

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****108****RSA-110-2019(O&M)****Date of decision: 10.12.2025****Jeet Ram deceased through his LR****...Appellant(s)****Vs.****Jai Kishan and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Jaivir Yadav, Senior Advocate with
Ms. Sunita Shekhawat, Advocate for the appellant.

NIDHI GUPTA, J.

Defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the plaintiffs/respondents for possession by way of specific performance of contract, has been decreed by both the Courts below.

2. Brief facts of the case are that the plaintiffs had filed Civil Suit for possession by way of specific performance of contract dated 25.06.1998 directing the defendant to execute the sale deed of the suit property; and in the alternative, for recovery of Rs.1,19,348/- with interest.

3. The pleaded case of the plaintiffs was that the defendant is the owner of suit land measuring 47K 3M. Defendant had agreed to sell the suit land to the plaintiff vide Agreement to Sell dated 25.06.1998 for a total sale consideration of Rs.11,93,484/- of which Rs.1,19,348 was received as earnest money. The target date to execute the sale deed was



set as 25.06.1999. It was pleaded that plaintiffs were always ready and willing to perform their part of contract. Plaintiffs had visited the office of Sub Registrar Matanhail on 25.06.1999 along with balance sale, consideration. However, defendant had failed to appear to execute the sale deed. Plaintiff had then issued legal notice dated 05.07.1999 to the defendant but to no avail. Hence, the present suit was filed on 18.06.2002.

4. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Civil Judge (Senior Division), Jhajjar had decreed the suit of the plaintiffs vide judgment and decree dated 16.11.2016 as follows: -

“..... the suit of the plaintiffs is decreed for possession by way of specific performance in terms of agreement dated 25.06.1998, subject to payment of Rs.10,74,484/- as balance consideration by the plaintiffs to the defendant within three months from the date of passing of this order failing which the suit shall be considered to be dismissed.....”

5. The Civil Appeal filed by the defendant was dismissed by the learned District Judge, Jhajjar vide judgment and decree dated 29.01.2018. Hence, present second appeal by the defendant.

6. It is *inter alia* submitted by learned Senior Counsel for the appellant that the suit of the plaintiffs could not have been decreed for specific performance as plaintiffs had failed to disclose the source of balance sale consideration. It is submitted that the learned Courts below have committed legal error in not considering that the plaintiffs were not having sufficient balance amount of consideration and the amount



required for purchase of stamp papers, which are necessary for execution of sale deed. The evidence of PW1 in this regard is not worthy of credence. The amount arranged by PW1 to the tune of Rs. 12 lacs the source has not been disclosed. The amount of Rs. 12 lacs is not a small amount and nobody under the law is expected to keep such an amount at home, specially since this witness has admitted that no amount has been withdrawn from his bank account. Thus, there is no authentic and reliable evidence in this regard. This factor alone ought to have been sufficient to decline the relief of specific performance. In this regard, reference is made to judgment of the Hon'ble Supreme Court in **U.N. Krishnamurthy (Since Deceased) Thr. Lrs. v. A.M. Krishnamurthy, (SC) : Law Finder Doc Id # 2011613** wherein it has been held that "*Specific performance of contract-Deposit in court would not establish Plaintiff's readiness and willingness to perform.*" It is contended that therefore it was incumbent upon the respondent to disclose the source of funds.

7. It is further submitted that the plaintiffs had filed the civil suit on 18.06.2002 which is just 7 days prior to expiry of limitation period of 3 years. Learned Senior Counsel for the appellant elaborates to submit that the learned Courts below committed patent legal error in not considering the vital fact that the plaintiff was not ready and willing to perform his part of the Agreement which is stated to be dated 25.6.1998 and the target date fixed as 25.6.1999, but still the plaintiff has chosen to file the suit on 18.6.2002 just few days before the expiry of 3 years from the target date. Suit may be said to be within period of 3 years, but in order to



award the relief of specific performance the date of filing the suit is relevant and important factor to be considered. In this regard, learner, Senior Counsel again refers to the judgment passed in **U.N. Krishnamurthy (supra)**; wherein it is further held that *“Specific performance of contract - Fact that limitation is three years does not mean that purchaser can wait for one or two years to file suit and obtain Specific Performance.”*

8. Learned Senior Counsel for the appellant further submits that the leaned Lower Appellate Court has also gone wrong in not placing reliance upon affidavits Ex.D1 & D2 on untenable grounds. It is contended that it has been wrongly observed that affidavits are not admissible since the aforesaid affidavits were prepared at Jhajjar and the executant identified by the advocate at Jhajjar, and Sub-Registrar has not obtained second thumb impression. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

9. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant.

10. The plaintiffs had proved the Agreement to Sell dated 25.06.1998 Ex.P1 by leading comprehensive evidence on record. Plaintiffs No.2 himself had appeared as PW1 and supported his case. Besides that, plaintiff had also examined Scribe PW2 Ramesh Kumar Saini, who had drafted the said Agreement; and PW3 V.B.Kashyap, who examined



handwriting and fingerprints upon the document and deposed regarding the due execution of the Agreement. It is also necessary to note that initially, the defendant in his written statement had denied the Agreement to Sell. However, subsequently, defendant had filed the amended written statement now admitting therein the Agreement, as well as receipt of earnest money. In the first written statement, defendant had denied the very execution of the Agreement to Sell Ex.P1. However, in the amended written statement, defence taken by the defendant is that the plaintiffs were not ready and willing to perform their part of the contract. Thus, the Agreement to Sell stood proven as per law.

11. As regards readiness and willingness, plaintiff No.2 Ved Parkash/PW1 has submitted Affidavit of Attendance dated 25.06.1999 Ex.P2 marking the presence of the plaintiffs in the Tehsil on target date. A perusal thereof shows that plaintiff has clearly stated therein that he was ready with the balance sale consideration and he was having total amount of Rs.12 lacs on 25.06.1999 and the said amount was arranged by him 1-2 months prior to target date. The Plaintiff No.2/PW1 in his Affidavit Ex.PW1/A has stated as under: -

“That plaintiffs have always been ready and willing to perform their part of the contract and plaintiffs are still ready and willing to perform their part of the contract dt. 25-6-98 and plaintiff had visited the office of Sub Registrar Matanhail on 25-6-99 for performing his part of the contract with remaining sale consideration in addition to necessary stamp and registration expenses but defendant did not turn out to the office of Sub Registrar Matanhail so the sale deed could



not executed. It is further stated that plaintiff had got an affidavit attested from Sub Registrar Cum Executive Magistrate Matanhail on 25-6-99 for marking their presence in the office of Sub Registrar Matanhail. The affidavit is Ex.....”

12. Further, relevant extract of cross-examination of Plaintiff No.2/PW1 is as under: -

“.....We had brought total amount of Rs.12.00 lacs on that day. We were having Rs.10.00 lacs and Rs.2.00 lacs was brought by my relative resident of Naharpur. I have not withdrawn an amount of Rs.10.00 lacs from the bank rather the same was arranged about 1-2 months earlier. It is wrong that respondent Jeet Ram and his wife Sattan Devi were present before the Sub Registrar, Mattanhail on 25.06.1999 and they have marked their presence and I was not ready for the execution/registration of the sale deed on that day. After 25.06.1999, I went to meet the respondent Jeet Ram alongwith the Sarpanch of the village of Jeet Ram namely Jai Bhagwan.....”

13. From the above, it is clear that argument of the appellant that plaintiff failed to disclose source of the funds/Rs.12 lacs is without merit as plaintiff has disclosed the source of funds. Even otherwise, said argument of the appellant is liable to be rejected in view of the other attendant facts and circumstances of the case which are as follows: -

(a) It is admitted fact on record that after 25.06.1999, plaintiff No.2 Ved Paraksh PW1 had gone to the house of the defendant with the Sarpanch;



(b) Plaintiff had also served legal notice dated 05.07.1999 Ex.P3 upon the defendant for execution of Sale Deed. Postal receipt in respect of the same is Ex.P4; and acknowledgement Ex.P5, are on record.

(c) There is nothing on record that any reply to the said legal notice was given by the defendant. Even pursuant to the legal notice, no notice was served by the defendant upon the plaintiff that he was ready to get the sale deed executed in terms of the Agreement in question.

14. Thus, from the above facts, it is proven that in actual fact, it was the defendant who was not ready and willing to perform the contract. No doubt, defendant-side had produced an Affidavit of Attendance Ex.D2 to prove presence before the Sub Registrar on 25.6.1999. The said affidavit Ex.D-2 is of Sattan Devi wife of the now-deceased defendant Jeet Ram. However, no weightage can be given to the said affidavit as Sattan Devi had not appeared in the witness box in support of the case of the defendant. Om Parkash, son of the defendant had appeared in the witness box. However, his evidence cannot be taken into account as he was not having personal knowledge whether his father Jeet Ram had gone to Tehsil office or not. Even otherwise, the Affidavit Ex.D1 marking presence of Jeet Ram; and Affidavit Ex.D2 marking presence of Sattan Devi do not inspire belief as the said Affidavits were executed at Jhajjar; and not in the office of Sub Registrar Matanhail. As per the defendants, the said Affidavits were attested at Tehsil office Matanhail. However, defendants failed to get identification of these Affidavits in the presence of Tehsildar, Matanhail by affixing their second thumb impression on this said affidavit



when the Tehsildar attested the said documents. Moreover, defendant failed to clearly state on what time they appeared before the Sub Registrar Matanhail. On the other hand, both plaintiffs have undisputedly marked their presence before the Sub Registrar Matanhail vide Affidavit Ex.P2.

15. Furthermore, Om Parkash son of Jeet Ram, has also not examined any witness to prove that plaintiffs were not ready and willing to perform their part of Agreement; whereas from the facts noted above, it is clear that plaintiffs have proved their readiness and willingness to perform their part of contract by marking presence in the Tehsil office on the target date with balance sale consideration. The said Affidavit Ex.P2 categorically states that plaintiffs were in possession of balance sale consideration of Rs.12 lacs alongwith registration expenses et cetera. Plaintiffs had even served legal notice upon the defendants which was not replied to by them; and even no notice was served upon the plaintiffs by the defendants to prove their readiness and willingness.

16. Last but not the least, it is to be noted that defendant has admitted in his cross-examination that possession of the suit property is with the plaintiffs for long period, and no measure has been taken by him or his father and no proceedings have been initiated by them for regaining possession of the suit property from the plaintiffs.

17. Besides the above, it is my considered view that the defendant cannot be allowed to take advantage of contrary written statement filed by him; wherein he has taken two starkly opposite stands by firstly denying the very execution of Agreement to Sell; and thereafter,



admitting the same and also admitting receipt of earnest money. Clearly, the defendant has not come before the court with clean hands; and therefore, an adverse inference is likely to be drawn against him.

18. Appellant can derive no benefit from the relied upon judgment in **UN Krishnamurthy (supra)** as the same is distinguishable on facts and law.

19. Learned counsel for the appellant has been unable to dispute or controvert the above concurrent findings of fact rendered by both the courts below.

20. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

21. Pending applications, if any, stand disposed of.

10.12.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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