

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.317 of 1997

1. Smt. Kiran Singh Wife of Narain Pd. Singh, resident of Barabandh, P.S. Khaira, District Monghyr, presently residing at Adampur, P.S. Barari, District- Bhagalpur.
- 2.1. Vineet Kumar Singh S/o Late Narain Prasad Singh, Y-195, Regency Park- 2, DLF Phase 4 Nathupur (67), Nathupur, Farrukhnagar, Gurgaon, Haryana.
- 2.2. Shashwat Kumar Singh, S/o Late Narain Prasad Singh, Y-195, Regency Park- 2 Galeria DL T IV, Galeria IV, Gurgaon, Haryana- 122002.
- 2.3. Richa Singh, D/o Late Narain Prasad Singh, C/o Ravi Shankar, F-73, 1st Floor, Suncity, Sect- 54 Chakarpur (74) Chakarpur Gurgaon, Haryana- 122002.

... .. Appellant/s

Versus

Sourja Banerjee Son of Late Sandip Banerjee, resident of Panchanantala Road, Ghoshpara, Police Station - Maheshtala, District- South 24, Parganas, West Bengal.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Nilanjan Chattergee, Advocate Mr. Ujjwal Raj, Advocate Mr. Sahil Kumar, Advocate Mr. Anirvan Chaudhary, Advocate Mr. Jyoti Prakash, Advocate
For the Respondent/s	:	Mr. Md. Nadim Seraj, Advocate Mr. Sunil Kumar Mandal, Advocate Mr. Muqtadin Ahmad, Advocate Mr. Raju Patel, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV JUDGMENT

Date : 24-03-2026

Heard learned counsel for the appellants as well as learned counsel for the respondent.

2. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has been filed by the appellants against the judgment and decree



dated 21.08.1997 passed by learned 3rd Additional District Judge, Bhagalpur (hereinafter referred to as 'Appellate Court') in Title Appeal No.04 of 1994 wherein learned Appellate Court reversed the judgment and decree dated 31.08.1990 passed by learned Sub Judge-I, Bhagalpur (hereinafter referred to as 'Trial Court') in Title Suit No.178 of 1978 holding that the plaintiff (respondent herein) has got no valid cause of action and that she has failed to perform her part of contract.

3. The genesis of the case, as borne out from the pleadings and the materials available on record, is that the plaintiff/respondent instituted Title Suit No. 178 of 1978 seeking a decree for specific performance of an agreement for sale dated 07.07.1974 in respect of the suit property situated at Mohalla Adampur, Bhagalpur, and, in the alternative, for a declaration that the registered sale deed dated 21.07.1973 executed in favour of defendant no.1 (appellant no.1) did not confer valid title upon her, along with recovery of possession. The case of the plaintiff, in substance, was that owing to financial distress and outstanding dues of the Central Bank of India, she obtained a sum of Rs. 30,000/- from defendant no.2 (appellant no.2) and, as security for the said loan, executed a registered sale deed dated 21.07.1973 in favour of defendant no.1, though the



transaction was never intended to be an absolute sale. It was further pleaded that she continued in possession of the suit property and that subsequently, on 07.07.1974, an agreement for re-conveyance was executed whereby the defendants (appellants) agreed to transfer the property back to her on receipt of the stipulated consideration. It has further been asserted that the respondent paid the consideration amount in installments, including a lump sum payment (Rs.15,000/-) towards the last four installments and stamp expenses in August, 1975, but despite such payment the defendants failed to execute the re-conveyance deed and ultimately dispossessed her forcibly on 30.10.1975. The defendants, however, contested the suit by asserting that the sale deed dated 21.07.1973 was an out and out sale for valid and adequate consideration, that possession had been delivered on the date of execution itself, that the plaintiff failed to perform the terms of the alleged agreement dated 07.07.1974 within the stipulated time, and that the story of mortgage and subsequent dispossession was wholly false.

4. Upon service of summons, both the defendants (appellants herein) appeared and filed their separate written statements, contesting the claim of the plaintiff *in toto*. It was stated that the suit, as framed, was not maintainable as the



plaintiff had no valid cause of action. It was further stated that the suit was barred by limitation, estoppel and principles of acquiescence, besides being bad for misjoinder of parties. It was specifically stated that the registered sale deed dated 21.07.1973 executed in favour of defendant no.1 was an out and out sale for valuable and adequate consideration of Rs. 30,000/-, and not a mortgage or security transaction as alleged. The defendants asserted that possession of the suit property was delivered to defendant no.1 on the date of execution of the sale deed itself, and thereafter her name was duly mutated in the municipal and revenue records and she had been exercising rights of ownership over the property. The alleged agreement for sale dated 07.07.1974 was either denied or, in the alternative, it was contended that the plaintiff had failed to perform her part of the contract within the stipulated time and had not paid the balance consideration as required under the terms thereof. The plea of continued possession and forcible dispossession on 30.10.1975 was categorically denied, and it was contended that the entire story of mortgage, re-conveyance and dispossession was false, concocted and instituted only to harass the defendants.

5. On the basis of the pleadings of the parties, the learned Trial Court framed following issues for determination:



(i) Is the suit as framed maintainable?

(ii) Has the plaintiff got any cause of action for the suit?

(iii) Is the suit bad for mis-joinder of the parties?

iv) Is the suit barred by law of limitation, rule of estoppel and principle of acquiescence?

(v) Has the plaintiff sold the suit property to the defendant no.1 for a valuable consideration through the registered sale deed dated 21.07.1973 or pledged the same as security to the alleged loan of Rs,30,000/-?

(vi) Was time an essence of the contract for sale?

(vii) Was the plaintiff dispossessed forcibly from the suit property by defendant no.1 and 2?

(viii) Has the plaintiff paid the entire amount of Rs.36,001/- to the defendant no.1?

(ix) Has the plaintiff any right, title and possession over the suit land?

(x) Is the plaintiff entitled to a decree, as prayed for?

(xi) To what relief or reliefs, if any, is the plaintiff entitled to?

6. Considering the facts and circumstances of the case, submissions of the parties and on perusal of the materials available on record, the learned Trial Court came to the conclusion that the plaintiff had failed to establish that the registered sale deed dated 21.07.1973 was a mere security



transaction and not an absolute sale. Learned Trial Court held that the document, being a registered instrument carrying a presumption of validity, clearly evidenced the transfer of title for valuable consideration, and there was no cogent material to rebut the same. It was further held that the plaintiff had not been able to prove payment of the entire consideration amount under the alleged agreement for re-conveyance dated 07.07.1974 nor her continuous readiness and willingness to perform her part of the contract within the stipulated time. The plea of continued possession and subsequent forcible dispossession was also disbelieved. Based on the above findings, the learned Trial Court dismissed the suit, holding that the plaintiff was not entitled to the reliefs of declaration, specific performance or recovery of possession.

7. Aggrieved by the judgment and decree of dismissal passed by the learned Trial Court, the plaintiff preferred Title Appeal No.04 of 1994 before the learned Appellate Court. The learned Appellate Court, being the final court of facts, re-appreciated the entire oral and documentary evidence on record and came to a different conclusion. It held that the surrounding circumstances indicated that the transaction dated 21.07.1973 was not intended to be an out and out sale but was executed in



the backdrop of financial distress, and that the agreement dated 07.07.1974 for re-conveyance was duly proved. The learned Appellate Court further found that the plaintiff had established payment of consideration and her readiness and willingness to perform her part of the contract. Consequently, the findings of the learned Trial Court were reversed and the suit was decreed, granting relief in favour of the plaintiff.

8. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the defendants have preferred the present Second Appeal. The appeal was admitted to hearing on formulation of substantial question(s) of law as required under Section 100 of the CPC. The substantial question(s) of law raised before this Court are as under:

(A) Whether the despatch of letter i.e. Ext.1 by certificate of posting has any evidentiary value in view of the law laid down by the Hon'ble Supreme Court in AIR 1994 SC 678?

(B) Whether a despatch of a letter under certificate of posting only raises a presumption of posting and nothing more?

(C) Whether in absence of any receipt of payment of Rs.15,000/- and the facts and circumstances of the case the appellant court erred in believing the alleged payment

(D) Whether the evidence of the plaintiff and her witnesses ought not to have been



rejected in view of the material and serious contradictions with regard to the date, time & place of payment to the Appellants ?

(E) Whether in the facts and circumstances of the case, Ext. 1 was an engineered document in as much as the date of payment of the remaining 4 instalments was mentioned in the said document but it was never pleaded in the plaint nor mentioned in the evidence as to when the payment was made to the defendant?

(F) Whether Ext. 1 could have been admitted as a document in view of the fact that the said original letter was filed as Ext. 1 in the court and also sent to the appellant-defendant no. 1?

(G) Whether in a case a witness who has not been confronted with a letter which is alleged to be sent to her/him and in the absence of any evidence on the part of the said witness with regard to receipt of the said letter suo-moto can be treated as admission of the document more so when the contents of the letter are categorically denied in the pleadings as well as in evidence?

(H) Whether a plaintiff/party who sets up a false case before the court of being dispossessed should be refused the relief of specific performance under Section 20 of the Specific Relief Act, 1963?

(I) Whether in the facts and circumstances of the case the finding of the Appellate court on the point alleged payment is sustainable in law without considering all the reasoning given by the trial court?



(J) Whether in view of clause-8 and 9 of the agreement for sale dated 7th July, 1974 the Appellate Court could have passed a decree for specific performance of contract without clarifying if the plaintiff was entitled to Rs.39,000/- instead of Rs.24,000/- as allowed by court below?

(K) Whether a decree for specific performance of an agreement can be granted by a court when the purchaser does not offer to make the payment/ or fails to make payment in accordance with the time schedule under the terms of the agreement when time is the essence of the agreement?

9. Learned counsel for the appellants assailed the impugned judgment and decree of the learned Appellate Court as being contrary to law and the evidence on record. It is submitted that the Appellate Court, while exercising jurisdiction as the final court of fact, failed to discharge its statutory duty of closely scrutinizing and dealing with the reasoning of the learned Trial Court before reversing its well-considered findings. Learned counsel submitted that the learned Trial Court had meticulously appreciated the both oral and documentary evidence and had rightly concluded that the registered sale deed dated 21.07.1973 was an absolute transfer for valuable consideration. It is further submitted that the learned Appellate Court reversed the said findings on conjectures and surmises, without assigning cogent reasons for discarding the presumption



attached to a registered instrument. Furthermore, the learned Appellate Court reversed this foundational finding without meeting the learned Trial Court reasoning “in close quarters”, as required in law, and disregard the principles laid down by Hon’ble Apex Court in *Madhusudan Das v. Narayani Bai*, reported in *(1983) 1 SCC 35*.

9.i. Learned counsel for the appellants further submitted that the plaintiff’s plea that the registered sale deed was merely a security transaction is legally untenable and contrary to the bar under Section 92 of the Evidence Act. It is submitted that once the terms of a registered document are clear and unambiguous, they cannot be contradicted by oral assertions unless supported by cogent and convincing evidence of a very high degree. It is further submitted that the burden to prove that a transaction, though absolute in form, was in substance a mortgage or security, lies heavily upon the person asserting it. Learned counsel submitted that in the present case, no reliable evidence was adduced to establish that the consideration of Rs. 30,000/- was in fact a loan or that the parties intended anything other than an outright sale, and the learned Appellate Court erred in law in diluting this settled burden of proof. It is further submitted that the learned Appellate Court erred in law in



ignoring the settled principle that the burden to prove that a document, though absolute in form, was in reality a mortgage or security transaction, lies heavily upon the person asserting so.

9.ii. Learned counsel for the appellant further submitted that, argumenti causa, even if the agreement for re-conveyance dated 07.07.1974 is assumed to be genuine, the plaintiff (respondent) was required to strictly prove continuous readiness and willingness to perform her part of the contract, as mandated for a decree of specific performance. It is submitted that the entire case of the respondent hinges upon the alleged payment of Rs. 15,000/-, which admittedly remains unreceipted, despite all earlier installments having been duly acknowledged. The learned Trial Court, upon proper appreciation of evidence, found that the plaintiff had failed to prove such payment and that the evidence suffered from material contradictions regarding the date, manner, and persons involved in the alleged transaction. Learned counsel submitted that these contradictions, going to the root of the claim, could not have been brushed aside as minor discrepancies, in view of the principles laid down in *Sarju Pershad v. Raja Jwaleshwari Pratap Narain Singh*, reported in *AIR 1951 SC 120* and the settled distinction between minor inconsistencies and material contradictions.



9.iii. Learned counsel for the appellants further submitted that the reliance placed by the learned Appellate Court on Exhibit-1, namely a letter sent under certificate of posting, is wholly misconceived in law. It is submitted that such a document does not carry any statutory presumption of service under Section 27 of the General Clauses Act, as held by the Hon'ble Apex Court in ***L.M.S. Ummu Saleema v. B.B. Gujaral and Anr.***, reported in ***AIR 1981 SC 1191***, and at best gives rise to a weak and discretionary presumption under Section 114 of the Evidence Act, which cannot be invoked in a disputed case. Learned counsel has also placed reliance on the judgment of the Hon'ble Apex Court in ***Samittri Devi and Anr. v. Sampuran Singh and Anr.***, reported in ***(2011) 3 SCC 556***, wherein it has been held that such presumption is not mandatory and depends upon surrounding circumstances. It is submitted that the learned Appellate Court erred in treating Exhibit-1 as unimpeachable proof and using it to override material contradictions, thereby effectively converting a weak piece of evidence into conclusive proof of payment.

9.iv. Learned counsel for the appellants next submitted that the findings of the learned Appellate Court regarding possession and alleged dispossession are equally



unsustainable. It is submitted that possession was delivered to defendant no.1/respondent no.1 at the time of execution of the registered sale deed itself, and subsequent mutation and acts of ownership corroborate the defence case. It is submitted that the learned Appellate Court, however, misdirected itself by placing undue reliance on interested and inconsistent oral testimony while ignoring documentary evidence and surrounding circumstances, thereby rendering its findings perverse.

9.v. In sum and substance, learned counsel for the appellants submitted that the impugned judgment of the learned Appellate Court suffers from perversity in appreciation of evidence, misapplication of legal principles governing interpretation of registered documents, and improper exercise of jurisdiction in reversing the well-reasoned findings of the learned Trial Court. It is, therefore, submitted that the judgment and decree of the learned Appellate Court be set aside and that the judgment of the learned Trial Court dismissing the suit be restored.

10. *Per contra*, learned counsel for the respondent supported the impugned judgment and decree of the learned Appellate Court and submitted that the same does not suffer from any illegality or perversity warranting interference under



Section 100 of the CPC. It is submitted that the learned Appellate Court, being the final Court of fact, has thoroughly re-appreciated the entire oral and documentary evidence on record and has recorded a categorical finding that the plaintiff had proved payment of the balance consideration amount of Rs.15,000/- and had established her continuous readiness and willingness to perform her part of the contract. Learned counsel further submitted that such findings are pure findings of fact based on evidence and cannot be reopened in second appeal unless shown to be perverse or based on no evidence, which is not the case herein.

10.i. Learned counsel for the respondent further submitted that the entire transaction between the parties clearly demonstrated that the registered sale deed dated 21.07.1973, though absolute in form, was executed in the background of financial distress and was followed by a registered agreement for re-conveyance dated 07.07.1974 (Ext.2), which unequivocally reflected the intention of the parties that the property would be returned to the plaintiff/respondent on repayment of the stipulated amount. The plaintiff admittedly paid eight instalments, and the dispute is confined only to the last lump sum payment made in August, 1975. It is submitted



that the learned Appellate Court, upon appreciation of the oral testimony of PW-1, PW-3 and PW-8 and Ext. 1 (letter dated 25.09.1975) along with Ext. 4 (certificate of posting), accepted the plaintiff's explanation regarding payment and the absence of a formal receipt in view of the cordial relations between the parties. It is, moreover, submitted that minor inconsistencies as to the exact date or accompanying persons do not go to the root of the matter and were rightly ignored by the learned Appellate Court.

10.ii. Learned counsel for the respondent further submitted that the objection regarding evidentiary value of the letter sent under certificate of posting is misconceived. Ext.1 was duly proved and marked without objection, and the carbon copy thereof was admissible in evidence as secondary evidence since the original was dispatched to the defendant. It is submitted that under Section 114 of the Evidence Act, a presumption arises regarding due service of a letter sent in the ordinary course of post, and the defendants having merely denied receipt without leading any convincing rebuttal evidence, the presumption remained unrebutted. It is also urged that the plea that time was the essence of the contract is untenable in contracts relating to immovable property, and in any event, the



respondents having accepted earlier instalments without protest, had waived strict adherence to the time schedule.

10.iii. In support of his submissions, learned counsel for the respondent placed reliance upon the decisions of the Hon'ble Supreme Court in *Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors.*, reported in *(1999) 3 SCC 722*, to contend that the High Court cannot interfere with findings of fact recorded by the first appellate court unless the same are perverse; *Chand Rani v. Kamal Rani*, reported in *(1993) 1 SCC 519*, to submit that time is ordinarily not the essence in contracts for sale of immovable property; *Gomathinayagam Pillai and Ors. v. Palaniswami Nadar*, reported in *(1967) 1 SCR 227*, on the principle of waiver of stipulation as to time; *Samittri Devi and Anr. v. Sampuran Singh and Anr.*, reported in *(2011) 3 SCC 556* and *L.M.S. Ummu Saleema v. B.B. Gujaral and Anr.*, reported in *AIR 1981 SC 1191*, regarding the presumption arising from postal communication; and *K. Narendra v. Riviera Apartments (P) Ltd.*, reported in *(1999) 5 SCC 77*, to submit that specific performance is the rule and refusal is an exception, and hardship foreseeable at the time of contract cannot defeat relief. On the strength of these authorities, it is submitted that the impugned



judgment does not raise any substantial question of law and the second appeal deserves dismissal.

11. Having heard the learned counsel for the parties at length and having perused the pleadings, evidence on record and the judgments of the learned Trial Court and the learned Appellate Court, this Court now proceeds to examine the substantial question(s) of law framed at the time of admission of the present Second Appeal. It is well settled that the jurisdiction of this Court under Section 100 of the CPC is confined to substantial questions of law, and this Court does not sit as a Court of re-appreciation of evidence unless the findings recorded by the Appellate Court are shown to be perverse, based on no evidence, or suffering from a patent error of law. Though the Appellate Court is the final Court of fact, its findings must be founded upon proper appreciation of evidence and correct application of legal principles. If the conclusions are arrived at by ignoring material evidence, misapplying settled principles governing proof, or by drawing inferences not supported by the record, such findings assume the character of perversity, thereby inviting interference under Section 100 of the CPC. The issues raised by the appellants, therefore, are required to be tested within the limited scope of interference permissible in Second



Appeal.

12. At the outset, it is well settled that though the Appellate Court is the final Court of fact, its findings must be based on proper appreciation of evidence and sound legal principles. Where the Appellate Court reverses a well-reasoned judgment of the learned Trial Court without adequately dealing with the core reasoning and material inconsistencies, such findings assume the character of perversity and give rise to a substantial question of law under Section 100 CPC. In ***Santosh Hazari v. Purushottam Tiwari***, reported in (2001) 3 SCC 179, the Hon'ble Supreme Court has held that reversal of findings must reflect conscious application of mind to the reasoning of the Trial Court, however, mere substitution of conclusions is impermissible.

13. This Court also takes note of the judgments relied upon by learned counsel for the appellants in support of their submissions. Reliance has been placed on ***Madhusudan Das v. Narayani Bai (supra)*** to submit that an Appellate Court, while reversing findings of the Trial Court, must assign cogent reasons and cannot disregard material evidence or substitute its own conclusions without proper analysis. Similarly, reliance has been placed on ***Sarju Pershad v. Raja Jwaleshwari Pratap Narain***



Singh (supra) to emphasize that findings of the Trial Court based on appreciation of oral evidence and witness credibility are entitled to due weight and should not be lightly interfered with. Further reliance on *Nathulal v. Phoolchand*, reported in *(1969) 3 SCC 120* has been made to submit that in a suit for specific performance, the plaintiff must establish readiness and willingness along with financial capacity and actual tender of consideration. The appellants have also relied upon *Samittri Devi v. Sampuran Singh (supra)* and *L.M.S. Ummu Saleema v. B.B. Gujaral (supra)* to put across that presumption arising from certificate of posting is merely permissive and cannot be treated as conclusive proof of service or payment. The principles emerging from the aforesaid decisions are well settled and have been kept in view while appreciating the issues involved in the present case.

14. It is pertinent to mention here that the general rule is that the Appellate Court should permit the finding of fact rendered by the Trial Court to prevail unless the Trial Court fails to consider the evidence and materials on record to reach on the said finding and the same is improbable. The Hon'ble Supreme Court in *Madhusudan Das v. Narayanibai (supra)* has held that:



“8. In an appeal against a trial court decree, when the appellate court considers an issue turning on oral evidence it must bear in mind that it does not enjoy the advantage which the trial court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. The principle is one of practice and governs the weight to be given to a finding of fact by the trial court. There is, of course, no doubt that as a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on a misreading of the evidence or on conjectures and surmises the appellate court is entitled to interfere with the finding of fact.”

15. So far as the evidentiary value of Ext.1 (certificate of posting) is concerned in the given case, it holds a significant value as to infer the acknowledgement of payment. It is clarified that a certificate of posting merely raises a permissive presumption of posting, not of delivery. The Hon’ble Supreme Court in ***L.M.S. Ummu Saleema (supra)*** has held as under:



“6.We are satisfied that the alleged letter of retraction was only a myth. The certificate of posting might lead to a presumption that a letter addressed to the Assistant Collector of Customs was posted on August 14, 1980 and in due course reached the addressee. But, that is only a permissible and not an inevitable presumption. Neither Section 16 nor Section 114 of the Evidence Act compels the court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of a case, the court may refuse to draw the presumption. On the other hand the presumption may be drawn initially but on a consideration of the evidence the court may hold the presumption rebutted and may arrive at the conclusion that no letter was received by the addressee or that no letter was ever despatched as claimed. After all, there have been cases in the past, though rare, where postal certificates and even postal seals have been manufactured. In the circumstances of the present case, circumstances to which we have already referred, we are satisfied that no such letter of retraction was posted as claimed by the detenu.”

(emphasis supplied)

16. At the outset, it is significant to reproduce Section 27 of the General Clauses Act, 1897 and Section 114 [Illustration (f)] of the Evidence Act, 1872. They are reproduced respectively, hereinafter:

“27. Meaning of service by post.—Where any 2 [Central Act] or Regulation made



after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

“114. Court may presume existence of certain facts. – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

xxxx xxxx xxxx

(f) that the common course of business has been followed in particular cases;.....”

17. The position to be inferred under Section 27 of the General Clauses Act is that it embodies a rebuttable presumption of service only when a document is properly addressed, prepaid and sent by registered post, and even then the presumption is not conclusive but subject to proof to the contrary. In the present case, the alleged communication was sent merely under certificate of posting and not by registered post with acknowledgment due. A certificate of posting, by



itself, merely evidences dispatch and does not raise an inevitable presumption of delivery. The Hon'ble Supreme Court in ***Gadakh Yashwantrao Kankarrao v. E.V. alias Balasaheb Vikhe Patil and Ors.***, reported in ***(1994) 1 SCC 682; AIR 1994 SC 678***, categorically held that a certificate of posting may give rise to a permissive presumption but the court is not bound to draw such presumption, particularly where surrounding circumstances create doubt regarding its genuineness or service.

18. The submission advanced on behalf of the respondent that the decision in ***Gadakh Yashwantrao Kankarrao (supra)***, is inapplicable on the ground that it arose out of an election petition and that in civil cases the doctrine of preponderance of probabilities prevails, does not merit acceptance. The principle laid down in ***Gadakh Yashwantrao Kankarrao (supra)*** is not confined to election jurisprudence but pertains to the nature and scope of presumption arising from a certificate of posting under Section 114 of the Evidence Act. The Hon'ble Supreme Court therein clarified that such presumption is merely permissive and not mandatory, and that courts must be cautious in acting upon certificates of posting, which are susceptible to easy procurement. The standard of proof, whether strict proof in quasi-criminal proceedings or



preponderance of probabilities in civil matters, does not dilute the foundational requirement that the fact of service must be established by reliable evidence. Even in civil cases, presumptions under Section 114 are discretionary and rebuttable, and cannot be mechanically invoked to shift the burden unless foundational facts are satisfactorily proved. The doctrine of preponderance of probabilities does not convert a weak or doubtful piece of evidence into conclusive proof rather, probabilities must be drawn from credible and cogent material.

19. In the present case, the appellants specifically denied receipt of the letter. No independent postal official was examined as well as no acknowledgment was produced. The learned Appellate Court treated the certificate of posting as conclusive proof, which is legally impermissible. Moreover, reliance put by the respondent on *Samittri Devi (supra)* and *L.M.S. Ummu Saleema (supra)* does not advance the present case, as those decisions clearly state that presumption is not inevitable and may be refused where circumstances create doubt. In the present case, the surrounding circumstances, such as, absence of receipt, denial by appellants, and contradictions in the testimony, clearly rebut such presumption. Also, the presumption under Section 114 of the Evidence Act is



discretionary and rebuttable. In view thereof, this Court finds that such reliance is legally erroneous and the finding by the learned Appellate Court based on Certificate of Posting (Ext.1) is not sustainable.

20. Now, it is significant to examine the central issue in the present case which relates to the alleged payment of the balance sum of Rs.15,000/- said to have been made in lump sum in August 1975 by the respondent. Admittedly, no receipt was issued for such a substantial amount. The learned Appellate Court accepted the explanation of “friendly relations” and treated the absence of receipt as inconsequential. The learned Appellate Court, however, brushed aside the material inconsistencies as “minor discrepancies” without analysing their impact. The finding regarding payment, therefore, is not a mere finding of fact but a finding based on misappreciation of material evidence, thereby attracting interference.

21. The reliance placed by the respondent on ***Kondiba Dagadu Kadam (supra)*** is misplaced. The said decision restricts interference where findings are based on evidence. It has been held as under:

“5. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last



court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

(emphasis supplied)

In view thereof, where material evidence is ignored or inference is drawn without legal proof, the finding becomes perverse and is open to interference. The present case falls in the latter category.

22. In the facts of the present case, this omission assumes significant importance. The previous course of dealings



between the parties unmistakably shows that for the earlier eight instalments, receipts were admittedly issued. When parties, in the ordinary course of their transaction, reduced payments into writing and acknowledged them formally, the sudden departure from such practice in respect of the final and substantial amount of Rs.15,000/- creates a serious doubt. It is not a case of an insignificant balance rather, it constitutes a substantial portion of the total consideration and included the alleged stamp expenses. In such circumstances, absence of any documentary acknowledgment, coupled with inconsistencies in the oral testimony regarding the date, place and presence of witnesses at the time of payment, renders the version of respondent inherently improbable.

23. It is well settled that in a suit for specific performance, the burden lies heavily on the plaintiff to prove continuous readiness and willingness under Section 16(c) of the Specific Relief Act. Payment of consideration must be proved with cogent and convincing evidence. Mere oral assertions, particularly when contradicted on material particulars, cannot substitute proof

24. The Hon'ble Supreme Court in *J.P. Builders and Anr.v. A. Ramadas Rao and Anr.*, reported in (2011) 1 SCC 429



has held as under:

“25. Section 16(c) of the Specific Relief Act, 1963 mandates “readiness and willingness” on the part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. It is also clear that in a suit for specific performance, the plaintiff must allege and prove a continuous “readiness and willingness” to perform the contract on his part from the date of the contract. The onus is on the plaintiff.

26. It has been rightly considered by this Court in R.C. Chandiok v. Chuni Lal Sabharwal [(1970) 3 SCC 140] that “readiness and willingness” cannot be treated as a straitjacket formula. This has to be determined from the entirety of the facts and circumstances relevant to the intention and conduct of the party concerned.

27. It is settled law that even in the absence of specific plea by the opposite party, it is the mandate of the statute that the plaintiff has to comply with Section 16(c) of the Specific Relief Act and when there is non-compliance with this statutory mandate, the court is not bound to grant specific performance and is left with no other alternative but to dismiss the suit. It is also clear that readiness to perform must be established throughout the relevant points of time. “Readiness and willingness” to perform the part of the contract has to be determined/ascertained from the conduct of the parties.”

25. Apropos the principle laid down by the Hon’ble



Supreme Court in *J.P. Builders and Anr. (supra)*, wherein a suit for specific performance, the plaintiff must establish readiness and willingness by clear and cogent evidence, and the burden to prove payment of consideration lies squarely upon the plaintiff. Where documentary evidence would ordinarily be expected in the normal course of human conduct, its absence becomes a material circumstance against the party asserting payment. Applying the said principle to the present case, this Court finds that the unexplained failure to obtain a receipt for such a substantial payment, contrary to the earlier consistent practice of issuing receipts, is a circumstance fatal to the case of the respondent and the learned Appellate Court erred in law in treating it as inconsequential.

26. Having considered that the requirement under Section 16(c) of the Specific Relief Act is mandatory. The respondent must prove continuous readiness and willingness from the date of agreement till decree. The conduct of the respondent does not inspire confidence and the learned Appellate Court assumed readiness merely because earlier instalments were paid. Further, the learned Appellate Court has failed to minutely examine the contradictions regarding date, place and presence of witnesses to the alleged payment and has



wrongly came to the conclusion of the story. Such inference is legally insufficient.

27. Moreover, the agreement (Ext. 2) specifically stipulated payment within one year and contained forfeiture clauses. The learned Appellate Court held that time is ordinarily not essence in contracts relating to immovable property, relying upon *Chand Rani (supra)*. However, the said judgment itself clarifies that intention of parties must be gathered from the terms of the contract. Where the agreement contains explicit stipulation of time coupled with consequences of default, the presumption stands displaced.

28. Section 55 of the Indian Contract Act, 1872 is in three parts. In relevance to this case, it is enough to notice the first two parts, which reads:

“55. Effect of failure to perform at fixed time, in contract in which time is essential.

—When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not



essential.—If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.”

29. The Hon’ble Supreme Court relying upon the precedent of **Chand Rani (supra)** in **K.S. Vidyadnam and Ors.**

v. Vairavan, reported in **(1997) 3 SCC 1** has held as under:

“10.That would amount to saying that the time-limits prescribed by the parties in the agreement have no significance or value and that they mean nothing. Would it be reasonable to say that because time is not made the essence of the contract, the time-limit(s) specified in the agreement have no relevance and can be ignored with impunity? It would also mean denying the discretion vested in the court by both Sections 10 and 20. As held by a Constitution Bench of this Court in Chand Rani v. Kamal Rani [(1993) 1 SCC 519]: (SCC p. 528, para 25)

“... it is clear that in the case of sale of immovable property there is no presumption as to time being the essence of the contract. Even if it is not of the essence of the contract, the Court may infer that it is to be performed in a reasonable time if the conditions are (evident?): (1) from the express terms of the contract; (2) from the nature of the property; and (3) from the surrounding circumstances, for example,



the object of making the contract.”

In other words, the court should look at all the relevant circumstances including the time-limit(s) specified in the agreement and determine whether its discretion to grant specific performance should be exercised.”

(emphasis supplied)

30. Further, the Hon’ble Supreme Court in ***Saradamani Kandappan v. S. Rajalakshmi and Ors.***, reported in ***(2011) 12 SCC 18*** has held as under:

“23. The above section deals with the effect of failure to perform at a fixed time, in contracts in which time is essential. The question whether time is the essence of the contract, with reference to the performance of a contract, what generally may arise for consideration either with reference to the contract as a whole or with reference to a particular term or condition of the contract which is breached. In a contract relating to sale of immovable property if time is specified for payment of the sale price but not in regard to the execution of the sale deed, time will become the essence only with reference to payment of sale price but not in regard to execution of the sale deed. Normally in regard to contracts relating to sale of immovable properties, time is not considered to be the essence of the contract unless such an intention can be gathered either from the express terms of the contract or impliedly from the intention of the parties as expressed by the terms of the



contract.

xxxx xxxx xxxx

28. The intention to make time stipulated for payment of balance consideration will be considered to be essence of the contract where such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. *If, for example, the vendor discloses in the agreement of sale, the reason for the sale and the reason for stipulating that time prescribed for payment to be the essence of the contract, that is, say, need to repay a particular loan before a particular date, or to meet an urgent time-bound need (say medical or educational expenses of a family member) time stipulated for payment will be considered to be the essence. Even if the urgent need for the money within the specified time is not set out, if the words used clearly show an intention of the parties to make time the essence of the contract, with reference to payment, time will be held to be the essence of the contract.”*

31. In *Saradamani Kandappan (supra)*, the Hon’ble Supreme Court after looking into express terms of the agreement held that parties to the agreement intended to make time as essence of contract in respect to the payment of balance consideration which was also manifested from the clauses of the agreement clearly indicating that payment was to made on the stipulated dates and even a day delay was not acceptable unless



the due date declared holiday as evident from the clause providing payment on immediate working day in case of date of payment being declared holiday

32. In the present case, clauses relating to forfeiture and time schedule clearly indicate intention of strict compliance. The respondent admittedly did not pay the amount within the stipulated period. It is pertinent to mention here that the acceptance of earlier instalments cannot automatically amount to waiver of final stipulation, particularly when the entire balance remained unpaid within time. The reliance of learned counsel for the respondent on *Gomathinayagam Pillai (supra)* is distinguishable, as in that case conduct clearly established waiver and in the instant case, no such unequivocal waiver is proved. Moreover, in *K. Narendra (supra)*, it has been held that grant of specific performance is discretionary and court must examine conduct and equity. The appellate court failed to properly exercise such discretion.

33. In view of the foregoing discussion and the findings recorded hereinabove, this Court is of the considered opinion that the judgment and decree dated 21.08.1997 passed by the learned Appellate Court in Title Appeal No. 04 of 1994 suffer from serious legal infirmities and misapplication of



settled principles governing appreciation of evidence, presumption of service, and proof of readiness and willingness in a suit for specific performance. The learned Appellate Court reversed the well-reasoned judgment of the learned Trial Court without properly addressing the material inconsistencies and without adhering to the legal standards required for grant of discretionary relief under the Specific Relief Act. The substantial questions of law framed in this Second Appeal are accordingly answered in favour of the appellants and against the respondent-plaintiff. It is held that the finding of the learned Appellate Court regarding payment of the balance consideration of Rs.15,000/-, presumption of service of Ext.1 (certificate of posting), and compliance with the mandatory requirement of readiness and willingness under Section 16(c) of the Specific Relief Act are unsustainable in law.

34. Resultantly, the present Second Appeal is allowed. The judgment and decree dated 21.08.1997 passed by the learned 3rd Additional District Judge, Bhagalpur in Title Appeal No.04 of 1994 are hereby set aside, and the judgment and decree dated 31.08.1990 passed by the learned Subordinate Judge-I, Bhagalpur in Title Suit No. 178 of 1978 dismissing the suit is restored and accordingly confirmed.



35. There shall be no order as to costs.

36. Let the Trial Court Record be transmitted
forthwith to the court concerned.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	AFR
CAV DATE	18.02.2026.
Uploading Date	24.03.2026
Transmission Date	N/A

