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

**RSA-4989-2017 with**
**COCP-2349-2019 (O&M)**
**Judgment reserved on 20.08.2025**
**Judgment pronounced on 16.09.2005**

**SANDEEP KUMAR ... APPELLANT**

**VERSUS**

**VIDYA PARKASH ...RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Abhilaksh Grover, Advocate
for the appellant.

Mr. Chetan Jain, Senior Advocate with
Mr. Chetan Slathia, Advocate
for the respondent.

****

**PARMOD GOYAL, J.**

1. The appellant-defendant is aggrieved by the impugned judgment and decree dated 24.08.2017 passed by the District Judge, Yamuna Nagar, whereby appeal filed by the plaintiff-respondent was allowed. As a result, the judgment and decree dated 03.03.2014 passed by Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri dismissing the suit of the plaintiff, was set-aside and suit of plaintiff-respondent was decreed.

2. The plaintiff had preferred a suit for specific performance of agreement to sell dated 29.12.2001, along with the prayer for symbolic possession of the land. The case of the plaintiff-respondent was that Ghanshyam Dass, father

of defendant, had executed an agreement to sell dated 29.12.2021 for sale of land measuring 4 Bighas, out of a total land measuring 9 Bighas 7 Biswas, situated in village Tejli as described in the plaint.

3. Additionally, the plaintiff had sought a decree for permanent injunction to restrain the defendants from interfering in the actual, physical and peaceful possession of the Plaintiff over the suit land, and from alienating, creating any charge upon, or transferring the same to any third person. It was further stated that the father of defendant had passed away on 25.12.2006, and on the basis of Will dated 22.02.2003, the defendant has inherited the suit property as its sole owner.

4. It was asserted that agreement to sell dated 29-12-2001 was executed by Ghanshyam Dass for total sale consideration of Rs. 20,00,000/-, out of which Rs.2,00,000/- was paid as earnest money. The target date for execution and registration of the sale-deed was mutually agreed to be 31.05.2002. Since the suit land stood acquired and Ghanshyam Dass had already received the compensation amount, it was further agreed that the Plaintiff would be responsible for getting the suit land exempted from acquisition and thereafter he shall be bound to pay amount of execution received by Ghanshyam Dass to State Government. It was also agreed that in the event Ghanshyam Dass failed to execute the sale-deed, the Plaintiff would have the right to get sale-deed executed and registered in his favour or in favour of his nominee through the Court of law.

5. At the time of execution of the agreement to sell, possession was handed over to Plaintiff, and amount of Rs. 1,00,000/- was paid as further earnest money. Subsequently, on 08.09.2002, Ghanshyam Dass received a sum of Rs.13,00,000/-, by endorsing a receipt on the reverse side of the agreement, in the

presence of attesting witnesses. It was further asserted that on 09.09.2002, another amount of Rs. 4,00,000/- was paid to Ghanshyam Dass against valid receipt. Thus, by 09.09.2002, the entire consideration of Rs.20,00,000/- stood fully paid. It was also averred that after receipt of the full consideration, Ghanshyam Dass executed a Special Power of Attorney dated 17.09.2002 in favour of the plaintiff, thereby authorizing him to deal with the property in any manner whatsoever.

6. It was asserted that the Plaintiff had deposited the compensation amount of Rs. 4,60,000/- with the Haryana Government and consequently got the suit land released from acquisition. Thereafter, the plaintiff requested Ghanshyam Dass to execute the sale deed, but he kept deferring the matter on one pretext or the other. In December 2006, Ghanshyam Dass had died and thereafter, the defendant, who was equally evasive, also avoided execution of the sale deed on different pretexts. It was consistently asserted that the plaintiff has always been ready and willing to perform his part of the agreement.

7. In written statement, the defendant denied the execution of any agreement to sell by his father. It was asserted that the alleged agreement is false, fabricated and result of collusion. It was further alleged that the plaintiff, being property minded, has connived with the witnesses to create a false agreement. It was contended that the market value of the land was around Rs. 1 crore, and therefore, no one would have agreed to sell it for Rs. 20,00,000/-. The defendant further stated that, even if the signatures of his father are proven, the same must have been obtained by the plaintiff on account of fraud or misrepresentation. It was admitted that land was acquired and compensation was paid; however, it was stated that the acquisition proceedings were quashed by the Punjab and Haryana High Court in year 1992. The defendant also denied that the plaintiff had ever

repaid any compensation amount to the Government. It was specifically asserted that possession of the suit land was never delivered to the Plaintiff. Additionally, it was contended that there is no way to land comprising Khasra No. 626, 628 and 629, and hence, the plaintiff's claim regarding delivery of possession is false and baseless.

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

*"1A Whether Ghanshyam Dass father of defendant had executed the agreement for sale dated 29.12.2001 for a sale consideration of Rs.20,00,000/- in favour of the plaintiff? OPP*

*1. Whether plaintiff has always been and is still ready and willing to perform his part of contract? OPP*

*2. If issue No.1 is proved in affirmative, then whether plaintiff is entitled to symbolic possession of the suit property by way of specific performance of the agreement to sell dated 29.12.2001? OPP*

*3. Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPD*

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

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

*5A. Whether suit of the plaintiff is barred by limitation? OPD*

*6. Relief."*

9. I have heard arguments and with the able assistance of learned counsels for parties, has perused the record.

10. In the present case, both the Courts below have concurrently held that the agreement to sell dated 29.12.2001 (Ex. P-1), as well as the receipts pertaining to the payment of sale consideration i.e. Ex. P-2 dated 29.12.2001 for ₹2,00,000/-

Ex. P-3 dated 10.03.2002 for ₹1,00,000/-, Ex. P-4 dated 08.09.2002 for ₹13,00,000/-, Ex. P-5 dated 09.09.2002 for ₹4,00,000/- and Ex. P-6 General Power of Attorney dated 17.09.2002 were duly executed by Ghanshyam Dass, father of the defendant-appellant.

11. The learned counsel for the defendant-appellant has tried to challenge the concurrent findings recorded by both the Courts below. However, upon careful consideration, I do not find any reasons to deviate from the findings recorded by Courts below as regards to validity of agreement to sell dated 29.12.2001 and the corresponding receipts dated 29.12.2001, receipts dated 29.12.2001, 10.03.2002, 08.09.2002 and 09.09.2002 showing payment of entire consideration amount of Rs. 2,00,00,000 as settled between buyer (plaintiff) and the seller Ghanshyam Dass.

12. The due execution of the General Power of Attorney (Ex. P-6) has also been accepted by both the Courts below. Learned Court of first instance as well as learned Appellate Court has found that general power of attorney was duly executed by Ghanshyam Dass in favour of the plaintiff and that it bears signatures of Ghanshyam Dass. However, the Appellate Court excluded the document from consideration on the ground that it was executed at Saharanpur, showing Ghanshyam Dass as a temporary resident of a village where he had never actually resided.

13. On consideration, I find that the Courts below have rightly held that it was Ghanshyam Dass, who executed agreement to sell dated 29.12.2001 along with the corresponding receipts dated 29.12.2001 and receipts dated 29.12.2001, 10.03.2002, 08.09.2002 and 09.09.2002. Even on a thorough examination of the evidence led by both the parties, no contrary view from that taken by the Courts

below is warranted. Plaintiff to prove due execution of agreement as well as receipts showing payment of entire consideration amount and general power of attorney executed by Ghanshyam Dass, had stepped into witness box as PW3 and also examined both the attesting witnesses. PW-2 and PW-4, the attesting witnesses, duly deposed regarding the execution of the agreement on 29.12.2001, and specifically stated that Ghanshyam Dass and the plaintiff had signed the agreement in their presence after fully understanding the contents. No material could be shown from cross-examination of these witnesses to cast doubt on the due execution of the agreement to sell or the related receipts evidencing payment of the consideration amount, exhibited as Ex. P-2 to Ex. P-5.

14. Similarly general power of attorney stands proved by the plaintiff by examining himself as well as its attesting witnesses i.e. PW-3 and PW-5. Both of whom deposed that they had duly witnessed the due execution of power of attorney by Ghanshyam Dass. Both the Courts below have duly noted that the photograph of Ghanshyam Dass was not only affixed on the power of attorney but also in the relevant register and that the same bore his cross-signature across the photograph. It is worth noticing that PW-5, Shri M.L. Bansal, Advocate who was a witness to the execution of the general power of attorney was also one of the attesting witnesses to Will executed by Ghanshyam Dass on 22.02.2003 in favour of his son, i.e., the defendant-appellant. Defendant-appellant is claiming suit property on basis of will dated 22.02.2003.

15. Furthermore, not only the attesting witnesses have been duly examined but the plaintiff has also proved the signatures of Ghanshyam Dass by examining a handwriting expert as PW-6. The handwriting expert corroborated the signatures of Ghanshyam Dass by comparing them with his admitted

signatures. Thus, the evidence of the plaintiff, the attesting witnesses as well as handwriting expert, when read cumulatively, conclusively proves the due execution of documents Ex. P-1 to Ex. P-6 (agreement to sell, receipts showing payment of entire consideration amount and power of attorney) by Ghanshyam Dass. Therefore, from aforesaid facts and evidence on record, it stands proved that agreement to sell, receipts & power of attorney were duly executed by Ghanshyam Dass.

16. I do not find any merit in the contention of the learned counsel for the appellant that, in the absence of the evidence of scribe or the stamp vendor, who sold the stamp paper, the due execution of the documents is not proved. It is a well-settled principle of law that it is not the quantity but the quality of evidence that matters. In the present case, attesting witnesses have consistently deposed regarding the due execution of the documents Ex. P-1 to Ex. P-6. Nothing has been brought on record either through cross-examination or by leading any independent evidence to discredit or render their testimony untrustworthy. The defendant has taken the stand that the documents relied upon by the plaintiff are forged and fabricated. However, the initial onus upon plaintiff stood discharged to prove Ex. P-1 to Ex. P-6 and thereafter onus was upon defendant to prove fraud, however, except for oral assertions by defendant himself as DW-1, no evidence was led as to raise any doubt over due execution of Ex. P-1 to Ex. P-6 (agreement to sell, receipts showing payment of entire consideration amount and power of attorney).

17. Therefore, I do not find any error in the conclusions drawn by the learned Courts below. Once the learned Appellate Court had accepted due execution of general power of attorney, it could not have taken it out of

consideration, merely on the ground that Ghanshyam Dass had got it registered at Saharanpur instead of Yamuna Nagar. It is worth noticing that Saharanpur is not very far away from Yamuna Nagar, it is just 40 kilometers from Yamuna Nagar. Judicial notice of this fact can be taken by this court. There is no evidence to doubt due execution of Ex. P-1 agreement to sell, receipts Ex. P-2 to Ex. P-5 and general power of attorney Ex. P-6 executed by Ghanshyam Dass.

18. Learned counsel for the appellant has attempted to dislodge the case of plaintiff-respondent on the ground that plaintiff failed to prove his readiness and willingness to perform his part of the contract, particularly for not producing any receipt for payment of Rs.4,60,000/- allegedly deposited with the Government, and for failing to produce the draft sale-deed, which he claims to have prepared on 08.03.2006. However, the readiness and willingness of a party to perform a contract is a matter to be determined in light of the facts and circumstances of each individual case. There is no straitjacket formula for proving readiness and willingness, nor can it be determined merely by the physical presence of a party at the office of the Sub-Registrar. Failure to produce the draft sale deed which plaintiff claims to have prepared on 08.03.2006 and failure to show payment of Rs. 4,60,000/- to State Govt. by themselves cannot be sufficient to hold lack of willingness on the part of the plaintiff when entire consideration stood paid on 09.09.2002, possession of property stood transferred to plaintiff-respondent and purchaser-plaintiff was given liberty to deal with property as he likes by way of General Power of Attorney.

19. It is a cumulative conclusion, based on the overall facts and circumstances of the case, whether the plaintiff–purchaser was ready and willing to perform his part of the agreement. In the present case, it is proved that the

agreement to sell was entered into on 29.12.2001, with the last date for execution of the sale deed fixed as 31.05.2002. However, in the meantime, on 10.03.2002, an additional amount of ₹1,00,000/- was paid by the plaintiff, against which receipt Ex. P-3 was executed. Subsequently, the balance sale consideration of ₹17,00,000/- was paid on 08.09.2002 and 09.09.2002, in two installments of ₹13,00,000/- and ₹4,00,000/- respectively. It is, therefore, clearly established that the entire sale consideration was paid by the plaintiff-respondent by 09.09.2002. When entire considerations stood paid on 09.09.2002 there was nothing which plaintiff was to perform as his part of the agreement. Defendant has nowhere pleaded and proved that he had paid the compensation back to Government. Rather, his case is that agreement is forged. Once defendant has denied execution of agreement & thereafter the agreement and payment of full consideration is established, readiness and willing on the part of the plaintiff stands proved.

20. It is also proved that upon receipt of the entire sale consideration, possession of the suit property was handed over to the plaintiff. Furthermore, Ghanshyam Dass, the predecessor-in-interest of the defendant, executed a General Power of Attorney in favour of the plaintiff, conferring upon him all rights to deal with the property as he deemed fit. These facts are of material significance and must be appreciated in the proper context.

21. It is also relevant to note that the suit property had been acquired by the Haryana Government, and compensation for the same had already been paid to Ghanshyam Dass. The agreement was subject to the release of the property from acquisition, upon which the sale deed was to be executed. Moreover, vide order dated 25.11.2003 passed by the learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri, Ghanshyam Dass was restrained and

directed to maintain status quo with respect to alienation and possession of the suit property.

22. Upon cumulative consideration of all the aforementioned facts, it clearly emerges that the plaintiff had duly performed all acts required of him under the agreement to sell. The execution of the registered sale deed could only have been completed with the cooperation and willingness of the seller. The plaintiff has specifically asserted that he made efforts to have the sale deed executed on 08.03.2006 by purchasing the necessary stamp papers. Merely because the original draft of the sale deed was not produced before the Court, it cannot be inferred that the plaintiff was not ready and willing to perform his part of the contract in light of facts noticed above.

23. It was the duty of the seller, Ghanshyam Dass, to execute the sale deed, which he failed to do during his lifetime. There is no evidence on record to suggest that Ghanshyam Dass was ever ready and willing to execute the sale deed, or that the plaintiff had in any manner resiled from his obligation or avoided the execution and registration of the sale deed in his favour. On the contrary, the evidence on record supports the plaintiff's consistent readiness and willingness to perform the contract.

24. Therefore, there remains no doubt, as rightly held by the Courts below, that the plaintiff was ready and willing to perform his part of the contract. The only substantial question of law which arises in the present case is whether the suit is within limitation. The suit was filed on 15.12.2007, whereas the agreement to sell is dated 29.12.2001 and the last date fixed for execution of the sale deed was 31.05.2002. Hence, it is the case of the defendant-appellant that the suit is barred by limitation, having been instituted beyond the prescribed period

of three years under Article 54 of the Limitation Act, 1963.

25. In support of his case, appellant-defendant has relied upon judgments titled as ***Usha Devi and others Vs. Ram Kumar Singh and others,*** *Civil Appeal No. 8446 of 2024, decided on 05.08.2024* and ***Sabbir (dead) Through LRs Vs. Anjuman (since deceased) through Lrs.,*** *Civil Appeal No. 6075 of 2023, decided on 22.09.2023.*

26. Whereas respondent-plaintiff has relied upon judgments in ***Balasaheb Dayandeo Naik (Dead) through LRs and others Vs. Appasaheb Dattatraya Pawar,*** *2008 AIR SC 1205*, ***Bahadur Singh Vs. M/s Kartar Coloniser Pvt. Ltd,*** *2021 (1) RCR (Civil) 739*, ***Parnam Balaji and another Vs. Bathina Venkatramayya and another,*** *1988 AIR Andhra Pradesh 250*, ***Silvey and others Vs. Arun Vargese and another,*** *2008 AIR SC 1568*, ***and Lal Chand Vs. Tek Chand,*** *2012 (3) PLR 736*. Principle of law stated in judgements referred by both sides are not in doubt it is their applicability in present case which needs to be seen.

27. Article 54 of the Schedule to the Limitation Act, 1963 would be applicable to present case. It is not in doubt that if the date is fixed for the performance of an agreement, then on non-compliance, last date so fixed would give cause of action to file a suit for specific performance within three years from the date so fixed. However, when no such date is fixed, the limitation of three years would begin when the purchaser has the notice that the seller has refused the performance of the agreement. Similarly, when time is extended after last date fixed for execution of sale deed by the parties impliedly or expressly then limitation would be as per new date fixed and if no new date fixed then from date when the purchaser has the notice that the seller has refused the performance of

the agreement.

28. Ld. Court of instance has taken start of three years of limitation from 31.05.2002 and held suit to be barred by limitation. Whereas Ld. First Appellate Court took in consideration subsequent events and concluded suit for specific performance to be within limitation. On consideration, I find that ld. Court of First instance has erred by taking 31.05.2002 as start of three years of Limitation. It had failed to take note of the fact that while fixing the date, it was agreed that the sale deed will be executed and registered after the release of the land from acquisition. Therefore, the date 31.05.2002 could not be taken to be the date fixed for the performance. The performance of the agreement was dependent on the release of the land from acquisition. It is worth noticing that after 31.05.2002 last date fixed under the agreement, part payments firstly of on 10.03.2002, then on 08.09.2002 and finally, on 09.09.2002 were made. Ghanshyam Dass by his subsequent conduct of accepting part payment/balance consideration, by giving possession and by executing General Power of attorney, even after the lapse of the fixed date, extended the time for performance. In **S. Brahmanand Vs. K.R.Muthugopal,** 2005 (12) SCC 764, Hon'ble Supreme Court had held as under :

> "Thus, this was a situation where the original agreement of 10.3.1989 had a "fixed date" for performance, but by the subsequent letter of 18.6.1992 the Defendants made a request for postponing the performance to a future date without fixing any further date for performance. This was accepted by the Plaintiffs by their act of forbearance and not insisting on performance forthwith. There is nothing strange in time for performance being extended, even though originally the agreement had a fixed date. Section 63 of the Indian Contract Act, 1872 provides that every promisee may extend time for the performance of the contract. Such an agreement to extend time need

not necessarily be reduced to writing, but may be proved by oral evidence or in some cases, even by evidence of conduct including forbearance on the part of the other party. Thus, in this case there was a variation in the date of performance by express representation by the Defendants, agreed to by the act of forbearance on the part of the Plaintiffs. What was originally covered by the first part of Article 54, now fell within the purview of the second part of the Article. Pazhaniappa Chettiyar v. South Indian Planting and Industrial Co. Ltd. and Anr. was a similar instance where the contract when initially made had a date fixed for the performance of the contract but the Court was of the view that "in the events that happened in this case, the agreement in question though started with fixation of a period for the completion of the transaction became one without such period on account of the peculiar facts and circumstances already explained and the contract, therefore, became one in which no time fixed for its performance." and held that was originally covered by the first part of Article 113 of the Limitation Act, 1908 would fall under the second part of the said Article because of the supervening circumstances of the case."

Therefore, from conduct of Ghanshyam Dass it is established that last date for execution of sale deed was extended on receipt of balance consideration amount after lapse of last date and upon execution of power of Attorney dated 17.09.2002 in favour of plaintiff and no date for execution of sale deed was fixed. Agreement, therefore, became one in which no time was fixed for its performance. Therefore, after receipt of remaining consideration without fixing any date for execution of agreement, the case had fallen within the purview of second part of the Article 54. In other words, the agreement which started with fixation of period became one without such period on account of the peculiar facts and circumstances noted above.

29. Plaintiff has duly pleaded and proved that after the release of the land,

he requested Ghanshyam Dass to get the sale executed but he kept putting off the matter on one pretext or the other and after his death in December, 2006, he asked the defendant to do the needful who promised to do so after sanction of mutation in his favour which was sanctioned on 13.09.2007 whereupon he was again requested to get the sale deed executed but, he too kept dilly-dallying and finally not only refused but also started threatening to forcibly dispossess the plaintiff and to alienate the land in favour of others. Ld. First appellate court has rightly held that there was no reason to disbelieve plaintiff particularly when he had already paid the entire amount of sale consideration and no part of obligation was left with him to be performed. The only obligation left was with Ghanshyam Dass and after his death with the defendant by way of execution and registration of the sale deed. Since no final date of execution of the contract was fixed after acceptance of remaining consideration after 31.05.2002, the cause of action accrued in favour of the plaintiff when performance was refused by the defendant. Defendant has no where pleaded or proved that he had refused to perform his part more than three years before the institution of the suit. Therefore, the suit was rightly held to be within limitation by first appellate court.

30. No fault with approach of Ld. First appellate court holding suit to be within limitation and granting decree for specific performance, can be found. Discretion vested in courts to grant decree of specific performance has rightly been exercised in view of pleaded and proved facts and circumstances noted above.

31. In view of above discussion, present second appeal preferred by defendant – appellant is without any merit hence dismissed.

32. Pending miscellaneous application(s), if any, shall also stand disposed of.

16.09.2025 **(PARMOD GOYAL)**
manoj **JUDGE**

| | |
|---|---|
| Whether speaking/reasoned | Yes |
| Whether reportable | Yes/No |