



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

RSA-4354-2014

Reserved on : 10.01.2025

Pronounced on : 30.01.2025

Harvinder Singh

..... Appellant

Versus

M/s Sanjay Ahuja and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Parminder Singh, Advocate
for the appellant.

Mr. Gaurav Rana, Advocate
for the respondents.

VIKRAM AGGARWAL, J

The plaintiff assails the judgment and decree dated 24.02.2014, passed by the Court of learned Additional District Judge, Ambala, dismissing the appeal filed by the plaintiff against the judgment and decree dated 25.09.2012, passed by the Court of learned Additional Civil Judge (Senior Division), Ambala vide which the suit for possession by way of specific performance filed by the plaintiff was dismissed.

2. For the sake of convenience and clarity, parties shall be referred as per their original status.

3. The plaintiff Harvinder Singh filed a suit for possession of plot measuring 70 feet x 48 feet (373 sq. yards) (fully described in the plaint), situated at Village Boh, Tehsil & District Ambala (hereinafter referred to as 'the suit property') by way of specific performance of the agreement to sell



dated 23.02.2003 with consequential relief of permanent injunction restraining the defendants from alienating the suit property.

4. The case, set up by the plaintiff, was that the suit property had been purchased by the defendants vide sale deed dated 05.09.1997. An agreement to sell was executed on 23.02.2003 vide which the defendants agreed to sell the suit property to the plaintiff. ₹35,000/- was paid as earnest money and the date for execution of sale deed was fixed as 03.05.2004. Certain terms and conditions were also laid down which included the completion of papers including jamabandi and mutation after which the sale deed was to be registered. However, as the land was not demarcated nor mutation was entered, the date for execution of the sale deed was extended to 31.05.2004. Since the documents had not been completed, a legal notice was served upon the defendants and as the sale deed was not executed even thereafter, the suit was filed. It was also averred that the plaintiff had always been ready and willing to perform his part of the agreement and had sufficient funds to get the sale deed executed but the defendants backed out. It would be relevant to mention here that the plaint lacked essential particulars, for, the total sale consideration was not mentioned in the plaint nor was the date of execution of the agreement to sell mentioned in the body of the plaint, though, it had been mentioned in the heading and prayer of the plaint. This Court, therefore, has no hesitation in holding that the plaint lacked material particulars and if one was to go strictly by law, no evidence beyond these pleadings could have been permitted.

5. Be that as it may, the suit was opposed by the defendants. The



basic stand which was taken was that the agreement to sell did not subsist as the plaintiff had not come forward for the execution of the sale deed on the relevant date as he was not possessing sufficient funds for the same. It was averred that the defendants had remained present at the office of Sub-Registrar, Ambala Cantt. for execution of the sale deed on 31.05.2004 but the plaintiff did not appear. The defendants then approached the plaintiff who sought 15 days time for execution of the sale deed which was verbally given to him and 16.06.2004 was fixed for the execution of the sale deed. On this date also, the defendants remained present before the Sub-Registrar, Ambala Cantt. but the plaintiff did not appear. Accordingly, notice dated 18.06.2004 was issued to the plaintiff and 12 more days were granted to him till 30.06.2004 for paying the balance sale consideration which was also not done despite the notice having been received. It was averred that the total sale consideration was ₹4,61,000/- and only a sum of ₹35,000/- as earnest money had been paid and balance amount of ₹4,26,000/- was to be paid.

6. It was averred that the suit had been filed only to harass the defendants since as per the agreement to sell, the rate was fixed as ₹1235/- per square yard whereas the market value of the suit property at the time of the filing of the suit was more than ₹3,000/- per square yard.

7. Replication was filed in which the contents of the written statement were denied and those of the plaint were reiterated.

8. From the pleadings of the parties, the following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to decree for possession of the suit land by way of specific performance of the agreement



dated 23.02.2003 as prayed for ? OPP

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

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

4. Whether the suit of the plaintiff is bad for mis-joinder of necessary parties ? OPD

5. Relief.

9. The parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiff holding that the plaintiff had not been able to prove that he had always been ready and willing to perform his part of the agreement. The appeal was also dismissed on the same ground leading to the filing of the present second appeal.

10. Learned counsel for the parties were heard.

11. Learned counsel representing the plaintiff submitted that both the Courts erred in dismissing the suit filed by the plaintiff despite cogent evidence having been led to prove his case. Learned counsel referred to the agreement to sell Ex.P1 wherein it was duly mentioned that prior to the execution of the sale deed, the defendants would get mutation effected in their name and that they would also be responsible to take the latest jamabandi. Learned counsel also referred to the endorsement dated 07.05.2004 made at the back of the agreement to sell wherein the date for execution of the sale deed was extended from 03.05.2004 to 31.05.2004 and it was duly mentioned that the same was being extended on account of demarcation. It was also mentioned that as soon as the demarcation was done, the sale deed would be executed.



12. Learned counsel further referred to the legal notice Ex.P2 which was issued by the plaintiff calling upon the defendants to refund a sum of ₹70,000/- being double the earnest money, failing which, he would proceed for specific performance of the agreement.

13. Learned counsel also referred to the draft Ex.PW3/A and the cheque Ex.PW3/C to contend that the plaintiff had always been ready and willing to perform his part of the agreement. Learned counsel also referred to the statements of witnesses and submitted that the reliable testimonies of the witnesses examined by the plaintiff were wrongly ignored and reliance was placed by the Courts upon the unreliable evidence led by the defendants. It was submitted that under the circumstances, the decision taken by both the Courts is not sustainable.

14. On the other hand, learned counsel for the defendants submitted that the plaintiff had not been able to prove that he had been ready and willing to perform his part of the agreement whereas the defendants were able to prove about their readiness and willingness. It was submitted that the defendants had gone to the office of the concerned Sub-Registrar even on 31.05.2004 and had marked their presence. Reference in this regard was made to the document Ex.D5.

15. Learned counsel also submitted that a close reading of the agreement would show that there was no condition as regards demarcation and there was only a condition regarding the mutation which was also a general condition. Reference was made to the mutation Ex.D4 and it was submitted that the mutation had already been sanctioned and, therefore, the



stand taken by the plaintiff that mutation had not been sanctioned and the already sanctioned mutation had been cancelled is devoid of merit.

16. As regards demarcation, learned counsel submitted that demarcation had also been done but could not point out to any document to prove the same. He submitted that in any case, demarcation was not such a thing without which the sale deed could not have been executed.

17. Learned counsel submitted that in fact, the plaintiff had never been ready and willing to perform his part of the agreement and that even the drafts etc. produced on record, do not inspire any confidence.

18. Learned counsel submitted that even legal notice Ex.D1 was issued calling upon the plaintiff to communicate in writing till 30.06.2004 about the payment of the balance consideration which also shows the intention of the defendants. It was submitted that in response to the said notice, notice Ex.P2 was issued in which refund of ₹70,000/- was claimed.

19. Learned counsel submitted that under the circumstances, no fault can be found with the judgments passed by both the Courts.

20. I have given my thoughtful consideration to the issue in hand. The question which would arise for the consideration of this Court would be as to whether the plaintiff had been ready and willing to perform his part of the agreement or not. If yes, would he be entitled to the relief of specific performance or would he be entitled to the alternative relief of refund of earnest money.

21. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab & Haryana, second appeals preferred are to



be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of *Pankajakshi (Dead) through LRs and others versus Chandrika and others (2016) (6) SCC 157* followed by judgments of the Supreme Court in the cases of *Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) 168* and *Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92*. Relying upon the law laid down in the aforesaid judgments, no substantial question of law is required to be framed and this Court shall proceed to answer the question which arises for consideration.

22. The execution of the agreement to sell dated 23.02.2003 (Ex.P1) is admitted. The suit land measuring 373 square yards was agreed to be sold @ ₹1235/- per square yard and a sum of ₹35,000/- was paid as earnest money. The date of execution of the sale deed was fixed as 03.05.2004. It was mentioned in the agreement to sell that within this period, the vendors could get the sale deed registered in anybody's name. It was also mentioned that the vendors would be responsible for getting the mutation executed and to get the copy of the jamabandi before the execution of the sale deed. Under the circumstances,, this appears to be a general clause and the execution of the sale deed did not hinge only upon this. Even otherwise, the mutation was produced on record as Ex.P4 showing that it had been executed as far back as on 18.04.1998. Though, it is the case of the plaintiff that the said mutation had been cancelled but no evidence to this effect was brought on record. It can, therefore, safely be concluded that the mutation had duly been effected



and the clause as regards the mutation in the agreement to sell was, therefore, a general clause.

23. As regards demarcation, no doubt, in the endorsement dated 07.05.2004 made at the back of the agreement to sell, it finds mention that demarcation would be done prior to the registration of the sale deed. However, again, even if demarcation had not been done, it was no ground to not get the sale deed registered because demarcation could have been done at any stage. Still further, demarcation was not an issue which could have been a hurdle in the execution of the sale deed.

24. Be that as it may, the defendants remained present at the office of the Sub-Registrar on 31.05.2004 for the execution of the sale deed which is clear from Ex.DX but the plaintiff has not produced on record any such evidence that he also remained present.

25. The matter does not end here. The defendants issued a notice dated 18.06.2004 Ex.D1 calling upon the plaintiff to arrange the balance sale consideration before 30.06.2004 so that the sale deed could be executed. It was also mentioned that in case, the said amount was not paid, the earnest money would be forfeited. It was duly mentioned in the legal notice that photocopy of the registered sale deed dated 05.09.1997 and copy of mutation No.1956 dated 18.04.1998 had been handed over to the plaintiff and that the suit land had also been shown physically and the measurements had been given to him (plaintiff) as per the sale deed at the site. A reply to the said legal notice was issued on 10.07.2004 (Ex.P4) in which it was mentioned that the mutation had been cancelled but no document was annexed. It has been



mentioned in the said reply that the plaintiff had gone to the office of Sub-Registrar on 31.05.2004. It was also stated in the reply that even on 30.06.2004, he had gone to the office of the Sub-Registrar with a pay order of ₹2,00,000/- but the defendants did not come. Notably, no reference to any demarcation was made in the reply. But it is quite strange that if the issue of mutation and demarcation was there, why the plaintiff went to the office of the Sub-Registrar, as claimed, but not proved, on 31.05.2004 as also on 30.06.2004. The plaintiff cannot be permitted to blow hot and cold in the same breath. He should either have said that the sale deed could not have been executed because of the non-sanctioning of the mutation and on account of demarcation not having been done or he should have said that he had always been ready and willing to perform his part of the agreement.

26. The documents Ex.PW3/A and Ex.PW3/C show that Ex.PW3/A is a draft dated 28.06.2004 for a sum of ₹2,00,000/- and Ex.PW3/C is a cheque dated 28.06.2004 in favour of 'yourself' for a sum of ₹2,00,400/-. A scrutiny of the same shows that Ex.PW3/A was a draft dated 28.06.2004 in favour of the defendants and the cheque Ex.PW3/C dated 28.06.2004 appears to have been given for preparation of the draft. This runs contrary to the legal notice Ex.P2 issued by the plaintiff on 22.06.2004 wherein the defendants were called upon to refund a sum of ₹70,000/- failing which specific performance of the agreement would be sought. Once the said legal notice had been issued, there was no occasion for the plaintiff to prepare a draft in the name of the defendants. Still further, readiness and willingness are two different things. Whereas readiness is the capacity of the plaintiff to



pay the sale consideration, willingness is the conduct of a party.

27. A cumulative analysis of the aforementioned facts and circumstances leads one to the conclusion that the plaintiff was not in fact ready and willing to perform his part of the agreement and, therefore, all other issues were raked up by him just with a view to wriggle out of the matter and get refund of his earnest money. There is another aspect of the matter. As per the agreement to sell, the sale deed was to be executed by 03.05.2004 and vide endorsement dated 07.05.2004, the date was extended to 31.05.2004. The suit was filed on 20.03.2007 i.e. few days short of 03 years from 31.05.2004. This also shows that the plaintiff was not actually ready and willing to perform his part of the agreement.

28. Recently, the Supreme Court of India has held in the case of *Pydi Ramana alias Ramulu versus Davarasety Manmadha Rao (2024) 7 Supreme Court Cases 515* that continuous readiness and willingness is a condition precedent to grant the relief of specific performance. It was held that where a suit for specific performance was filed on the verge of limitation coming to an end, the plaintiff would not be entitled to a decree of specific performance. In the case under reference, an agreement to sell was executed between the parties on 07.06.1993. Sale deed was to be executed within one year after getting the suit property surveyed. Since the sale deed was not executed, a legal notice dated 30.05.1996 was issued and ultimately, suit for specific performance was filed. Referring to Section 16 (c) of the Specific Relief Act, 1963, the Supreme Court of India held that for, the suit had been filed on 09.06.1997 after the agreement to sell having been executed on



07.06.1993 and sale deed was to be executed within one year, the long unexplained delay in not taking any reasonable steps, as is expected from a reasonable person, was itself sufficient to dis-entitle the plaintiff to an equitable relief. It was held that it was not in doubt that a suit for specific performance could be filed even on the last date of the limitation as prescribed under Article 54 of the Limitation Act. However, the steps taken by the plaintiff during this period namely from the date of the agreement till the filing of the suit would have to be explained in the plaint and proved in evidence;

“The ratio of the above judgment in all force would be applicable to the facts on hand in the instant case. The agreement of sale (Ex.A1) was executed on 07.06.1993 and the date fixed for execution of the sale deed was one year from the date of measurement of the suit schedule property. Undisputedly no such measurement was carried out and plaintiff has not raised his little finger in this regard from the date of execution of agreement till he got issued legal notice dated 30.05.1996 that is almost for a period of 3 years and suit came to be filed only on 09.06.1997 at the fag end of the expiration of the limitation. The long unexplained delay in not taking any reasonable steps as is expected from a reasonable person is itself sufficient to disentitle the plaintiff to an equitable relief. It is no doubt true that suit for specific performance can be filed even on the last date of the limitation as prescribed under [Article 54](#) of the [Limitation Act](#). However, the steps taken by the plaintiff during this period namely from the date of agreement till date of filing of suit will have to be explained in the plaint and



proved in the evidence which is lacking in the instant case.

20. The long unexplained delay and silence on the part of the plaintiff in this regard while in the witness box would not entitle the plaintiff to a decree of specific performance and it is for this precise reason, the trial court as noticed supra has refused to grant the equitable relief which has been reversed by the appellate court without assigning proper and cogent reason and the one assigned are at tangent or in other words contrary to the facts. The resultant effect of filing the suit for specific performance on the verge of limitation coming to an end came to be examined by this Court in the matter of Rajesh Kumar Vs. Anand Kumar and Ors⁶ and held that plaintiff would not be entitled to the equitable relief.”

29. Applying the facts of the present case, it would be seen that the agreement to sell was executed on 23.02.2003 and the sale deed was to be executed by 03.05.2004 which was extended to 31.05.2004. Apart from the communication in 2004 including the legal notice Ex.P2 which was also issued in June, 2004, no steps were taken till the filing of the suit on 20.03.2007 i.e. for almost three years. Accordingly, the plaintiff would also not be entitled to the relief of specific performance as has rightly been held by both the Courts. Still further, since it has been held that the plaintiff had not been ready and willing to perform his part of the agreement, there would be no question of the grant of the alternative relief as well including the relief of refund of earnest money.

30. If one views the entire matter in its entirety, the irresistible



conclusion that one arrives at is that there is no merit in the claim of the plaintiff and, therefore, both Courts committed no illegality by dismissing the suit filed by him. Accordingly, no interference is called for.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

Reserved on : 10.01.2025

Pronounced on : 30.01.2025

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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No