

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****133****RSA-3948-2025 (O&M)****Date of decision: 27.11.2025****Pankaj Sharma****...Appellant(s)****Vs.****Parmod Bansal****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Omkar Chauhan, 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 plaintiff/respondent herein, for specific performance of Agreement to Sell dated 07.11.2016, alongwith consequential relief of permanent injunction, has been decreed by both the Courts below.

2. It is *inter alia* submitted by learned counsel for the appellant that learned Courts below were in error in holding that the appellant has executed an Agreement to Sell. Whereas in actual fact, the appellant had procured a friendly loan to the tune of Rs.3 lacs from the plaintiff. It is submitted that this has been the consistent stand of the appellant throughout the proceedings that he had handed over original Sale Deed of the shop in question to Yogesh Yadav from whom he procured a loan to the tune of Rs.3 lacs. It is contended that therefore, the plaintiff was unable to prove the alleged Agreement to Sell in question.



3. It is further submitted that plaintiff has failed to prove his readiness and willingness to perform the contract. It is contended that both the Courts below were in error in holding that plaintiff had succeeded in proving his readiness and willingness as he was present before the Sub Registrar on 09.01.2017 with balance sale consideration. However, admittedly, target date was set for 07.01.2017. The plaintiff has wrongly alleged that 07.01.2017 was a holiday however that is not so. Further, mere issuance of legal notice dated 24.01.2017 by the plaintiff would, in no manner, prove his readiness and willingness to perform the contract.

4. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

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

6. The facts of the case as discernible from the record show that defendant/appellant is owner in possession of suit shop by virtue of Sale Deed No. 21559 dated 22.12.2008. The appellant had entered into an Agreement to Sell dated 07.11.2016 Ex.P1 with the plaintiff to sell the suit shop to him for a total sale consideration of Rs.23,25,000/-. Defendant had received Rs.11,50,000/- as earnest money on 07.11.2016 and accordingly had executed receipt Ex.P2. Defendant had also received Rs.2 lacs as another part payment on 12.11.2016 in respect of which he had



executed a receipt dated 12.11.2016 Ex.P3; whereafter defendant had delivered possession of suit property to the plaintiff on 24.11.2016 vide possession-delivery Memo dated 24.11.2016 Ex.P4. Target date for execution of Sale Deed was set for 07.01.2017. However, as the defendant failed to execute Sale Deed, plaintiff had issued legal notice dated 24.01.2017 Ex.P6 which was shown to be served upon the defendant vide Postal Receipt Ex.P7.

7. The record reveals that plaintiff had proved the Agreement to Sell dated 07.11.2016 Ex.P1 and the receipts of earnest money from the evidence of PW1 Ram Kishan Kaushik, Notary Public, who has specifically deposed that parties to the Agreement had appended their signatures and thumb impressions in his presence. PW1 had further deposed that he had made entry in his register at Sr. No. 3544 on 07.11.2016 regarding attestation of Agreement to Sell. PW1 had also produced relevant extract of his register (Ex.PW3/A). He further deposed that photograph of defendant is also affixed in his register. Moreover, plaintiff had admittedly produced the originals of the above said documents.

8. Besides that, the defendant as DW1 has categorically admitted his signatures and thumb impressions on the Agreement to Sell Ex.P1. In his cross-examination, he has also admitted his signatures and thumb impressions on the receipt dated 07.11.2016 Ex.P2. In his cross-examination, defendant had also admitted that his photograph is affixed on the Agreement Ex.P1.



9. From the above it is clear that Agreement in question stood duly proven in accordance with law.

10. Possession of the plaintiff over the suit property was proved from the evidence of DW2 Bhagwan Singh who had categorically admitted in his cross-examination that the plaintiff was in possession of the suit property. The said testimony of the defendant's witness clearly proves the execution of possession-delivery Memo dated 24.11.2016 Ex.P4.

11. Furthermore, as regards, readiness and willingness of the respondent to perform the contract, the appellant has denied the very execution of the Agreement. As such, as per the law, appellant is not entitled to take the defence that plaintiff was not ready and willing to perform the contract. 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 judgment of this Court in **"Lal Chand vs. Tek Chand 2012 SCC OnLine P&H 24572"**, the relevant extract 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)

12. Notwithstanding the above legal position, plaintiff has proven his readiness and willingness to perform his contract by submitting his original Affidavit of Attendance dated 09.01.2017 Ex.P5 before Sub Registrar, Faridabad. Admittedly, 07.01.2017 and 08.01.2017 were holidays being Saturday and Sunday. As such, plaintiff had duly put in appearance before the Sub Registrar, Faridabad on the very next date i.e. 09.01.2017. A perusal of Ex.P5/Affidavit of Attendance dated 09.01.2017 shows that plaintiff has categorically deposed therein that he alongwith balance sale consideration and registration and stamp charges et cetera had appeared before the Sub Registrar to perform his part of contract as 07.01.2017 and 08.01.2017 were holidays being Saturday and Sunday, but it was the defendant who had failed to appear. Service of legal notice dated 24.01.2017 Ex.P6 vide Postal Receipt Ex.P7 were also proved.

13. Ld. counsel for the appellant is unable to controvert or dispute the above said facts and findings; as also the legal position noted above.

14. As such, the present Regular Second Appeal stands **dismissed.**

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

27.11.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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