

702514400-113126

RSA-6235-2016 (O&M)
Date of decision : 26.11.2025

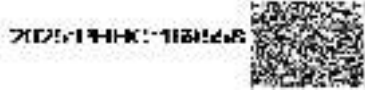
..... Appellants

Ajit Singh (deceased) thr. His LRs & anr. Respondents

Mr. Manoj Tanwar, Advocate
for respondent No.1.

1 Defendants are in second appeal. For convenience, parties
hereinafter are referred to by their original position in the suit i.e. the
appellants as defendants and respondent No.1 as plaintiff.

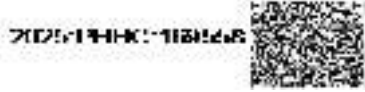
2 Plaintiff filed suit for specific performance propounding agreement to sell dated 08.08.2006 *qua* land measuring 23 kanal 17 marlas. As per the plaintiff, defendants agreed to sell suit land in their favour for a total sale consideration of Rs. 37.00 lakhs, out of which Rs.2.00 lakhs were paid as earnest money on the date of execution of agreement to sell. Parties agreed to get the sale deed executed on or before 10.11.2006. Defendant No.4 was not signatory to the agreement. Defendants No.1 to 3 claimed themselves to be authorized and undertook the responsibility to produce her consent at the time of execution of agreement to sell *qua* sale of her share. Plaintiff



claims that on the appointed date, i.e. 10.11.2006, he remained present before the office of the Sub-Registrar along with the balance sale consideration and other expenses. Defendants failed to appear despite having been called various times. On the very next date, i.e. 11.11.2006, plaintiff served legal notice upon defendants through his counsel calling upon them to appear before the office of Sub-Registrar on 22.11.2006 for execution of sale deed. Again on 20.11.2006, a registered notice was sent to the defendants calling upon them to appear before the Sub-Registrar on 22.11.2006. Plaintiff accordingly claimed that he always remained ready and willing to perform his part and is entitled to decree of specific performance by instituting present suit on 04.12.2006.

3 Defendants No.1 to 3 filed joint written statement. They claimed that plaintiff never intended to purchase the land as he had no means to do so. He was selling his own land, measuring 10/11 acres. Plaintiff is a property dealer who entered into an agreement to sell but had no money to perform his part on the appointed date. The defendants remained present before the office of Sub-Registrar on 10.11.2006 to get the sale deed executed and registered. Plaintiff having failed to appear; they got their presence marked before the office of Sub-Registrar.

4 Defendant No.4 in her separate written statement denied any knowledge regarding agreement to sell executed by defendants No.1 to 3 *qua* her share. She claimed that she neither executed any agreement to sell nor accepted any amount. Defendants No.1 to 3 having no right to alienate her share, she is not bound by the agreement to sell propounded by the plaintiff.



5 Court of the First Instance framed following issues :-

“1. Whether the defendants no.1 to 3 with the consent to defendant no.4 entered into agreement to sell the suit property to plaintiff for Rs.37,00,000/- on dated 8.8.2006 and received Rs.200000/- as earnest money as alleged ? OPP.

2. Whether the plaintiff has been and is still ready and willing to perform his part of contract ? OPP.

3. If issues no.1 and 2 are proved, whether the plaintiff is entitled to specific performance of contract dated 8.8.2006 ? OPP.

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

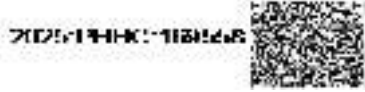
5. Whether the suit of the plaintiff is not maintainable in the present form ? OPD.

6. Whether the plaintiff is estopped from filing the suit by his own act and conduct ? OPD.

7. Relief.”

6 Courts below have concurrently found that defendants No.1 to 3 had no power or authority to execute the agreement to sell on behalf of defendant No.4. Defendant No.4 being not a signatory to the agreement is not bound by the agreement to sell executed by defendants No.1 to 3 in favour of plaintiff. Accordingly, the suit filed by the plaintiff *qua* share of defendant No.4 was ordered to be dismissed.

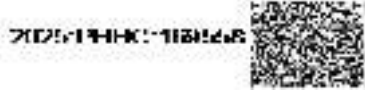
7 Considering the testimony of the plaintiff and the attesting witness Nihal Singh PW3 and scribe Gurdayal Sharma PW1, the Courts below concurrently found that the plaintiff successfully proved execution of agreement to sell exhibit PW1/B in his favour by defendants No.1 to 3 and payment of earnest money of Rs.2.00 lakhs. The Courts below further found that plaintiff successfully proved his readiness and willingness to perform his



part. Affidavit Ex.PW2/A proves his presence before the office of Sub-Registrar on 10.11.2006. Plaintiff on the very next date served registered legal notice upon the defendants calling upon them to appear before the office of Sub-Registrar on 27.11.2006 to get the sale deed executed. On 27.11.2006 again, he remained present before the Sub-Registrar which is proved by Ex.PW2/A. In order to prove his readiness, he has produced copy of account statement Ex.PW6/A. The same was proved by examining Bank Clerk Sanjay Kumar, PW6. He proved that in the account bearing No.07422011000924 an amount of Rs.1.00 crore was deposited on 15.09.2006. On 10.11.2006 an amount of Rs.36,06,552/- was credited. Rs.30 lakhs were withdrawn on 10.11.2006. An amount of Rs.30 lakhs was deposited back in the same account on 11.11.2006.

8 The Courts below concurrently found plaintiff entitled for the decree of specific performance.

9 Learned counsel for the defendants has assailed the findings recorded by the Courts below claiming that one of the co-sharers i.e. defendant No.4 was not even signatory to the agreement to sell and thus the suit ought not have been decreed. He submits that there is a cloud over the readiness and willingness of the plaintiff. Defendants proved on record their presence before the Sub-Registrar on 10.11.2006. Their affidavits attested by Sub-Registrar Ex.D1 to D3 were proved on record. Thus, the plaintiff who failed to prove his readiness and willingness has been wrongly granted decree of specific performance by the Courts below. It has been further contended that Ex.PW6/A shows that an amount to the tune of Rs.30.00 lakhs has been



withdrawn on 10.11.2006 whereas plaintiff in his cross examination claimed that he withdrew Rs.23.00 lakhs from the account of his brother and rest of the amount i.e. Rs.15.00 lakhs were collected by him from his house. There being serious cloud over his readiness and willingness, the plaintiff's suit should have been dismissed.

10 In support of his contentions, he relies upon *Smt.Katta Sujatha Reddy Vs. Siddamsetty Infra Projects Pvt. Ltd., 2022 AIR (Supreme Court) 5435, Nanjappan Vs. Ramasamy & anr., 2015 (2) RCR (Civil) 224, Saradamani Kandappan Vs. S.Rajalakshmi & ors., with S.Rajalakshmi & ors. Vs. Saradamani Kandappan & anr., 2011 AIR (Supreme Court) 3234, Urvashi Aggarwal (since deceased) through LRs & anr. Vs. Kushagr Ansal & ors., 2019 (2) RCR (Civil) 331 and Shanker Singh Vs. Narinder Singh & ors., 2015(3) SCC (Civil) 719.*

11 I have heard counsel for the parties and have carefully gone through records of the case with their able assistance.

12 The defendants have also claimed their presence before the office of the Sub-Registrar on the appointed date i.e. 10.11.2006. Thus, there is no dispute with regard to execution of agreement to sell by defendants No.1 to 3 in favour of plaintiff. Trite it is that once defendants also claimed to be ready and willing on the appointed date, burden lies heavily upon the plaintiff to evince his readiness and willingness. As per the settled proposition of law, the readiness and willingness of the plaintiff must be gathered from the attending circumstances in each case, and there is no strait-jacket formula to ascertain the same. But in the present case plaintiff proved his presence



before office of Sub-Registrar on 10.11.2006 vide Ex. P2. It has come on record that on the very next date he served a legal notice upon the defendants calling upon them to appear before the office of Sub-Registrar on 27.11.2006 to execute the sale deed. This sufficiently explains willingness of the plaintiff.

13 So far as the readiness of the plaintiff is concerned, the same stands demonstrated vide Ex.PW6/A-the bank statement of brother of the plaintiff. On 10.11.2006 an amount of Rs.30.00 lakhs was withdrawn from the said account. The same amount was deposited back on the next date i.e. 11.11.2006. Plaintiff claims that he along with his four brothers had sold their land measuring 81 kanals for a sum of Rs.1,11,00,000/-, 15 days before the execution of agreement to sell with defendants. Whole of the amount was deposited in the account of his brothers. Account statement Ex.PW6/A pertains to the same. His brother Vinod Kumar appeared in the witness box as PW5 and fully corroborated the stand of the plaintiff. The present suit was instituted without any delay on 04.12.2006, i.e. within a week after 27.11.2006. In these circumstances, this Court finds that the Courts below rightly concluded plaintiff to be ready and willing to perform his part of the contract and rightly decreed the suit for main relief of specific performance.

14 The plea raised by counsel for the defendants regarding defendant No.4 not being signatory to the agreement to sell carries no weight in view of the fact that the specific performance has been granted in favour of the plaintiff *qua* share of defendants No. 1 to 3 only and the suit has been dismissed *qua* defendant No.4. Needless to say, doctrine of frustration is

subject to doctrine of severance. Once the agreement to sell can be performed *qua* rights of defendants No.1 to 3 and the rights of defendant No.4 can be severed, the agreement to sell cannot be held to have been frustrated in whole.

15 To balance the equities, counsel for the plaintiff was asked to seek instructions as to whether the plaintiff is ready to pay a further amount of **Rs.25.00 lakhs**, over and above the agreed sale consideration. He has sought instructions. He submits that plaintiffs are ready to pay **Rs.25.00 lakhs** to the defendants over and above the total sale consideration agreed between the parties.

16 In view of above, the decree is modified to the extent that the plaintiff shall pay another sum of **Rs.25.00** lakhs over and above the agreed sale consideration to defendants No.1 to 3. The enhanced amount shall be apportioned among defendants No.1 to 3 in accordance with their share in the suit land.

17 Accordingly, the appeal is disposed off.

18 Pending miscellaneous application, if any, also stands disposed off.

26.11.2025

Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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