

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-5273-2014 (O&M)****Reserved on:11.02.2025****Pronounced on: 27.02.2025****KISHAN CHAND AGGARWAL AND ANOTHER****. . . .APPELLANTS****Vs.****BAL KRISHAN AND OTHERS****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present:- Mr. Amit Jain, Sr. Advocate, with
Mr. Aryaman Thakur, Advocate, for the appellants.

Mr. S.K. Garg Narwana, Sr. Advocate, with
Mr. Vishal Garg Narwana, Advocate, and
Mr. Nitin Sachdeva, Advocate, for the respondents.

DEEPAK GUPTA, J.

Plaintiffs of this case have approached this Court by way of the present Regular Second Appeal against the judgment dated 21.08.2014 of the First Appellate Court, dismissing the appeal against judgment & decree dated 05.10.2011 of the trial Court, whereby suit filed by the plaintiffs (*appellants herein*) for specific performance of agreement to sell dated 16.03.2005 was dismissed.

2. In order to avoid confusion, parties shall be referred as per their status before the Trial Court. Trial Court record was called and the same has been perused.

3.1 Being owners of 33 kanal 12 marla of the suit land, detailed in para No.1 of the plaint, defendants (*respondents herein*) agreed to sell the same to the plaintiffs vide agreement dated 16.03.2005 Ex.P1 at the rate of ₹14,70,000/- per acre i.e. for total sale consideration of ₹61,74,000/-. An amount of ₹10 lakh was received by the defendants as earnest money vide a separate receipt Ex.P2. The sale deed was agreed to

be executed on 18.07.2005 in favour of plaintiffs or their nominee on receipt of the balance sale consideration. Usual default clauses were also incorporated in the agreement.

3.2 As pleaded by the plaintiffs, they were always ready & willing and still ready & willing to perform their part of contract. They contacted the defendants and requested them several times to perform the contract in question and offered them necessary amount for purchase of stamp papers and incurring registration charges and told them that balance sale consideration of ₹51,74,000/- was with them. Plaintiffs also requested defendants to come in the office of Sub Registrar, Palwal on 18.07.2005 i.e. the date stipulated for execution and registration of the sale deed. It was pleaded further that plaintiff No.2-Rakesh Gupta reached the office of Sub Registrar, Palwal on 18.07.2005 along with necessary amount for stamp papers and registration charges etc. and also with the balance consideration of ₹51,74,000/-, but defendants did not turn up in the office of Sub Registrar. After waiting for the defendants for full office hours, Plaintiff No.2-Rakesh Gupta got his presence marked in the office of Sub Registrar, by getting an affidavit executed in this regard from Executing Magistrate. Plaintiffs later on also got served a legal notice dated 06.10.2005 Ex.P20 upon the defendants through their counsel, but defendants No.1 to 3 deliberately did not receive the same and made the false endorsement of incorrect address. With these averments, plaintiffs brought the present suit on 27.02.2006 seeking specific performance of the agreement to sell.

4.1 In their written statement, the defendants do not dispute the execution of the agreement to sell or the receipt of ₹10 lakh as earnest money. However, they challenge the plaintiffs' readiness and willingness to perform their part of the contract.

4.2 The defendants pleaded that as per the agreement, they were required to demolish the factory building on the suit land, which they did at an expenditure of ₹4 lakh. They further claimed that on

18.07.2005, they appeared at the office of the Sub-Registrar, Hodal, to execute the sale deed in favour of the plaintiffs or their nominee and waited until office hours, but the plaintiffs or their representatives failed to appear. According to the defendants, the plaintiffs were unable to arrange the balance sale consideration of ₹51,74,000/- before the stipulated date, as they could not find a buyer for the suit land. The defendants deny that the plaintiffs ever offered the remaining sale consideration before 18.07.2005 and allege that the affidavit was procured by the plaintiffs in collusion with the Executive Magistrate. Since the plaintiffs failed to turn up for the registration of the sale deed, the defendants claim to have served a legal notice dated 03.08.2005, which the plaintiffs refused to accept.

4.3 The defendants also plead that time was of the essence of the contract, as they had entered into an agreement on 18.05.2005 to purchase land measuring 9 kanal 2 marla from one Kamruddin, son of Jumma, in Tehsil and District Faridabad. They had paid ₹6 lakh as earnest money, with the remaining ₹34 lakh due by 18.08.2005. However, due to the plaintiffs' failure to perform their contractual obligations, the defendants could not complete their transaction with Kamruddin, resulting in the forfeiture of their ₹6 lakh earnest money and causing them financial loss.

4.4 It is pleaded further that as a result of the plaintiffs' non-performance, the earnest amount of ₹10 lakh stood forfeited, and the agreement was deemed cancelled.

4.5 With this position, while disputing other assertions made by the plaintiffs, the defendants pray for the dismissal of the suit.

5. Necessary issues were framed. Evidence produced by the parties was taken on record. On appreciation of evidence produced on file, the trial Court reached to the conclusion that plaintiffs failed to prove their readiness and willingness to perform their part of contract. With this

finding on the material issue, the suit was dismissed vide judgment dated 05.10.2011. The appeal filed by the plaintiffs was dismissed by the First Appellate Court on 21.08.2014, thus endorsing the findings of the trial Court.

6.1 Assailing the aforesaid concurrent findings returned by the Courts below, it is contended by learned Sr. advocate for the appellants/plaintiffs that both the Courts below have failed to appreciate the evidence on record in right perspective.

6.2 It is argued that as per the agreement to sell, plaintiffs could get the sale deed executed in favour of themselves or their nominee. Plaintiffs wanted to get the sale deed executed in favour of M/s KR Packaging Private Limited, a company owned by the family members and it is for this reason that plaintiffs had purchased stamp papers for an amount of ₹18 lakh in the name of said M/s KR Packaging Pvt. Ltd. on 18.07.2005 i.e. the target date fixed for execution and registration of the sale deed. Demand drafts of ₹3 lakh each in favour of the six defendants were got prepared from the bank on the same date and that plaintiff No.2-Rakesh Gupta along with those bank drafts had appeared in the office of Sub Registrar, Hodal on 18.07.2005 and got his affidavit attested from the Executive Magistrate but defendants did not turn whole of the date.

6.3 To substantiate this contention, appellants-plaintiffs also moved an application under Order 41 Rule 27 CPC bearing CM-609-C-2025 to place on record information received through RTI regarding purchase of stamp paper and refund of the cancellation thereof. Copy of draft sale deed got prepared by the plaintiffs is also sought to be placed on record.

6.4 Assailing the findings of the Courts below to the effect that plaintiffs were not having the financial capacity to pay the balance sale consideration, learned Sr. Advocate for the appellants has drawn

attention towards statement of bank accounts of both the plaintiffs, their respective wives and their respective HUFs as Ex.P13 to P19, which would reveal that in all, there was an amount of more than ₹1.15 crore in their bank accounts, which was more than sufficient to meet out the obligation to pay the balance sale consideration to the defendants. It is argued that it was not required for the plaintiffs to prove the ready cash with them and rather, they were required to prove their financial capacity so as to make payment of the balance sale consideration to the defendants.

6.5 Assailing the finding of the trial Court to the effect that there was no reference in plaint regarding getting the demand drafts of ₹18 lakh prepared in the name of the defendants, it is contended that as per Order 6 Rule 2 CPC, evidence need not be pleaded. Still further it is argued that there is no evidence on the part of the defendants to show their presence in the office of Sub Registrar on 18.07.2005, the date fixed in the agreement for getting the sale deed executed.

6.6 Lastly, it is argued that agreement (Ex.DW2/1) has been got manipulated by the defendants to show the time as essence of contract, as this agreement was allegedly got executed by the defendants after the agreement dated 16.03.2005 (Ex.P1) in question.

6.7 In support of his contentions, Id. counsel has relied upon ***M/s J.P. Builders and another Vs. A. Ramadas Rao and another, 2011(1) SCC 429, Managing Director, TNSTC Vs. Suguna and others, 2009(2) RCR (Civil) 122 and Sukhbir Singh and others Vs. Brij Pal Singh and others, JT 1996 (6) SC 389.***

6.8 With above submissions, Id. Senior advocate prayed to set aside the impugned judgments passed by the Courts below and to decree the suit for specific performance of the appellants, by allowing this appeal.

7.1 Refuting the aforesaid contentions, Id. Sr. Advocate appearing for the respondents-defendants contends that though sale

deed could be got executed in the favour of nominee of the plaintiffs, but in this case, plaintiffs allegedly wanted to get the sale deed executed in favour of a company named M/s KR Packaging Pvt. Ltd. but plaintiffs failed to produce any resolution of the said company so as to purchase the land.

7.2 Drawing attention towards the draft sale deed and the copy of the stamp papers sought to be produced by the plaintiffs-appellants, it is argued that sale consideration mentioned therein is shown to be ₹18 lakh, although the total sale consideration as per the agreement to sell is ₹61,74,000/- and balance amount of ₹51,74,000/- was still payable after adjusting the earnest money. There is no reference of the agreement to sell in the draft sale deed.

7.3 It is further pointed out that affidavit (Ex.P3) placed on record by the plaintiffs is that of Rakesh-plaintiff No.2, but said Rakesh has not entered in the witness box to prove his presence in the office of Sub- registrar on 18.7.2005, whereas PW-Kishan Chand Aggarwal, the other plaintiff could not prove the said affidavit. It is argued that Id. courts below have rightly ignored the said affidavit. It is further argued that plaintiffs might have the financial capacity to pay the balance consideration, but they were not at all willing to get their part performed in pursuant to the agreement to sell.

7.4 Contending that there is no scope for interference in the concurrent findings of facts recorded by the Courts below, Id. Sr. Advocate for the respondents has prayed for dismissal of the appeal.

8. This Court has considered submissions of both the sides and has appraised the record carefully.

9. As per agreement to sell (Ex.P1), plaintiffs could get the sale deed executed either in their favour or in favour of their nominee. As per pleaded case of the plaintiffs, they wanted to get the sale deed executed and registered in favour of M/s KR Packaging Pvt. Ltd., a private limited

company owned by their family members. Ex.P5 is the certificate of incorporation of the said company revealing that Manish Gupta son of plaintiff-Kishan Chand, and Swati Gupta wife of plaintiff-Rakesh Gupta are the directors of the said company. Company incorporated under the Companies Act is a separate legal entity. In case, sale deed was to be executed in favour of the said company, it was required for the company to pass a resolution to that effect. However, plaintiffs have failed to plead or produce any such resolution in favour of M/s KR Packaging Pvt. Ltd. to get the sale deed executed in its favour.

10. Further, plaintiffs have been mainly non-suited on account of lack of their readiness and willingness to get the sale deed executed in terms of the agreement to sell. Concurrent finding of the Courts below to this effect is found to be correct on appreciation of evidence.

11. Although Id. Sr. Advocate for the appellants/plaintiffs has tried to convince this Court that there was an amount of more than ₹1.15 crore in the six saving accounts i.e. that of the two plaintiffs, their respective wives and their respective HUFs as per Ex.P14 to P19, but it is found that Id. counsel is referring to the amount, which was lying in these accounts at the end of the month of July 2005. The Court is required to see the amount available with the plaintiffs as on 18.07.2005, the target date fixed for execution and registration of the sale deed. Perusal of Ex.P14 to P19 would reveal that as on 18.07.2015, following amounts were lying in the respective bank accounts of the plaintiffs and their family members

Ex.P14	Kishan Chand	₹2,35,698
Ex.P15	KC Gupta HUF	₹69,053
Ex.P16	Rakesh Gupta	₹4,32,831
Ex.P17	Rakesh HUF	₹30,339
Ex.P18	Swati Gupta	₹1,79,557
Ex.P19	Suman	₹1,03,262

TOTAL	₹10,50,740
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12. Thus, it is apparent from the aforesaid statements of the bank accounts of the plaintiffs and their family members that as on 18.07.2015, hardly an amount of approximately ₹10.5 lakh was available with them. The balance sale consideration, which was liable to be paid by the plaintiffs to the defendants was ₹51,74,000/-. Plaintiffs placed on record the evidence that they got prepared demand drafts of ₹3 lakh each in favour of the six defendants i.e. total ₹18 lakh from the account of M/s KR Packaging Pvt. Ltd.. Even if this amount is taken into consideration, it will come out to be total amount of ₹28.5 lakh approximately. Plaintiffs have absolutely failed to produce cogent evidence that they were having sufficient funds or had the financial capacity to pay the entire balance sale consideration on 18.07.2005 apart from the amount required for payment of stamp charges and registration charges.

13. No doubt that as per the authorities relied by Id. counsel for the appellants, plaintiffs are not required to show the ready cash available with them, but at the same time, they are certainly required to prove before the Court that they not only had the financial capacity to pay the balance sale consideration but were also ready and willing to do so. Plaintiffs in this case have utterly failed to prove their financial capacity to pay the balance sale consideration on the last date fixed for execution of the sale deed.

14. Still further, it is claimed by the plaintiffs that on 18.07.2005, plaintiffs went to the office of Sub Registrar, Hodal along with the necessary amount for purchasing stamp papers and balance sale consideration for getting the sale deed executed. However, as per pleadings, it is Rakesh Gupta-Plaintiff No.2, who had gone to the office of Sub Registrar, Hodal. The legal notice (Ex.P20), which was later on sent by the plaintiffs to defendants would also reveal that they had pleaded only about the presence of Rakesh Gupta in the office of Sub Registrar, Hodal

on 18.07.2005 for himself and on behalf of other plaintiff. Contrary to the said pleadings, as per the testimony of PW3-Satyadev Sharma, he along with plaintiff-Kishan Chand Aggarwal, had gone to the office of Sub Registrar, Hodal on 18.07.2005 and that they were only two persons in the car. There is no reference of Rakesh Gupta having gone to the office of Sub Registrar, Hodal on that date. Rakesh Gupta-Plaintiff No.2 having not entered in the witness box, Id. courts below have rightly ignored the affidavit Ex.P3 which is purported to be executed by Rakesh Gupta. Even no official from the office of Sub Registrar, Hodal was examined so as to prove said affidavit.

15. Still further, though plaintiffs claimed that they had appeared in the office of Sub Registrar, Hodal on 18.07.2005 and defendants did not turn up, but as per the cross examination of PW2-Kishan Chand Aggarwal, one of the plaintiffs, he did not personally know any of the defendants. He also stated that he had never met the defendants. DW3-Ram Kumar the witness examined by the defendants also deposed that agreement was entered between the parties through a mediator namely Sh. Satyadev Sharma, who was examined by the plaintiffs as PW3. Even the earnest money of ₹10 lakh had been paid by the plaintiffs to the defendants through Sh. Satyadev Sharma only. It is also admitted by DW3 that he did not recognize plaintiffs.

16. In the abovesaid circumstances, when plaintiffs and defendants had never met face to face with each other, it is hard to believe that plaintiffs had ever made request to the defendants to get the sale deed executed or that they waited for the defendants and found that defendants had not turned up on 18.7.2005.

17. Further, appellants sought to produce additional evidence under Order 41 Rule 27 CPC in the form of Annexures A1/1 to A1/4 in order to show that on 18.07.2005, they had purchased stamp papers of ₹1,51,200/- for getting the sale deed executed in terms of the agreement. The stamp papers were issued from office of Sub Registrar,

Hodal, in favour of M/s KR Packaging Pvt. Ltd. on 18.07.2005 and after 10% deduction, an amount of ₹1,36,080/- was refunded to M/s KR Packaging Pvt. Ltd. through Munish Aggarwal on 06.03.2006.

18. In this regard, it is liable to be noticed and as also observed by the Courts below that neither in the plaint nor in the legal notice (Ex.P20), plaintiffs have made any reference that they had purchased stamp papers for sale consideration of ₹18 lakh on 18.07.2005 and had returned the same later on. It was a matter of fact and not a matter of evidence and so, it was required to be pleaded.

19. However, even if the above said fact is ignored and it is taken into consideration that appellants had actually purchased stamp papers of ₹1,51,200/- for getting the sale deed executed, but perusal of the draft sale deed Annexure A/3 placed on record, would reveal that total consideration to purchase the suit land is shown to be ₹18 lakh and not ₹61,74,000/-, which was agreed in the agreement Ex.P1. There is no reference of agreement to sell in Annexure A/3. Appellants have utterly failed to convince this Court as to when out of the total sale consideration of ₹61,74,000/-, ₹10 lakh had been paid and ₹51,74,000/- was still required to paid as balance, how the draft sale deed was got prepared showing the total sale consideration of ₹18 lakh only.

20. Contention of Ld. Counsel that the appellants wanted to get the sale deed executed at the Collector rate only is absolutely not convincing in the absence of any pleading or evidence to that respect.

21. As such, even if the additional evidence sought to be adduced by the appellants, is taken into consideration, it does not advance the case of the appellants-plaintiffs any further.

22. Having considered aforesaid facts and circumstances, this Court does not find any illegality and perversity in the findings recorded by the Courts below to the effect that plaintiffs have failed to prove their readiness or willingness to perform their part of contract.

23. Consequently, there is no scope to interfere in the well reasoned concurrent findings of facts recorded by the Courts below. As such, holding the present appeal to be devoid of any merit, the same is hereby dismissed.

27.02.2025

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>