, 2025
Pronounced on 28th of November, 2025
Uploaded on 1st of December, 2025**

RSA No.5553 of 2016 (O&M)

Jaspreet Singh

....Appellant

Versus

Balwant Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Amit Jhanji, Senior Advocate with
Ms. Priyanka Kansa, Advocate and
Mr. Suneet Pal Aulakh, Advocate
for the appellant.

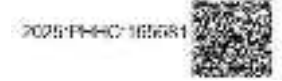
Mr. H.S. Dhandi, Advocate
for the respondents.

PANKAJ JAIN, J.

Plaintiff is in second appeal. For convenience and to avoid confusion, the parties hereinafter are referred to as by their original position before the Court of First Instance, i.e., the appellant as plaintiff and respondents as defendants.

2. Plaintiff filed suit seeking decree of possession by way of specific performance of agreement to sell, dated 16.09.2005, and in the alternate, prayed for recovery of Rs.60,00,000/- along with interest @ 18% per annum.

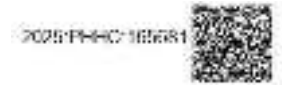
2.1. As per plaintiff, defendants agreed to sell their land measuring



115 Kanals @ Rs.6,00,000/- per acre in his favour vide written agreement dated 16.09.2005. Defendant No.1 also agreed to sell another 5 Kanal 5 Marlas of land owned by his brother Gurjant Singh and assured that he would get power of attorney executed from the owner and shall honour his part. Rs.15,00,000/- were paid by the plaintiff to the defendants as earnest money. By way of present suit, plaintiff only seeks to enforce agreement to sell *qua* 115 Kanals of land owned by defendants and is not pressing relief *qua* 5 Kanal 5 Marlas of land owned by Gurjant Singh.

2.2. As per the agreement to sell, sale deed was to be executed on or before 10.02.2006. Plaintiff claims to have appeared before the Joint Sub Registrar, Dharamkot on the agreed date. However, he was advised that the sale deed is to be registered on the next working date. 11.02.2008 and 12.02.2006 were Saturday and Sunday. Plaintiff claims to have appeared before the Joint Sub Registrar thereafter, on 15.02.2006. After defendants failed to appear before the Joint Sub Registrar to execute the sale deed, plaintiff filed suit seeking decree of permanent injunction. The said suit was stated to be pending at the time of institution of the present suit on 21.03.2006. Plaintiff claimed by way of present suit that he always remained ready and willing to perform his part and continuous to do so, and is thus entitled for decree of specific performance.

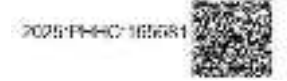
3. Suit was contested by the defendants. Execution of agreement to sell is admitted. As per the defendants, they appeared before Joint Sub Registrar, Dharamkot on 10.02.2006. An application was moved for getting



their presence marked but the same was returned with the remarks that the sale deed cannot be executed on 10.02.2006 and they were advised to come present on the next day fixed for registration i.e., 15.02.2006. Defendants claimed that they remained present in the office of Joint Sub Registrar, Dharamkot, on 15.02.2006 but the plaintiff failed to turn up. On the next day i.e., 16.02.2006, again they appeared before the Joint Sub Registrar, Dharamkot, but plaintiff failed to appear. Defendants thereafter served legal notice, dated 17.02.2006 upon the plaintiff. Accordingly, defendants claim that the plaintiff having approached the courts with the false plea, is not entitled to decree of specific performance.

4. Suit filed by the plaintiff was put to trial by the Court of First Instance, framing following issues:

- “1) Whether the defendants have entered into an agreement dated 16.09.2005 with the plaintiff? OPP
- 2) If issue no.1 is proved, whether the plaintiff is entitled to possession by way of specific performance? OPP
- 3) If issue no. 2 is not proved, whether plaintiff is entitled for relief of permanent injunction as prayed for? OPP
- 4) Whether the plaintiff, in alternative, is entitled for relief of recovery including interest, as prayed for? OPP
- 5) Whether suit of the plaintiff is not maintainable in the present form? OPD
- 6) Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD
- 7) Whether the plaintiff has got no locus standi to file the present suit? OPD
- 8) Whether the plaintiff has got no cause of action to file the present suit? OPD
- 9) Relief.”



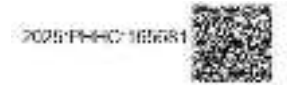
4.1. Trial Court further framed following additional issue on 05.04.2010:

“2A) Whether the plaintiff is ready and willing and is still ready and willing to perform his part of the agreement dated 16.09.2005? If so its effect? OPP”

5. The Execution of agreement to sell having been admitted, Trial Court found that the plaintiff proved his willingness by appearing before the Sub Registrar on 10.02.2006, and thereafter on 15.02.2006. He proved of being in possession of requisite finances. This shows that he remained ready and willing to perform his part of agreement and is thus entitled for decree of specific performance.

6. Dissatisfied with the judgment and decree passed by the Court of First Instance, defendants preferred appeal.

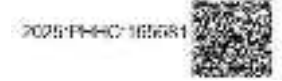
7. Lower Appellate Court found that even though plaintiff successfully proved by account statement, Exhibit PW6/A, that he was in possession of funds to perform his part but failed to prove his willingness. Lower Appellate Court relied upon testimony of PW-5 Nazar Singh, who appeared as Attorney of the plaintiff and testified that on the stipulated date i.e., 10.02.2006 though they appeared before the Joint Sub Registrar but were not in possession of the balance sale consideration. Lower Appellate Court further found that plaintiff claimed to be in possession of the amount required for purchase of stamp duty after withdrawing the same from the



account, but not even a single penny was withdrawn by the plaintiff from his account as is evident from bank statement Exhibit PW6/A.

7.1. Lower Appellate Court further referred to testimony of Nazar Singh wherein he claimed that the plaintiff was in possession of the balance sale consideration by way of demand draft whereas it is only cheques which have been placed on record. The Lower Appellate Court accordingly, reversed the findings recorded by the Court of First Instance on readiness and willingness of the plaintiff and dismissed the suit *in toto*.

8. Ld. Senior Counsel representing the appellant while assailing the findings recorded by the Lower Appellate Court submits that the factum of readiness and willingness of a party in a suit for specific performance, is to be adjudicated from the conduct of a party. As per the agreement to sell, the sale deed was to be executed on or before 10.02.2006. Plaintiff remained present before the Joint Sub Registrar, Dharamkot on the agreed date. Thereafter, on 15.02.2006 also, the plaintiff remained present before the Joint Sub Registrar. Financial capacity of the plaintiff stands proved vide Exhibit PW6/A. Hence, readiness and willingness of the appellant stands proved and thus Lower Appellate Court erred in reversing well reasoned findings recorded by the Court of First Instance. Reliance is being placed upon ratio of law laid down in the case of **Gurjit Singh and another vs. Tarsem Singh and another, 2012(4) RCR (Civil) 53, Jamal vs. Naresh Kumar, 2023 (1) RCR (Civil) 364, Madhukar Nivrutti Jagtap and others vs. Smt. Pramilabai Chandulal Parandekar & others, 2019(4) RCR**

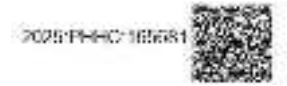


(Civil) 114, Devi Dayal Sharma vs. Sham Sunder Avasthi and others, 2019(2) RCR (Civil) 254 and Harbans Lal vs. Bhim Singh etc., 1977 CLJ (Civil) 259.

9. Per contra, counsel for the respondents submits that the conduct of the plaintiff has been rightly appreciated by the Lower Appellate Court. On 10.02.2006, the defendants appeared before the Joint Sub Registrar. It not being the day for registration of deeds, defendants were asked to come present on 15.02.2006. Defendants remained present before Joint Sub Registrar on 15.02.2006 till 4:40 PM. There is an endorsement on the application, Exhibit D2, moved by defendants that despite repeated calls, plaintiff failed to appear. After defendants left the O/o Joint Sub Registrar, Dharamkot, plaintiff in order to create a false evidence in his favour, appeared before the Joint Sub Registrar only at 4:50 PM knowing well that the defendants had already left the office of Joint Sub Registrar after waiting for the whole day.

9.1. It has been contended that even though plaintiff proved that he had funds available in his bank to pay the balance sale consideration but at no point of time, he withdrew the said amount which can prove that he was in fact in possession of the balance sale consideration when he came present before the Joint Sub Registrar. Counsel for the respondents thus submits that the Lower Appellate Court has rightly dismissed the suit filed by the plaintiff.

10. I have heard counsel for the parties and have carefully gone

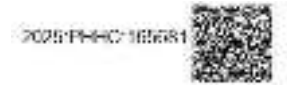


through records of the case.

11. Execution of agreement to sell propounded by the plaintiff, is not in dispute. Both the parties rather claim that they remained ready and willing to perform their part of contract as per agreement to sell, dated 16.09.2005.

11.1. In terms of mandate of Section 16(c) of the Specific Relief Act, 1963, the plaintiff in order to succeed in a suit for specific performance, is required to clear the bar of readiness and willingness. Trite it is that there is no straight-jacket formula for proving readiness and willingness of the plaintiff in the suit for specific performance. The same has to be gathered from the facts and circumstances of each and every case.

11.2. The issue assumes more pertinence where the defendant accepts and admits the agreement to sell but claims that it is plaintiff, who was not ready and/or willing to perform his part. In the suits where defendant proves his readiness and willingness, burden to evince his readiness and willingness lays heavy on the plaintiff. It is correct that explanation appended to Section 60(c) provides that it is not essential for plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court. But the same does not absolve the plaintiff of proving his readiness in the suit for specific performance. In the suits where defendant fails to appear before the Sub Registrar on the appointed date, the plaintiff can rely upon the documents exhibiting his presence before the Sub Registrar. Where the defendant has shown his presence before the Registration Authority,



plaintiff needs to satisfy the conscience of the Court regarding readiness and willingness by leading 'positive cogent evidence'.

11.3. As per the agreement to sell, parties agreed to get the sale deed executed on or before 10.02.2006. Both parties are *ad idem* that on 10.02.2006, sale deed could not be executed and the parties were advised by the Joint Sub Registrar (though separately) to come on the next date fixed for registration i.e., 15.02.2006.

11.3. The issue for determination thus is :

- i) *'Whether plaintiff was ready and willing to perform his part of contract, on 15.02.2006 or not?*
- ii) *'Whether plaintiff is entitled for relief of specific performance.'*

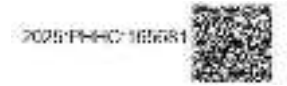
12. Plaintiff has produced copy of application, Exhibit P-6 to prove his willingness on the said date. Endorsement at the bottom of Exhibit P-6 reads that the application was presented at 4:50 PM. Since the same does not relate to the concerned office, the same is returned back.

12.1. Defendants on the other hand relies upon Exhibit D-2 to prove that they remained present before the Joint Sub Registrar, Dharamkot on 15.02.2006. There is an endorsement at the bottom of the said application.

The same reads as under:

“Time:- 4.40 PM

Today this application has been presented by the applicants. Many a time the call was raised. The other party failed to appear. This



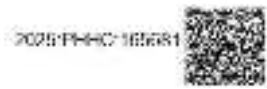
application has no concern with this office and thus the same is returned back.

Sd/-
15.02.06
(signed & sealed)
Joint Sub Registrar,
Dharamkot”

12.2. Exhibit D-2 shows that defendants were present before the O/o Joint Sub Registrar, Dharamkot at 4:40 PM on 15.02.2006. There is another application, dated 16.02.2006, which also shows that defendants remained present before Joint Sub Registrar, Dharamkot till 4:55 PM. Evidently, plaintiff was not present on 15.02.2006 before the Joint Sub Registrar till 4:40 PM and failed to appear despite having been called several times.

13. In view thereof, this Court finds that even though plaintiff relies upon Exhibit P-6 to prove his readiness to get the sale deed executed on 15.02.2006 but in fact, he was not willing to get the sale deed executed on the said date.

14. The conduct of the plaintiff during the suit is also not free from suspicion. Even though Exhibit PW6/A demonstrates that he had the financial capacity to perform his part of the agreement but his willingness cannot be inferred merely from his financial capacity. His Attorney Nazar Singh admitted that even though on 15.02.2006, they appeared before the Joint Sub Registrar but were not in possession of the balance sale consideration. In his testimony, he claimed that the balance sale amount was available with them in form of demand draft. Demand draft has not seen light of the day. Rather in evidence, it is the cheques which have been



produced as Exhibit P7/1 to Exhibit P7/3. All this shows that the plaintiff continued to change his stand as per his convenience during the suit. He did not approach Courts with clean hands.

15. In view of above, this Court finds that the Lower Appellate Court rightly answered Issue No.2-A against the plaintiff, reversing the findings recorded by the Court of First Instance.

16. Defendants even though claim that a legal notice was served upon plaintiff on 17.02.2006 but the same has not come on record.

17. In view of above, this Court finds that even though the plaintiff is not entitled to decree of specific performance but is entitled for refund of earnest money of Rs.15,00,000/- along with interest @ 9% per annum from the date of agreement to sell till the date of actual realization.

18. Accordingly, the instant regular second appeal is allowed. The suit filed by the plaintiff is decreed but for alternate relief of recovery of earnest money.

19. Pending application, if any, shall also stands disposed off.

November 28, 2025
Dpr

(Pankaj Jain)
Judge

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