

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****222****Date of decision: 30.10.2025****1. RSA-2269-2014 (O&M)****Radha Devi****...Appellant(s)****Vs.****Kharati Lal****....Respondent(s)****AND****2. RSA-1649-2014 (O&M)****Radha Devi****...Appellant(s)****Vs.****Kalu Ram****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ashwani Chopra, Senior Advocate with
Mr. Manendra Singh Bishnoi, Ms. Ridhima
and Ms. Mansi, Advocates for the appellant(s).

Mr. Sandeep Jasuja, Advocate for the respondent(s).

NIDHI GUPTA, J.**RSA-2269-2022 (O&M)**

The plaintiff is in second appeal against the judgments and decrees of the learned Courts below; whereby suit filed by the appellant for specific performance was only partly decreed by the Trial Court for refund of earnest money; and the appeal filed by the plaintiff/appellant against the said decree has been dismissed by the First Appellate Court.

2. The case, as pleaded by the plaintiff is that the defendant/respondent is owner of 99/1970 share of total land measuring 98K 10M. The defendant had entered into an Agreement



dated 03.01.2006 with the plaintiff to sell his share of the land to the plaintiff @Rs.4,50,000/- per acre after receiving Rs.50,000/- as earnest money. The target date for execution of Sale Deed was set for 15.05.2006.

3. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Civil Judge (Junior Division), Abohar vide judgment and decree dated 02.06.2012 had partly decreed the suit of the plaintiff with costs for *“alternative relief of recovery of principal sum of Rs. 50,000/- (Rs. Fifty Thousand Only) with interest @ 9% per annum from 03.01.2006 i.e. the date of agreement to sell and receipt of earnest money till the date of decree and future interest @ 6% per annum from the date of decree till realization.”* The appeal filed by the plaintiff was dismissed by learned Additional District Judge, Fazilka vide judgment and decree dated 07.10.2013. Hence, the present second appeal by the plaintiff.

RSA-1649-2014 (O&M)

The plaintiff is in second appeal against the judgments and decrees of the learned Courts below; whereby suit filed by the appellant for possession and specific performance was only partly decreed by the Trial Court for refund of earnest money; and the appeal filed by the plaintiff/appellant against the said decree has been dismissed by the first Appellate Court.

2. The case, as pleaded by the plaintiff is that the defendant is owner of 196/3451 share of total land measuring 172K 11M. The



defendant/respondent had entered into an Agreement dated 03.01.2006 with the plaintiff to sell his share of the land to the plaintiff @Rs.4,50,000/- per acre after receiving Rs.1,00,000/- as earnest money. The target date for execution of Sale Deed was set for 15.05.2006.

3. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Civil Judge (Junior Division), Abohar vide judgment and decree dated 02.06.2012 had partly decreed the suit of the plaintiff with costs for *“alternative relief of recovery of principal sum of Rs. 1, 00,000/- (Rs. One Lac Only) with interest @ 9% per annum from 03.01.2006 i.e. the date of agreement to sell and receipt of earnest money till the date of decree and future interest @ 6% per annum from the date of decree till realization.”* The appeal filed by the plaintiff was dismissed by learned Additional District Judge, Fazilka vide judgment and decree dated 07.10.2013. Hence, the present second appeals by the plaintiff.

4. Both the above said Second Appeals are being disposed of by this common order as plaintiff in both the Appeals is the same; the defendants in both the matters are real brothers, who had entered into separate Agreements, both dated 03.01.2006, with the plaintiff; and fundamental facts and issues involved in both appeals are identical. The defendants after entering into their respective Agreements, had refused to execute the contract despite request made by the plaintiff. Hence, two suits were filed on 12.06.2006 for specific performance of the aforesaid two Agreements dated 03.01.2006. For the sake of facility,



facts are being drawn from RSA-2269-2014 titled as ***“Radha Devi vs. Kharati Lal.”***

5. It is *inter alia* submitted by learned Senior Counsel for the appellant/plaintiff that learned Trial Court has denied specific performance of the Agreement to the plaintiff only on the ground that plaintiff was not found to be ready and willing to perform her contract. It is submitted that in holding so, the learned Trial Court has ignored the fact that the plaintiff had duly put in appearance before the Sub-Registrar on the target date of 15.5.2006 with the balance sale consideration. The plaintiff has categorically pleaded in the plaint that she had remained present in the office of Sub Registrar on 15.05.2006 alongwith balance sale consideration. The respondent in his written statement, has nowhere denied and disputed the aforesaid pleadings. Besides that, Anirudh Jakhar, Power of Attorney Holder of the appellant, had also specifically and categorically deposed in respect of the readiness and willingness of the plaintiff. However, the Trial Court relied upon the judgment of Hon’ble Supreme Court passed in **“Man Kaur by LRS vs. Hartar Singh Sangha”(SC) : Law Finder Doc Id # 224670** and held the plaintiff to be not ready and willing. It is contended that this conclusion is based not only on a misreading of the facts and evidence on record, but also on misreading of the judgment in **Man Kaur’s case (supra)** as appellant had proved her readiness and willingness to perform her contract by duly putting in appearance on target date of 15.05.2006 before the Tehsil Office. Appellant had produced her



Affidavit of Attendance Ex.P2 and had categorically stated that she was in possession of the balance sale consideration. It is submitted that in this background, there is no question of denial of specific performance of contract to the plaintiff.

6. Learned Senior Counsel further submits that in any event, specific performance of the Agreement could not have been denied to the plaintiff on the ground that she was not ready and willing to perform her contract as defendant, in his written statement, has totally denied Agreement in question. It is argued that in such circumstance, it is not open for the defendant to take the defence/plea that plaintiff was not ready and willing to perform the contract.

7. It is accordingly prayed that the present Appeals be allowed; and impugned judgments and decrees of the Courts below be set aside.

8. *Per contra*, learned counsel for the respondent/defendant opposes submissions made on behalf of learned Senior Counsel for the appellant and submits that the plaintiff had not stepped into witness box. Only her son Anirudh Jakhar PW3 had deposed on her behalf. However, PW3 could not be held competent to depose on behalf of the plaintiff as there are plethora of judgments holding that facts of which only the plaintiff has knowledge, evidence of Attorney Holder cannot be taken into consideration, in respect of those facts, acts, and transactions. It is submitted that therefore, Agreement could not be held proven in accordance with law. Therefore also, it cannot be held that readiness and willingness of the plaintiff to perform the contract was proved.



Learned counsel further refers to para 17 of the judgment dated 07.10.2013 of the learned first Appellate Court; wherein it is noticed that there was even overwriting in respect of the last date of execution of the sale Deed i.e. 15.05.2006. It is pointed out that various other discrepancies have been noted by the learned first Appellate Court due to which plaintiff cannot be granted relief of specific performance. It is accordingly prayed that the present appeals be dismissed.

9. No other argument is raised on behalf of the parties. I have heard learned counsel, perused the case file in detail, and given my thoughtful consideration to the rival submissions of both the parties. I find merit in the submissions made by Id. Senior Counsel for the appellant.

10. It is undisputed fact on record that both the Courts below have returned the positive finding that the Agreement to Sell dated 03.01.2006 stood duly proved on record from the evidence of PW3/Anirudh Jakhar/son and GPA holder of the plaintiff. Admittedly, GPA of the plaintiff/her son Anirudh Jakhar was present on the date of execution of Agreement. The Agreement was also proved from the evidence of the marginal witnesses PW1 Anil Kumar and PW4 Pawan Kumar. The Notary Public was also examined by the plaintiff as PW5, who proved the entry regarding the Agreement. PW5 further deposed that the said Agreement bears the signature of defendant. The Scribe of the Agreement Manoj Kumar was also examined as PW2 who also proved the agreement in question. Thus, from the evidence of the



above-mentioned witnesses the authenticity of the Agreement in question is established beyond doubt. Any minor discrepancy that may have crept into the evidence of the said witnesses is normal with the passage of time and cannot be held to be fatal to the case of the plaintiff.

11. Yet, the Id. Trial Court has nonsuited the appellant; on the ground that she failed to prove her readiness and willingness to perform the contract. In holding as above, the learned trial court has relied upon judgment of the Hon'ble Supreme Court passed in **Man Kaur's case (supra)**. Reasoning of the learned Trial Court is as follows: -

"The law laid down in case titled Man Kaur (Dead) by LRS (Supra)" applies to the facts of the present suit. The Hon'ble Supreme Court has held that in a suit for specific performance proof of readiness and willingness can be proved by the plaintiff himself when he enters into the witness box and the Attorney cannot prove this fact as readiness and willingness refers to the state of mind and conduct of the purchaser, as also his capacity and preparedness. The plaintiff Radha Devi has not stepped in the witness box to depose regarding the readiness and willingness In view of the law-laid down by Hon'ble Supreme Court of India it has to be held that plaintiff Radha Devi has failed to prove regarding her being ready and willing to perform her part of contract. Therefore, in view of the position, where agreement to sell dated 03.01.2006 is duly proved but plaintiff Radha Devi is not found ready and willing to perform her part of contract, therefore, in my view plaintiff is not entitled to the relief of specific performance but is entitled to alternative relief."



12. The above reasoning of the trial court is patently unsustainable; as first and foremost in holding as above, the Trial Court has ignored the fact that plaintiff herself was present in the Tehsil Office on target date of 15.05.2006 from 9 a.m. to 5 p.m. with balance sale consideration; and Affidavit of Attendance Ex.P2. to this effect has been produced on record. The plaintiff has also categorically pleaded in the plaint that she had remained present in the office of Sub Registrar on 15.05.2006 alongwith balance sale consideration. The respondent in his written statement, has nowhere denied and disputed the aforesaid pleadings. Besides that, Anirudh Jakhar, Power of Attorney Holder of the appellant, had also specifically and categorically deposed in respect of the readiness and willingness of the plaintiff. Moreover, suit was filed by the appellant within less than one month from the last date fixed for execution of Sale Deed which is 15.05.2006 and suit was filed on 12.06.2006. This clearly shows that appellant was always ready and willing to perform her part of contract. However, these aspects of the matter have been totally ignored by the learned Trial Court. Thus, it cannot be said that the plaintiff was not ready and willing to perform the contract.

13. Furthermore, the above said reasoning of the learned Trial Court is based on a patent misreading of the judgment of the Apex Court in **Man Kaur (supra)**; wherein, in actual fact, it is held as under: -

“(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his state of mind or conduct, normally the



person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant on the ground of his bonafide need and a purchaser seeking specific performance who has to show his readiness and willingness fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed transacted and looked after by an attorney who may happen to be a close family member, it may be possible to accept the evidence of such attorney even with reference to bonafides or readiness and willingness. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

14. Thus, from a bare reading of the above pronouncement it is clear that son of the plaintiff who is also her GPA Holder was competent to depose on behalf of the plaintiff. It is to be appreciated that as per our societal set up, it is the children, especially the son who looks after and manages all the affairs on behalf of his mother, especially a widowed mother, as in the instant case. It is therefore not far-fetched that Anirudh Jakhar was handling and managing all the affairs of the plaintiff on her behalf. Further, even if for the sake of argument, it is taken that Anirudh was not authorized by GPA, even then it is not denied that he was handling all the affairs of the plaintiff. GPA of the plaintiff was competent to depose on behalf of Principal as son of the plaintiff was very much present at the time of execution of Agreement. Thus, testimony of



Anirudh PW3 could not have been rejected. As such, it cannot be held that plaintiff was not ready and willing to perform the contract.

15. In any event, the defendant is debarred from raising any plea regarding readiness and willingness in view of his denial of the very Agreement itself. In holding as above I rely upon “**Lal Chand vs. Tek Chand 2012 SCC OnLine P&H 24572**”, the relevant para of which is as under:-

*“14. Now the second question that is required to be determined by this Court is as to whether the plaintiff is ready and willing to perform his part of the contract or not. In the present case, the stand of the defendant was of clear-cut denial of the execution of the document in question. However, the defendant, as stated earlier, has miserably failed to prove this plea. In such a scenario, the only question that requires to be seen is that whether the plaintiff has fulfilled the basic ingredients as required under Section 16 of the Specific Relief Act or not. It has been held in **Santa Singh v. Binder Singh 2007 (1) R.C.R. (Civil) 162 2006 (4) CCC 608 (P & H)** that in case the defendant has denied the execution of the agreement, the statement of the plaintiff is sufficient to infer that he was ready and willing to perform his part of the contract. In the case in hand, the plaintiff has not only mentioned regarding his readiness and willingness in the plaint he has in fact mentioned the same by examining his power of attorney holder as PW-7 who in no ambiguous terms has stated that the plaintiff was always ready and willing to perform his part of the contract. Further more, the extension of dates which had taken place and was also reduced into writing on the back side of the agreement to sell coupled with the legal notice sent by him to the defendant, further proves and satisfies this Court that the plaintiff was*



*always ready and willing to perform his part of the contract. A coordinate bench of this court in **Jora Singh v. Lakhwinder Kumar 2011 (1) R.C.R. (Civil) 130: 2011 (2) CCC 113** has held that when the defendant has denied the execution of the agreement to sell, it means that the defendant was never ready and willing to perform his part of the contract and It does not lie in his mouth to contend that the plaintiff was not ready and willing to perform his part of the contract. In view of the law laid down above and also in the opinion of this Court, that in a case where the defendant has denied the execution of the agreement to sell, he cannot raise the plea of the plaintiff being ready and willing and it only remains between the court and the plaintiff to determine the question of readiness and willingness, I have no hesitation in dismissing this appeal as the same is without any merit The judgments that have been relied upon by learned Counsel for the appellant are peculiar in their own facts and circumstances and the same are not applicable to the present case for the reason that in the present case, the power of attorney holder has been able to prove the readiness and willingness on the part of the plaintiff and also no evidence whatsoever is coming forth on behalf of the defendant to negate the same, Hence, Janki Vashdeo's case (supra) is not applicable to the present case. K. Narindra's case (supra) is also distinguishable on facts, as in the present case I am inclined in not interfering in the relief granted by the learned lower Appellate court of specific performance in view of the peculiar facts and circumstances of the case. In view of the above, finding no question of law much less substantial question of law arising for determination, the present second appeal is hereby dismissed.” (Emphasis added)*



16. Thus, in almost identical circumstances, it has been held by a coordinate Bench that in a case where the defendant has denied the very Agreement itself, the plea/defence of readiness and willingness is not available to him.

17. Further, even the reasoning of the first Appellate Court in denying specific performance to the plaintiff, cannot be sustained. The first Appellate Court has dismissed the appeal of the plaintiff for the reasons as recorded in the following para 17 of its judgment dated 07.10.2013: –

“17. After going through the record and arguments and case law, it is clear that the agreement to sell was recorded on 03.01.2006. The following defects are there in the present case:-

- 1. That there is over writing on the last date of execution i.e. 15.05.2006.*
- 2. Ex.D-1 Majid Sayee of giving more earnest money is not at all signed and there are signatures of none which shows that the intention of the parties was not to fulfil and something was going on between the parties.*
- 3. The plaintiff have not herself signed the agreement and it was signed on behalf of her son whereas in plaint in para No.8 it is recorded that it was in the presence of the plaintiff Whereas, it should have been in the presence of power of attorney of the plaintiff.*
- 4. The stamp on which the affidavit was recorded on 15.05.2006 by the plaintiff was purchased on 09.05.2006 which shows that the same was not pruchased on 15.05.2006.”*



18. It is my considered view that in holding as above, the learned first Appellate Court has exceeded its jurisdiction. The first Appellate Court failed to appreciate that it is not anyone's case that there is overwriting in respect of the target date of 15.5.2006. Respondent has nowhere pleaded any of the other reasons as set out in para 17 of the judgment. Case of the respondent is total denial of Agreement itself. Thus, in recording such findings, the first Appellate Court has gone beyond the pleadings; and has, of its own, added to the case set up by the defendant. This is not permissible under law. It is established position in law that Courts cannot go beyond the pleadings.

19. Moreover, once a positive finding has been recorded by the learned trial court regarding execution of the Agreement dated 3.1.2006; and there was no cross-appeal/cross objections filed at the instance of the respondent, the learned first Appellate Court could not have recorded any such findings. Once the respondent has denied the very Agreement itself, these pleas are not available to the defendant; and plaintiff could not have been nonsuited for the above reasons. Furthermore, defendant has not led any evidence to prove the allegedly fraudulent nature of the Agreement. Defendant had also not examined any document expert to prove that the said document did not bear his signature; or to prove that his signature is not borne on the Register of Notary Public. As such, findings of the first Appellate Court recorded in para 17 of its judgment cannot be sustained.



20. From the above facts, it can be summed up that Agreement to Sell dated 03.01.2006 stood duly proved; and the readiness and willingness of the plaintiff is also proved. In the present case, the vendor/defendant had signed the Agreement in question. In an Agreement to Sell, it is more important that the vendor signs the Agreement which is so in the present case. The Court cannot go beyond the pleadings. Once the defendant had denied the Agreement, these factors could not have been gone into by the learned Courts below. There is no pleading by the defendant in his written statement to the effect that son of the plaintiff was not her GPA. The Notary Public PW5 has even deposed regarding the presence of the plaintiff in the Tehsil Office on the target date. There is even no cross-examination by the defendant of PW3 in respect of his competence to depose on behalf of the plaintiff (as evident at pg. 89 of LCR). Thus, plaintiff could not have been nonsuited.

21. I also place reliance upon judgment passed by the Hon'ble Supreme Court in **"Santosh Vadiya vs. Namdeo Budde and others, 2016 SCC OnLine Bom 16088"**, the relevant portion of which is as under:-

"8. I have heard learned counsel for the rival parties at length. I have also perused the entire record, documentary as well as oral. I have perused the reasons recorded by the Courts below. This Court had at the time of admission on 27.02.2007, framed three substantial questions of law, which are as under with my answers:

(1) whether the Power of Attorney holder for the proposed vendees could validly depose about the existence of readiness and willingness on the part of the plaintiff/proposed vendees



to perform their part of the contract when this fact could have been within the special knowledge of the plaintiffs themselves?...Yes."

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Answer to Question No. 1:

12. Now coming to the controversy in the suit and the submissions made before me, the argument made by the learned counsel for the appellant on the point of power of attorney holder and his evidence, it will have be necessary to have a look at Order VI, Rule 14 of the CPC which reads thus:

"Order VI: Pleadings generally:

14. Pleading to be signed. Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf."

13. The aforesaid proviso to Rule 14 categorically shows that a person authorised is entitled to file and prosecute the suit till its disposal. In the instant case, it is not in dispute that the plaintiffs had authorised Dhairyasheel (PW1) to act as their power of attorney holder for signing of various documents, prosecuting and contesting the litigations etc. It is not at all disputed by any of the plaintiffs or defendant No. 2. None of he plain tiffs or defendant No. 2 have stated that they have not authorised Dhairyasheel (PW1) the power of attorney holder. Insofar as the aspect of attestation at a later point of time after execution of the power of attorney is concerned, I do not think any significance can be given to it since none of the persons. giving authority have disputed the authority of the power of attorney holder either orally or in writing to plead and prosecute their lis. In the light of the above



provision, therefore, it is not possible to accept the submissions about the incompetence of power of attorney. The counsel for the appellant then argued that the power of attorney holder had no personal knowledge about the execution of agreement and, therefore, his evidence is worthless and should not have been relied upon by the appellate Judge. In this context, I have perused the pleadings as well as entire evidence of Dhairyasheel (PW1) and the cross-examination. In the examination-in-chief, the power of attorney holder deposed about the entire transaction in question, readiness and willingness, details about the agreement, payments made and so on and so forth, which clearly shows his personal knowledge about the transaction in question and the filing of the litigation i.e. the suit in question. If according to the appellants, he had no personal knowledge about the transaction, there ought to have been appropriate pleadings in the written statement and appropriate cross-examination to him to bring out from his mouth that he did not have any personal knowledge about the transaction. However, it is significant to note that not only that there is no cross-examination on that point but there is no even a single suggestion to him that he does not know anything about the transaction and that he was not a witness to depose on behalf of the plaintiffs or the proposed vendees. In the absence of appropriate pleadings and the cross-examination, it would be difficult to accept such a submission. Secondly, the submissions that his evidence was hearsay evidence, again will have to be rejected as he deposed about the whole transaction. There is further submission that the contents of the power of attorney were not proved by the power of attorney holder and the answer obviously would be that Dhairyasheel (PW1) deposed about



*details or the power of attorney in his favour which was also exhibited and there is no cross-examination that he was not authorised by the plaintiffs and defendant No. 2 nor the plaintiffs and defendant No. 2 disputed his authority to act on their behalf. As to his evidence before the Court, in this context the learned counsel for the appellants vehemently relied on some judgments about the evidence of power of attorney holder, numbering 1 to 7 is in the list of reliance. I have carefully gone through all these decisions. The first decision was rendered in the case of **Janki Bhojwani ((2005) 2 SCC 217: AIR 2005 SC 439) (supra)**. In that case, the Apex Court specifically found on facts that the power of attorney holder did not have personal knowledge about the matters of the appellants and, therefore, he could not depose about his personal knowledge of the matter of the appellants and therefore he could neither depose on his personal knowledge nor could be cross-examined on those facts which were to the personal knowledge of the principal. As stated earlier, there is no even remote suggestion or pleading anywhere or admission in the evidence about want of personal knowledge. On the contrary, Dhairyasheel (PW1) deposed on his personal knowledge about each and every details of the transaction which was not challenged. Hence, such matters cannot be resolved by merely raising questions but there has to be foundation in pleadings as well as evidence which is absent in the present case. The existence of readiness and willingness on the part of the plaintiffs or the proposed vendees to perform their part of contract has, in fact, been deposed by Dhairyasheel (PW1) the power of attorney holder of the plaintiffs.....”*



22. I further place reliance upon judgment of Hon'ble Supreme Court in **Aloka Bose vs. Parmatma Devi (2009) 2 SCC 582**, as under: -

“18. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognised communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale.”

23. Reference is also made to judgment of this Court passed in **“Mahabir and others v. Satbir, (Punjab And Haryana) : Law Finder Doc Id # 2777629”**; wherein, after considering the entire case law on the subject, it is held as under:-

“A. Specific Relief Act, 1963 Section 16(c) Plaintiff seeking specific performance of an agreement to sell - Readiness and willingness to perform the contract - Held, plaintiff proved his readiness and willingness through affidavits, legal notices, and evidence of availability of funds - Defendant's denial of the agreement and plea of fraud found to be unsubstantiated and inconsistent.

D. Specific Relief Act, 1963 Section 20 Equitable relief - Mere increase in market value of the property cannot be a ground to deny specific performance of a valid agreement to sell.”

The relevant paras are as under: -



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

“15. Plaintiff propounded agreement to sell executed by the defendant dated 8th of March 1989. In order to prove the same, scribe of the agreement to sell, Balkar Singh appeared as PW-2. Balkar Singh proved copy of register Exhibit P-2 showing entry made by him at Serial No.121. Vidya Sagar, Stamp Vendor appeared as PW-1. He produced his Register. He proved that defendant Bhupinder Singh purchased stamp-paper for execution of agreement. Entry was made at Serial No.5842 dated 7th of March 1989 in the Register against which defendant appended his signatures. The said stamp-paper was identified by him as the one used for scribing original agreement dated 8th of March 1989, Exhibit P-1. Attesting witness Jhirmal Singh (PW-3) fully established that Bhupinder Singh signed and executed agreement to sell, Exhibit P-1, in favour of the plaintiff after having heard and admitting the contents of the same and after receiving Rs. 5000/- as earnest money.

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



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

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

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

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

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



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

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

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

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



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

10. *As per the terms & conditions of the agreement to sell, the date fixed for execution of the sale-deed was 09.05.2014. The plaintiff went to the office of Sub-Registrar, Gurdaspur, along with balance sale consideration. The factum of the plaintiff going to the office of Sub-Registrar, Gurdaspur, stands corroborated by Ex.P2, which is an affidavit duly attested by the Executive Magistrate showing her presence. Since the defendant failed to turn up on 09.05.2014, the plaintiff served him with a legal notice (Ex.P3), asking him to come to the office of Sub-Registrar, Gurdaspur for the execution and registration of the sale-deed on 06.06.2014. Since the defendant yet again did not turn up for the execution and registration of the sale-deed on the given date, the plaintiff got her presence marked in the office of Sub-Registrar, Gurdaspur vide her affidavit dated*



06.06.2014 (Ex.P4). The defendant failed to give any cogent reason during his deposition before the trial Court qua his non-appearance on 09.05.2014 and 06.06.2014 before the Sub-Registrar, Gurdaspur. From the conduct of the respondent/plaintiff, it is discernible rather it leaves no manner of doubt that she was always ready and willing to get the sale-deed executed. 11. Upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the conclusions so arrived at by the Courts below were either contrary to the record or suffered from any material illegality. Still further, no question of law, much less, substantial question of law arises for consideration in the present appeal. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.”

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

“19. It appears, the terms of the agreement of sale between the plaintiff and the defendant is mainly intended to divide the land of the defendant into house plots, obtain an approved layout and sell house plots. The recitals show that the defendant agreed for division of the land into house plots and also apply to panchayat for approval of layout. It is well settled that specific performance of contract will ordinarily be granted even if there is default in carrying out the contract within the specified period having regard to the expressed stipulations of the parties, nature of



*property and other circumstances. It is one thing to admit the suit agreement of sale and to contend that the plaintiff has failed to establish readiness, but it is altogether a different thing to take a defence that the suit agreement of sale is fabricated and still require the plaintiff to establish readiness and willingness. Therefore the plea put forth by the defendant that he signed on blank papers and plaintiff fabricated the agreement of sale Ex.A-1 does not merit consideration. The facts in a latest decision of the Supreme Court in **Laxman Tatyaba Kankate v. Taramati Harischaandra Dhatrak** are an agreement to sell dated 8-1-1991 was entered into between the parties in terms whereof the defendant-appellant therein had agreed to sell the land ad-measuring 1H.60R of the land and that a sum of Rs. 10,000/- only was paid at that time. Though the defendants therein assured that they would execute the sale deed, they failed to do so, hence, notice was served and thereafter the plaintiff filed suit for specific performance and in the alternative for recovery of amount was filed before the trial Court, and that the trial Court partially decreed the suit dismissing his claim for specific performance and ordered for refund of earnest money with interest. On appeal, the lower appellate Court decreed the suit in its entirety granting decree for specific performance. The legality and correctness of the aforesaid decree was challenged before the High Court of Judicature at Bombay at its Aurangabad Bench and the same was confirmed. The appellant-defendant took pleas that there was rapid increase in the market value of the land, that they wanted to obtain loan and had agreed to sign certain*



papers by way of security, that the plaintiff on the pretext got certain blank papers signed and that there was no intention to sell the property in question that sale of suit was land was barred under Maharashtra Co-operative Societies Act, 1961. The Supreme Court considering those circumstances held that restriction placed by 1961 Act is conditional and goes once loan of the society is cleared, and bar to sale under re-settlement act also disappears once permission of Government is obtained, as Sections 13 and 20 of the Act protect the right of the plaintiff, decree passed for specific performance cannot therefore be faulted. It was further held by the Supreme Court as follows:-

"....The onus to prove that the respondent had obtained signatures of the appellants on blank papers on the pretext of advancing a loan of Rs. 2,000/- was entirely upon the appellant. No evidence, much less cogent documentary and oral evidence was led by the appellants to discharge this onus. The averment has rightly been disbelieved and the plea was rightly rejected by the concerned Courts in the judgment under appeal. The appellants led no evidence and nothing was brought to our notice, even during the course of the hearing, to show that this plea could be accepted.."

20. Once the defendant has failed to prove that the suit agreement of sale is fabricated, all other defences taken by him such as readiness and willingness of the plaintiff and there is no requirement of selling the suit schedule property are all being supplementary, based on which, equitable relief of decreeing the suit cannot be refused to the plaintiff when it is otherwise legal



*and justified to do so. Be that as it may, the defendant has also not raised any issue on the price of the suit schedule property being Rs. 2 lac per acre. Though it was contended by the learned counsel for the defendant that there is considerable increase in prices of land, that cannot be a ground for denying the decree for specific performance and the defendant has also not chose to lead any evidence on that aspect. Therefore, it has to be construed that there is no grievance from the defendant that the suit schedule property is being taken away for a paltry consideration. As per the evidence, the suit agreement of sale entered into on 13-2-1993 and the time fixed for performance is one year. Time begins to run from the expiry of period fixed for performance i.e. from 13-2-1994 and the suit was filed within three years from 13-2-1994. The Supreme Court in **Mademsetty Satyanarayana v. G. Yelloji Rao** observed that delay in filing the suit itself should not disentitle grant of relief of specific performance.”*

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

“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The



effect of not cross-examining the witnesses has been considered by this Court in Bhoju Mandal v. Debnath Bhagat. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.

16. In **Maroti Bansi Teli v. Radhabai**, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in *A.E.G. Carapiet v. A. Y. Derderian* has laid down that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. A Division Bench of the Nagpur High Court in **Kuwarlal Amritlal v. Rekhlal Koduram** has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in **Karnidan Sarda v. Sailaja Kanta Mitra** has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the

aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.”” (Emphasis mine)

24. Learned counsel for the respondent is unable to controvert or dispute the above said facts, findings and/or the legal position.
25. Both the appeals, accordingly, stand **allowed** on merits; and suits of the plaintiff stand decreed for specific performance of the contracts dated 03.01.2006.
26. Pending application(s) if any also stand(s) disposed of.

30.10.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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