

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101

RSA-2366-1991 (O&M)
Baldev

...Appellant(s)

Vs.

Niranjan Singh and others

...Respondent(s)

The date when the judgment is reserved:	30.01.2026
The date when the judgment is pronounced:	10.02.2026
The date when the judgment is uploaded on the website:	11.02.2026
Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced:	Full judgment

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Amit Jain, Sr. Advocate with
Mr. Parit Aggarwal, Advocate
for the appellant.

Mr. Rajesh Bhateja, Advocate
for respondents No. 14 to 16.

NIDHI GUPTA, J.

Plaintiff is in Second Appeal against the judgment of reversal whereby the suit filed by the appellant for specific performance of Agreement to Sell dated 03.06.1979 although decreed by the learned Trial Court; has been dismissed by the learned First Appellate Court by holding the Agreement dated 03.06.1979 to be fraudulent.



2. Brief facts of the case are that the plaintiff had filed a suit for possession by way of specific performance of Agreement to Sell dated 03.06.1979; **and** in the alternative suit for recovery of Rs.30,000. It was the pleaded case in the plaint that Ram Singh was owner in possession of suit property comprising of 3 shops, as described in the plaint. Defendants No. 1 to 5 are the legal heirs of Ram Singh. Ram Singh had agreed to sell the suit property to the appellant vide Agreement to Sell dated 03.06.1979 for a total sale consideration of Rs.30,000/- of which earnest amount of Rs.25,000/- was received by Ram Singh in cash at the time of execution of Agreement on 03.06.1979. Target date for execution of Sale Deed was set for 18.02.1981 on receipt of remaining amount of Rs.5,000/-. It was further agreed that if the plaintiff would not get the Sale Deed registered, advance money will stand forfeited and if the vendor will not execute the Sale Deed, the plaintiff would get Rs.50,000/- as damages including Rs.25,000/- as earnest money. Appellant had further averred in the plaint that target date of 18.02.1981 was a Sunday. Hence the appellant duly appeared before the Sub Registrar on the very next date i.e. 19.02.1981 to execute the Sale Deed, however the defendant did not turn up. Notice was issued to the legal heirs of Ram Singh. On the contrary, defendants No. 1 to 5 vide Sale Deed dated 28.04.1981 had sold the suit property to defendants No. 14 to 16 with the consent of defendants No. 2 to 13. With these pleadings, present suit was filed on 25.07.1985.



3. Defendants No.1 to 13 filed written statement resisting the suit on the ground that Agreement in question was a forged Agreement which was never executed by Ram Singh. It was contended that the suit property is a joint property of Ram Singh and his brother Bhan Singh and both have equal shares of the suit property which is in their joint possession. It was alleged that the Agreement dated 03.06.1979 had been prepared by the plaintiff in connivance with his brother-in-law Parmod Bhushan, who was tenant in one of the 3 suit shops. It was denied that the said defendants had ever received any legal notice from the plaintiff. Accordingly, dismissal of the suit was prayed for.

4. From the pleadings of the parties, following issues were framed by the learned Trial Court:-

“1) Whether Ram Singh deceased executed agreement as alleged and received earnest amount for the extent of Rs. 25,000/-?OPP.

2) If issue No.1 is proved whether the plaintiff has been ready and willing to perform his part of contract ?OPP.

3) Whether the suit is not maintainable in the present form? OPD.

4) Whether Ram Singh and Bhan Singh deceased were joint owners of the property in dispute? If so its effect?OPD.

5) If issue No. 1 is proved, whether the agreement in question is forged one?OPD.

6) Whether defendants no.1 4 to 16 are bonafide purchasers for consideration without notice of the property in dispute as alleged? If so its effect?OPD.

7) Whether the plaintiff is entitled to specific performance or for damages if so, to what extent?OPP.



8) Relief.”

5. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Senior Sub Judge, Kapurthala decided issue No. 1 in favour of the plaintiff and against the defendants; issue No.2 in favour of the plaintiff that he was ready and willing to perform his part of contract; issue No. 3 was not pressed at the time of arguments and therefore, decided accordingly; issue No. 4 against the defendants as in furtherance to findings on issue No.1 to 5, it was proved that Ram Singh deceased was the sole owner of the property in dispute and was not in joint possession of his brother Bhan Singh; issue No. 6 against defendants as it was proved that defendants No. 14, 15, 16 the subsequent vendees of the suit property, were grandchildren of the deceased Ram Singh; issue No. 7 holding the plaintiff entitled to relief of specific performance of agreement; and accordingly vide judgment and decree dated 20.05.1988, had decreed the suit of the plaintiff in the following terms: -

“14. In view of my findings in respect of aforesaid issues, and the suit of the plaintiff for possession of the suit property by way of specific performances of agreement dated 3.6.1979 is decreed with costs subject to payment of balance of sale price Rs.5000/-and the suit for alternative relief of recovery of Rs.50,000/-as damages and earnest money is dismissed. Decree sheet be prepared. File be consigned.”

6. However, the Civil Appeal preferred by the defendants was accepted by the learned Additional District Judge, Kapurthala vide



impugned judgment and decree dated 26.08.1991; and judgment and decree dated 20.05.1988 passed by Trial Court was set aside; and suit of the plaintiff was dismissed. Hence, present second appeal by the plaintiff.

7. It is *inter alia* submitted by learned Senior Counsel for the appellant/plaintiff that the learned First Appellate Court has dismissed the suit of the plaintiff on completely conjectural premises. It is submitted that the entire evidence on record has been misread by the learned First Appellate Court; and the relevant evidence has been ignored. It is submitted that the learned Trial Court on the basis of pleadings had initially framed issue No. 5 as to “*Whether the Agreement in question is fraudulent one? OPD.*” However, upon an application being filed by the respondent/defendants, the said issue was amended to the effect that “*If issue No.1 is proved, whether the Agreement in question is a forged one? OPP.*” Learned Senior Counsel contends that perusal of the impugned judgment shows that all findings of the learned First Appellate Court pertain to the fraudulent nature of the Agreement and nothing has been said about the forgery. It is submitted that in these circumstances, learned First Appellate Court could not have held the Agreement in question to be fraudulent document as there was no pleading to this effect by the respondents in their written statement. It is reiterated that it was on the own application of the respondents that issue was framed in respect of the forgery of the Agreement which the respondents have miserably failed to prove. As such, findings of the learned First Appellate Court in regard to alleged fraud are unsustainable being beyond pleadings.



8. Learned Senior Counsel submits that in holding the Agreement to be a fraudulent document, Id. First Appellate Court has mistakenly relied upon the report of DW9 Handwriting Expert. However, this could not have been done as admittedly DW9 has submitted his report Ex.DW9/K on the basis of a photocopy of the Agreement, and he had not examined original of the Agreement. Furthermore, report Ex.DW9/K suffers from material lacunae which had been ignored by the learned First Appellate Court *in-as-much* as in Ex. DW9/K, the Expert has given opinion that the signatures of Ram Singh on numerous admitted documents are not identical to the signature of Ram Singh on Agreement Ex.P1. In giving this opinion, DW9 has stated that the signatures on the Agreement are with the 'finger movement' of Ram Singh. Whereas while examining signatures of Ram Singh on receipts dated 07.08.1963 and 01.08.1973 in another Civil Suit dated 28.08.1976 titled as **Ram Singh Vs. Ram Piari**, DW9 Dewan K. S. Puri has opined that signature of Ram Singh are 'finger movement and wrist movement'. Learned Senior Counsel contends that therefore, there is material discrepancy in the Expert opinion and the same could not have formed the basis by First Appellate Court while non-suiting the appellant.

9. It is further submitted that in holding the Agreement to be a fraudulent document, the learned First Appellate Court has also opined that shadow of doubt is cast on the Agreement as Parmod Bhushan one of the tenants in the suit shops, was brother-in-law of the plaintiff; and therefore, the said Parmod Bhushan in connivance with the plaintiff, had



executed the fraudulent Agreement. Learned Senior Counsel contends that said finding of the First Appellate Court is pure conjecture without any basis as Parmod Bhushan has given clear evidence that he has no connection with the appellant. It is contended that learned First Appellate Court has presumed Parmod Bhushan to be brother-in-law of the appellant; whereas he is only tenant in the suit property. Even Parmod Bhushan in his evidence as PW9 has denied the said assertions of the defendants.

10. Learned Senior counsel further submits that the malafde intent of the defendants and their reluctance to execute the contract is made out from the fact that they executed Sale Deed dated 28.04.1981 in favour of their own family members. It is further submitted that defendants have miserably failed to prove that the Defendants No. 14 to 16 are the bonafide purchasers of the suit property. Learned Senior Counsel contends that being family members of the vendors/defendants No. 1 to 13, defendants No. 14 to 16 cannot be taken as bonafide purchasers. Learned Senior Counsel further contends that the Agreement in question duly proved from the evidence of both the attesting witnesses being PW2 and PW6. Even Scribe was examined as PW3. PW3 had duly brought the original register in Court. Moreover, on the reverse side of the Agreement, endorsement has been made by the attesting witnesses, which has been misconstrued by the learned First Appellate court. Ram Singh purchased the stamp paper for scribing of the Agreement.



11. Learned Senior Counsel reiterates that learned First Appellate Court has given findings of fraud; whereas the issue was framed regarding forgery. It is pointed out that initially learned Trial Court had framed issue regarding fraud on the basis of averments made in the written statement by the defendants. However, upon application moved by the defendants, issue of forgery was recast vide order dated 10.12.1984.

12. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 26.08.1991 passed by learned Additional District Judge, Kapurthala be set aside, and the suit of the plaintiff be decreed.

13. *Per contra*, learned counsel for the respondents/defendants vehemently opposes submissions made on behalf of the appellant and submits that judgment of First Appellate Court suffers from no infirmity as readiness and willingness of the appellant to perform the Agreement has not been proved. It is submitted that the appellant has failed to demonstrate his presence in the Tehsil office on 19.02.1981. The Affidavit of Attendance submitted by the appellant to prove his presence before the Sub Registrar on 19.2.1981 has been signed by only Oath Commissioner and not by the Sub Registrar. Moreover, plaintiff in his cross-examination has admitted that he was not present before the Sub Registrar on 19.02.1981. In this regard, learned counsel refers to the deposition of the plaintiff as PW1. Appellant has also failed to prove the availability of balance sale consideration. Appellant has also been unable to prove the financial capacity to pay earnest amount, let alone the



balance sale consideration. Even no legal notice was served upon the defendants/LRs of Ram Singh as alleged. Moreover, the legal notice was admittedly not served by the plaintiff Baldev but is alleged to have been served by one Ramji Dass. In this regard, Id. counsel refers to the cross-examination of the plaintiff where plaintiff has stated that *"I have not sent any notice or registered cover to LRs of Ram Singh. I still do not know by whom the shop in dispute as owned. Ram Singh, however stated that it was owned by him. On 19.02.1981, I did not present myself before the sub registrar."* Id. counsel argues that if plaintiff was not even aware regarding the ownership of the property, then how could he have entered into Agreement to Sell. Moreover, there are many contradictions in the plaintiff's case *in-as-much* as Ramji Dass has stated in his evidence that Baldev has purchased stamp papers; whereas Baldev has stated that Ramji Dass bought stamp papers.

14. Learned counsel further contends that the Agreement dated 03.06.1979 has been rightly held to be fraudulent by the learned First Appellate Court. Learned counsel refers to the impugned judgment in minute detail to submit that learned Additional District Judge has given various and numerous reasons in holding the said Agreement to be a result of fraud. It is submitted that the connivance between the plaintiff and his brother-in-law Parmod Bhushan is duly proved on record. Learned counsel continues to refer to cross-examination of the plaintiff to submit that in order to deny his relationship with Pramod Bhushan, plaintiff has gone to the extent of stating that *"I do not know where my mother*



resides. I cannot tell from whom I arranged the money. I have four sisters. I have no knowledge where they are married. Raj Rani is not my sister. All of my sisters are married in Punjab. I cannot say in what cities. I cannot say whether any of my sisters is married at Sultanpur Lodhi to Pramod Bhushan, a tenant in disputed shop.” Learned counsel submits that clearly therefore, the plaintiff has not outrightly denied that Parmod Bhushan is not his brother-in-law. It is also submitted that it is highly suspicious and totally unlikely that plaintiff would not know residence of his mother and his sisters. Clearly therefore, the Agreement is a result of connivance between the plaintiff and Parmod Bhushan.

15. Learned counsel further submits that clear finding of the learned First Appellate Court is based on the Expert Report. It is pointed out that the learned First Appellate Court has examined evidence on record in minute detail to give the said findings. Learned counsel refers to the impugned judgment to submit that a categorical finding has been given that the Scribe of the Agreement did not maintain his register properly. Learned First Appellate Court has held that *“From the perusal of the above-mentioned statement of Naval Kishore it appears that he was not maintaining register property and he was keeping the space blank so that any Agreement of ante-date could be written”*. It is contended that therefore, findings of the learned First Appellate Court are based on cogent reasoning as per the evidence on record and no error can be found in the same. He accordingly prays for dismissal of the present Appeal.



16. No other argument is raised on behalf of the parties. I have heard Id. counsel and perused the case file in great detail. I find merit in the submissions advanced on behalf of Id. Senior Counsel for the appellant.

17. The Appellant/Plaintiff filed the suit on 19.08.1981 for Possession by way of Specific Performance of the Agreement dated 03.06.1979 for three shops comprising of two rooms each, a choubara and staircase along with all incidental and easementary rights situated in Saddar Bazar Sultanpur Lodhi, Dist. Kapurthala; and in the alternative suit for recovery. The case of the appellant/plaintiff was that Ram Singh was the owner in possession of the suit property and, vide Agreement dated 03.06.1979, had agreed to sell the same for Rs. 30,000/- to the plaintiff and received 25,000/- as earnest money with target date as 18.02.1981. The plaintiff was always ready and willing to perform his part of the Agreement. After postponing the execution for some time, the heirs of Ram Singh malafidely sold the suit property to their family members, Defendants No. 14 to 16 on 28.04.1981. The case of the respondent/defendants was that Ram Singh and Bhan Singh were joint owners of the suit property; and the alleged Agreement was never executed. It was alleged that the plaintiff has forged the said Agreement in connivance with the tenants.

18. After considering the evidence on record the Ld. Trial Court, vide judgement dated 20.05.1988, decreed the suit while coming to the conclusion that Ram Singh was owner of the suit property and had



executed the Agreement dated 03.06.1979 and that the Agreement was not forged.

19. **AGREEMENT TO SELL:-**

19.1 Upon perusal of the case file in detail, it is my clear view that the **appellant has succeeded in proving the Agreement to Sell dated 03.06.1979** Ex.P1. Plaintiff himself appeared as PW1 in support of his case. Besides, the appellant has also examined attesting witnesses PW2 Rajinder Kumar and PW6 Ajit Singh. PW2 Rajinder Kumar has clearly stated that after scribing, Agreement was read over to the parties who, after admitting the same to be correct, signed the same. PW2 has deposed as under: -

“Baldev was not known to me earlier. I do not know what relations Baldev and Ramji Das had got. I was taken by Ram Singh to witness a document from my house. House of Ram Singh in at a distance of about half furlong from my house. The other witness met us near the shop of Khareiti Halwai and from there he was taken along. Ram Singh was about 80/85 years. Ram Singh had a tent house but he was not working there. He was on a brotherly terms with my grandfather Dina Nath and he used to print Amras. Ram Singh had three sons and three daughters. Children of Ram Singh never visited him. He had no good relations with him as he told me. Ram Singh had already with him the stamp paper on which the agreement is written. He came to my house and asked my father. My father was not at house. He perhaps was at Sultanpur or some at out-station. I did not know Ajit Singh witness. I had not seen him earlier. Agreement was written at about 9.00 AM. I do not know Parmod Bhushan. Hari Ram Pal was a doctor at Sultanpur Lodhi. I did not know him. I have



seen his shop. Dr. Hari Ram is already dead. Another doctor is sitting there but I do not know his name. I cannot say whether Parmod Bhushan sits in that shop. There is no sign board in front of that shop. One doctor is a tenant in the disputed shop at a monthly rent of Rs.10/-. My Shop is at a distance of 40/50 shops from the disputed shop. I residing at Sultanpur since birth. I am doing tailoring work for the 6/7 years. I cannot say whether Parmod Bhushan is a tenant in this shop. I can identify the person. I know one doctor Lal Chand and no other doctor. I have education upto B.A. 1st years. I did B.A 1st year in 1974/75. I have not seen the shop from inside. There is one chubara and two rooms but I have not seen that. It was told by Ram Singh. Ram Singh did not have any talk with me while he was selling the property. He did not ask anybody in this respect in my presence. When Ram Singh received the money after the execution of the Agreement he said Chalo Asin Tan Ganga Nahate Han, Doctor Dukan Chhadada Nahian Sl. (I have taken a bath in Ganges the doctor was not vacating the shop). This statement was made by Ram Singh in presence of all of us including the purchaser and Ramji Das when we were about to start from that place. All were hundred rupees notes. Money was with Baldev and he gave with his own hands handed it over to Ram Singh. Ram Singh himself counted it and nobody else counted it. Ram Singh returned a sum 100/- which he stated that he received as Sai but it was not mentioned in the agreement. I signed the agreement with the pen of document writer. I cannot say about the other witness. In what language Ajit Singh signed I cannot say because I signed first. I cannot say whether Ram Singh is educated or Illiterate. Endst. Ex.P-1/A was scribed by me at the instance of Ram Singh. He had asked me write it. I cannot say whether the



other person wrote any endorsement. Document writer had not written any note that document was written at his house. Ramji Das was not known to me. I saw him that day for the first time. May be that Ramji Das is the permanent resident of Sultanpur. I have not seen his house. I stop outside his house, Ram Singh went inside. Ram Singh was residing with his wife. In what language Baldev signed the agreement I cannot say. First Ram Singh signed the document then I signed. It is wrong to suggest that I know Parmod Bhushan or that I in connivance with Parmod Bhushan, other witnesses and the scribe created this false and fabricated document. Ram Singh was not in very weak health. It is also wrong to say that no amount 25000/- was paid or I have falsely.”
(Emphasis added)

- 19.2. Similarly, PW6 attesting witness Ajit Singh has deposed that: -
- “.....The buyer Baldev, Ram Singh, witness Rajinder Kumar, myself and one person from the electricity department were present. There was one scribe, who wrote it. The agreement was written at the house of deed writer, at morning 8-9 I had seen the person, in whose favor it was written, for the first time. It was said that he is a resident of Delhi. The paper was in Ram Singh's bag and he has taken it out. It was a stamp paper of Rs. 2.25. Ram Singh, Baldev, I and Rajinder Kumar had signed on the register. I had signed in Gurmukhi. Volunteered, when we were about to get up after finishing, Sardar Sahib had said "today we are heavenly relieved, and de-hooked, as the doctor was neither taking the shop nor leaving it". From this, I guessed that the shops were in the possession of some doctor. It is wrong to suggest that I did not know Ram Singh. I do not know any Doctor Parmod Bhushan. It is wrong to suggest that I, in connivance with*



Doctor Parmod Bhushan, deed writer and witnesses and Baldev, have forged a fabricated agreement to sell. It is also wrong to suggest that Ram Singh never came there and he never signed over there.” (Emphasis added)

19.3. Plaintiff had further produced Scribe Naval Kishore as PW3, who had deposed as follows: -

“Stated that I have seen the agreement Ex.P-1. It is scribed by me at the instance of the parties. Ram Singh was to sell three shops on the ground floor and a chubara to Sh. Baldev r/o Delhi. The sale consideration was a sum of Rs.30000/- and a sum of Rs.25000/- was paid in my presence at the time of execution of agreement EXP-1. The agreement was read over to the parties who after admitting it to be correct signed the same in my presence and in the presence of marginal witness namely Rajinder Kumar and Ajit Singh. Ajit Singh and Rajinder Kumar also made an endorsement on the agreement Ex.P-1 regarding the receipt of the earnest money and the agreement in my presence. I also made an entry in my register at Serial number-374 dated 3-6-79. I have brought the original register today. The agreement was scribed by me at my residence as it was a holiday on that day. The parties and the marginal witnesses also signed the entry in my register in token of its correctness.

XXXXXXXXXXXXXXXXXXXXX

I have seen the disputed shop. Dr. Parmod Bhushan is a tenant in this shop. I cannot tell the rate of rent. I am now 37 years of age. I see Dr. Parmod Bhushan in this shop since my childhood. First his father was working there. Parmod Bhushan does not generally comes to me get the document executed. I however cannot rule out the possibility whether



he got any other document executed from me. I can make a definite answer after seeing the document. It is correct that the entry of the agreement is on the last page of register. The register begin from entry no 1 of 1.1.79 serial Number runs up to 31st December of every year. We kept the registers as record with us. I do not deposit it anywhere. We keep a separate register for registered documents, which is got attested from the sub-registrar and register for other misc. documents is not attested from any officer.

It correct that in entries no 230 & 231 bears the signatures of the parties but the subject matter is not written. The witness volunteers the information that the party could not reach an agreement and as such it was not written. Word cancelled is written on blank entry in the subject matter column. It is correct that first the document is written and then it is signed by the parties, witness volunteers that the entry is made in the register when the document is complete. Similar is the position in entry no. 190 it bears the thumb impression of one Prem Kumar but it is left blank and then word cancelled is written. Similarly in entry no 152 in this register bears the thumb impression of the party and then it is left blank and word cancelled is written then. Similar is the position of entries no. 14 and 15 of 15.1.79 thumb impression of the parties are there. Entries are left blank and then word cancelled is written. It is wrong to say that I kept the entries blank of fabricate an antedate the document. The witness volunteers the information that our record is daily checked. Again said, these are occasionally checked. This register is not checked by any officer. The next register is also in my possession. Document was written at my house. No note is mentioned that it was written at my house. Nor there is any note that it was holiday. It was written at about 8/9-00 AM.



No other document was written on that day. Entry-366 of 2.6.79 the thumb impression and signature of parties are there. Entry is left blank and then word cancelled is written. Perhaps Parmod Bhushan has not summoned me as a witness in any other document of his. I have seen Baldev only on that day. I cannot say whether Baldev has any relations with Parmod Bhushan. The stamp paper was with Ram Singh. I cannot say from where he brought it. Except the persons who had signed in the agreement, one Ramji Das was also present. Ramji Das did not attest the document. I have not written any document concerning Ramji Das. I did not suggest to any witness to write any Endst. P-1/A and P-1/B. These were written by the witnesses themselves. Baldev directly paid the amount to Ram Singh and Ram Singh counted in my presence. It is incorrect to suggest that I in connivance with Ramji Das, Parmod Bhushan and witnesses fabricated this document. It is also wrong that no money was paid in my presence. Ram Singh was not personally known to me. I cannot say when he died." (Emphasis added)

19.4. Thus, Rajinder Kumar, Attesting Witness/PW-2 has stated in his examination in chief that he has seen the Agreement (Ex. P-1). He further stated that Ram Singh has executed the agreement after it was read over to him and Ram Singh signed it after admitting its correctness. He also stated that the plaintiff Baldev, had received the earnest money (Rs. 25,000/-) in his presence and he scribed the Endst. (Ex. P-1/A) on the Agreement describing that the amount was paid in his presence. Furthermore, in his cross-examination he stated that Ram Singh already



had the stamp paper with him on which the Agreement was written and that the Endst. (Ex. P-1/A) was scribed at the instance of Ram Singh.

19.5. Similarly, Ajit Singh, Attesting Witness/PW-6 stated that he had signed the Agreement (Ex. P-1) as a witness. He also stated that Ram Singh signed the register of Nawal Kishore, Deed Writer/PW-3 in his presence. In his cross-examination he stated that the stamp paper was taken out by Ram Singh from his bag.

19.6. Nawal Kishore, Deed Writer/PW-3 has stated in his examination in chief that the Agreement (Ex. P-1) was scribed at the instance of the parties and the earnest money was paid in his presence. He further stated that the Agreement was read over to the parties and they signed it after admitting its correctness. He further stated that Ajit Singh and Rajinder Kumar (Attesting Witnesses) made endorsement regarding payment and Agreement in his presence. He also produced the original Register which was signed by parties and the attesting witnesses.

19.7. A bare reading of the above evidence of the attesting witnesses as also the Scribe, shows that there is no discrepancy or inconsistency in their evidence. All three witnesses have stated that: they had come there at the asking of the vendor Ram Singh; that the Stamp Paper was purchased by Ram Singh; that the Agreement was read out to the parties, whereafter, it was signed by them; and that money was paid by Baldev to Ram Singh in their presence; whereafter the endorsement was made and signed by the parties and the witnesses. From the above, it is clear that in fact PW2 and PW6 attesting witnesses were not known to the



plaintiff Baldev and were known to the vendor Ram Singh and had been brought as attesting witness by the vendor Ram Singh. It is to be noted that no evidence in rebuttal was led by the respondents. Therefore, due execution of the agreement (Ex. P-1) is proved from the evidence of the scribe and the attesting witnesses.

20. **ENDORSEMENT:-**

20.1. However, the first Appellate Court has ignored the essence of the above voluminous, crystal-clear evidence of the witnesses; and has discarded the same on entirely insignificant, nitpicking, splitting hair, and conjectural grounds. The primary reason given by the learned First Appellate Court for doubting the Agreement is that **endorsement made at the reverse of the Agreement is in different inks** to be affect that: *“Another fact shows doubt that the genuineness of the agreement to sell. On the Agreement Ex. P1 the witnesses have written that Ram Singh received Rs. 25000/-. This writing seems to have been written afterwards because this writing is with a different ink than the ink of the other writing in the document Ex. P1. So this fact also shows that the Agreement is a manipulated one. Naval Kishore stated that the witness have written these endorsements Ex. P1/A and Ex. P1/B at their was own instance. Whereas Rajinder Kumar stated that he has written the endorsement at the instance of Ram Singh.”* It is but trite that the difference in the ink in the endorsements and the body of the Agreement was bound to occur as the said endorsement had been made by the two attesting witnesses; who would have used their own pens to endorse the payment of earnest



amount. The said observations of the learned First Appellate Court are utterly presumptive.

20.2. Observation of the First Appellate Court that Scribe has stated that the witnesses had written endorsement on their own; whereas Rajinder Kumar/PW2 stated that endorsement was written at the instance of Ram Singh, is a minor discrepancy that can occur over time. The same is not sufficient to discard the Agreement in entirety. The learned First Appellate Court has read evidence in piecemeal and has not read the statement of the witnesses in entirety and has therefore, misconstrued what was stated. It is my view that from the above evidence, it is clearly established on record that Agreement to Sell was not a forgery. The learned First Appellate Court has made uncalled for hue and cry about the minor discrepancies in the statements of Naval Kishore and Rajinder Kumar which are bound to occur with the passage of time.

21. **REGISTER OF SCRIBE:-**

21.1 Moreover, **PW3 Naval Kishore Scribe has produced the original register** in the Court. Learned First Appellate Court has held that the said register could not be relied upon as Scribe Naval Kishore was not maintaining his register properly. However, the said findings of the learned First Appellate Court are based upon entries at Sr. Nos. 230, 231, 190, 152, 14 and 15; whereas, admittedly entry in respect of the present Agreement was made by Naval Kishore at Sr. No. 374 dated 03.06.1979. As such, findings in respect of the above said serial numbers are extraneous for the



purpose of the present dispute and could not have been relied upon. Even otherwise, PW3 has explained the said entries in his deposition.

21.2. Moreover, in holding as above, the learned First Appellate Court has ignored clear and categorical evidence of Naval Kishore; and has gone beyond the pleadings *in-as-much* as it was the clear plea of the defendants that the Agreement was a forged document; and issue No. 5 to this effect was duly framed by the learned Trial Court; however, learned First Appellate Court has given no finding whatsoever regarding forgery.

22. **EXPERT EVIDENCE:-**

22.1 Much reliance has been placed by the learned First Appellate Court upon the report DW9/K submitted by **DW9 Handwriting Expert Diwan K.S. Puri** produced by the defendants, who had reported that the alleged signature of vendor on the Agreement was not of Ram Singh. Relevant findings of the learned First Appellate Court in this regard are as under: -

"..... The signatures of Ram Singh on Ex. D1 application form, Ex.D2 indemnity bond, Ex. D3, specific signatures were got compared with the signatures of Ram Singh on the alleged agreement to sell dated 3.6.79 which is Ex. P1. Dewan K.S. Puri appeared as, DW9 and he opined that he compared the signatures of Ram Singh on the account opening from the and specimen-signatures of Ram Singh which were given in the Bank with the signatures of Ram Singh on the agreement to sell and in his opinion that the disputed signatures are not in the hand-writing of a person who wrote the signatures S1 to S4. Ex. DW9/A is considered to be true and genuine one and he has given the report in



detail. Moreover, Dewan K. S. Puri is consider to be one of the best hand-writing Experts in the Punjab. Even from the bare look of the signatures of Ram Singh on the account opening from, indemnity bond and specimen signatures shows that they were not tallying each other. It has come into the evidence that Ram Singh was of the age of 75 or 80 years. At that time a person writes with a tremor hand which appears from the signatures of Ram Singh on the document Ex.D1, Ex.D2 and Ex.D3. But the document Ex. P1 whose that Ram Singh has signed without any tremor.”

22.2. However, learned First Appellate Court was in patent error in relying upon the report DW9/K, as DW9 in his cross-examination has categorically admitted that *“I have not examined the original before submitting my report Ex.DW9/K. I have given my opinion on the examination of photographs coupled with negatives. The disputed signatures are by advance finger movement. A person who usually write with the finger movement cannot write with the wrist movement. However, a person who usually writes with wrist movement may come down to finger movement as and when he wishes.”* Therefore, first and the foremost, the report DW9/K is admittedly based on the examination of photographs and negatives, and not on the original Agreement. Clearly therefore, the report DW9/K could not have been relied upon to reject the Agreement.

22.3. Further, the learned first Appellate Court has erred in ignoring the fact that the report DW9/K could not have been relied upon also for the reason that DW9 has given contradictory reports in respect of



the writing style of Ram Singh. It is not disputed that in another Civil Suit No. 227 dated 31.08.1976 decided on 24.09.1978 titled as **Ram Singh vs. Ram Piari**, while examining handwriting of present vendor Ram Singh, DW9 had submitted a report (Ex.PX7) in which he has contradictorily stated that *“both the disputed and the specimen signatures have been written by the combined movement of fingers and wrist. Thus, for the aforesaid reasons, the said observations/findings of the First Appellate Court are not sustainable.*

23. **FRAUD/COLLUSION:-**

23.1. Learned First Appellate Court has discarded Agreement in question also on the ground of **collusion between the plaintiff and Pramod Bhushan**, to the effect that:

“.....There is a statement of Baldev PW1, are, his evidence cannot be relied upon because Baldev stated that he is having four sisters and he has no knowledge where those are married but he admitted that all of his sisters are married in Punjab. It is strange that a brother does not know where his sisters are married. It is no where the allegation of Baldev that he is having strained relations with his sisters. So Baldev is concealing the facts intentionally and he seems to be deposed in that way because it is alleged that one of his sister is married with Dr. Parmod Bhushan who is a tenant in the shop...”

23.2. However, even the aforesaid reasoning of the learned First Appellate Court is utterly conjectural as Parmod Bhushan while appearing as PW9, has categorically stated in his cross-examination that *“my wife is*



Raj. Raj's father name is Ram Tirath. Raj has no brother. I do not know the plaintiff, Baldev." Thus, PW9 Parmod Bhushan has given parentage of his wife, and has mentioned name of father of his wife as Ram Tirath; whereas the appellant is Baldev is son of Hans Raj. PW9 has also categorically stated that his wife Raj, has no brother. In the face of this unequivocal statement, it is not clear as to how the first Appellate Court has drawn the presumption that there was connivance between the plaintiff and Pramod Bhushan; or that Pramod Bhushan was brother-in-law of the plaintiff. Clearly, this evidence of Pramod Bhushan has not at all been considered by the learned First Appellate Court while making above said presumptive observations.

23.3. Thus, the defendants failed to establish their plea that the Agreement was prepared with the collusion of tenants or that the plaintiff was related to the tenants in any manner as alleged in the written statement. PW1 and PW9 specifically denied any relationship with each other. The respondents had failed to establish any relationship of the appellant with the tenant Parmod Bhushan in terms of Section 50 of the Evidence Act, and the Id. Appellate court has proceeded on presumptions to assume the existence of relationship with the tenant and the alleged collusion. All the observations of the learned First Appellate Court in regard to the alleged connivance between Parmod Bhushan and the plaintiff are based in the realm of imagination and have no basis in the pleaded facts or evidence on record. It is also to be noted that factum of tenancy is duly mentioned in the Agreement to Sell, and that it was upon



the appellant to get the suit property vacated. It was for this reason that the target date was set for 2 years hence.

24. **FORGERY VS. FRAUD:-**

24.1. It would be pertinent to mention/ elaborate here that the Issue no. 5 was re-cast at the instance of respondents vide order dated 10.12.1984 as they pleaded that they have never challenged the Agreement on the ground of fraud and misrepresentation and have challenged it only on the ground of forgery. Thus, all the above findings of the first Appellate Court that the Agreement was fraudulent, are beyond pleadings. In the written statement, defendants had clearly pleaded in para 2 that: -

“2. That para No. 2 is wrong. Shri Ram Singh has not agreed to sell any property to plaintiff. The alleged agreement is a forged document it was never executed by Shri Ram Singh. In fact one Parmod Bhushan Paul who is a tenant of the suit property is the real person who in order to grab the suit property has forged this agreement inclusion with the plaintiff and the witnesses of the alleged deed. The plaintiff is the real brother-in-law of Parmod Bhushan Paul. All the terms mentioned in this alleged agreement are denied. No consideration of Rs.25,000/- ever received by Shri Ram Singh.”

24.2. Clearly therefore, defendants had only taken plea of ‘forgery’. Whereas learned First Appellate Court has not given a single finding regarding forgery. All findings of the learned First Appellate Court point towards the fraudulent nature; which are not sustainable being beyond



pleadings; as plea of fraud had already been given up by the defendants. No finding has been given which could establish “*forgery*” of the Agreement in question. The onus to prove forgery was upon the respondents; which they have miserably failed to discharge. The Handwriting Expert DW9 produced by the respondents is not reliable for the reasons already noted above. The plaintiff rightly led evidence in rebuttal by producing his own Handwriting Expert PW11 P.S.Ahuja. Handwriting Expert P.S. Ahuja examined by the plaintiff duly proved that signature of Ram Singh on the Agreement tallied with the admitted standard signatures.

24.3. At the risk of repetition, it is reiterated that reasoning of the learned First Appellate Court is totally presumptive, based on a misreading of the evidence. The first Appellate Court has totally ignored that in cross-examination, Dewan K.S. Puri (Expert) (DW-9) has admitted that the difference of specimen signatures (Ex. D-3 and Ex. D-Y) can be due to old age or illness. He has mentioned many similarities in signature of Ram Singh on the Agreement (Ex. P-1) and the specimen signatures (Ex. D-3 and Ex. D-Y). He admitted that he had not examined the originals before giving the report. Still further DW9 gave a contradictory report in another case regarding the signatures of Ram Singh Ex PX-7 which puts a question mark on the credibility of the report Ex DW9/K and has been completely ignored by the Ld Appellate court. Moreover, P.S. Ahuja (Expert) (PW-11) also submitted a report (Ex. PW-11/1) whereby it is stated that signatures of Ram Singh on Agreement (Ex. P-1) are similar to his specimen signatures



(Ex. PW-10/17, Ex. PW-10/6, Ex. PW-10/11, Ex. PW-10/18 and Ex. PW-10/16) which were obtained from the documents on the file of earlier litigation with Ram Singh deceased. Still further the Ld Trial court also stated that on observation with the naked eye the signatures looked similar and the report of PW11 was believable. Therefore, it is clear from the evidence of expert witness that the signatures of Ram Singh are similar to the specimen signatures provided. Thus, findings recorded by the Id appellate court cannot be sustained in law.

25. **SUIT PROPERTY WAS NOT JOINT:-**

25.1. The plea of the defendants that the suit property was joint between Ram Singh and Bhan Singh was discarded by both the courts below. Jaspal Singh (DW-2) has stated in his cross-examination that Bhan Singh and Ram Singh had effected a family partition. Gian Singh (DW-3) has stated in his cross-examination that Bhan Singh and his family had settled in Ferozepur for past 40 years. Furthermore, as per house tax register (Ex. P-8 to Ex. P-15), it is clear that the heirs of Ram Singh are owners in possession of the suit property situated at Sultanpur Lodhi. Findings of both the Courts below are concurrent on the point that the suit property was not joint in nature between Ram Singh and his brother Bhan Singh. These concurrent findings have not been challenged by the respondents at any stage and, therefore, attained finality. Therefore, Ram Singh was competent to sell the suit property.

26. **FINANCIAL CAPACITY OF THE PLAINTIFF:-**



26.1. As regards the financial capacity of the plaintiff to make the payment of earnest money or the balance sale consideration, it is firstly to be noted that no such plea has been raised by the defendants in their written statement that plaintiff did not have financial capacity to make payment of the total sale consideration. As such, any findings of the learned First Appellate Court, in this regard are beyond pleadings and could not have been used to non-suit the plaintiff.

26.2. Furthermore, payment of the earnest money of Rs.25,000/- stands proved from the endorsements at the back of the Agreement on the stamp paper which are proved from the evidence of attesting witnesses Scribe, as also PW4 Ramji Dass. PW2 Rajinder Kumar and PW6 Ajit Singh the attesting witnesses have made separate endorsement that Rs.25,000/- was received by Ram Singh in their presence. PW2 Rajinder Kumar s/o Lal Chand has made the Endorsement Ex.P-1/A on the Agreement; and Ajit Singh has made Endorsement Ex-P-1/B on the Agreement. As noted above, both witnesses have categorically stated that the payment of ₹25,000/- was made by Baldev to Ram Singh in their presence; upon which Ram Singh had stated that '*Chalo Asin Tan Ganga Nahate Han, Doctor Dukan Chhadada Nahian Si.*' (I have taken a bath in Ganges the doctor was not vacating the shop). PW2 Rajendra Singh, as further stated that Endst. Ex.P-1/A was scribed by him at instance of Ram Singh. '*He had asked me write it.*' PW3 Nawal Kishore, Deed writer has also stated that the "*Agreement Ex.P-1 is scribed by me at the instance of parties..... Agreement was read over to parties who after admitting it to*



be correct signed same in my presence & in presence of marginal witness Rajinder Kumar & Ajit Singh. Ajit Singh & Rajinder Kumar also made endorsement on agreement Ex.P-1 regarding receipt of earnest money & agreement in my presence. I also made an entry in my register at Sr. no. 374 dated 3-6-79.” PW4 Ramji Das s/o Mehanga Ram GPA Ex.P-7 has deposed that “.....A sum of 25000/- was paid in my presence of time of execution of agreement. The parties signed agreement after admitting same as correct. Rajinder Kumar & Ajit Singh were marginal witnesses.... Witnesses scribed endst. P-1/A and P-1/B. Property situated at Sultanpur had come in share of Ram Singh deceased while other property had fallen to share of other brothers. I had enquired from my brother and mohalla-wala. Ram Singh also told us about this. Ram Singh has shown me a paper concerning the partition.”

26.3. Rejection of the said endorsement merely on the ground that the same are made in different ink, is puerile and in the realm of imagination, and cannot be sustained. Thus, as plaintiff had already paid more than 80% of the total sale consideration, it cannot be held that plaintiff did not have financial capacity to perform the contract. Forgery and financial capacity are two different aspects of the matter. As noted above, there is no pleading by the respondents in respect of the financial capacity of the plaintiff.

27. **READINESS AND WILLINGNESS:-**

27.1. The plaintiff has also proved his readiness and willingness to perform the contract by serving legal notice dated 10.02.1981 Ex.P5 upon



the defendants through his GPA holder Ramji Dass, who has appeared as PW4 and has categorically stated that legal notice was sent through him. Ramji Dass (PW-4) had also stated that he acted as the go-between between Ram Singh and the plaintiff Baldev, regarding the sale of property. The Agreement (Ex. P-1) was concluded at his residence and that Ram Singh executed the same and had received the earnest money.

27.2. The readiness and willingness of the plaintiff is also proved from the fact that he remained present before the Sub-registrar and got his affidavit Ex P-6, attested on 19.02.1981 (as 18.2.1981 was a holiday). The presence of the plaintiff in the office of Sub Registrar is proved from his Affidavit of Attendance dated 19.02.1981 Ex.P6. No findings have been given by the learned First Appellate Court regarding readiness and willingness. Argument of learned counsel for the respondents that plaintiff has admitted that he was not present in the Tehsil office on 19.02.1981 is a piecemeal reading of the statement made by the plaintiff. In actual fact, plaintiff/ PW1 has stated that *".....I do not know where my mother resides. She resides with my brother at Delhi. Volunteered, I have no concern with them. The money I did not get from any bank, but it was lying with me. I have no bank account. I am not resident of Sultanpur. I am illiterate. I cannot tell from whom I arranged the money. But I arrange the money from a party from this side or that side. It is wrong to say that Parmod Bhushan is my brother-in-law. I have not sent any notice or registered cover to the LRs of Ram Singh. All the notices were written by Ramji Das himself. On 19.2.81 I did not produce myself before the sub-*



registrar. I kept sitting outside. I had not been to tehsil office except that day. I cannot say whether Ram Singh was an educated man or whether he was illiterate.” Thus, it also appears that plaintiff had strained relations with his family because of which he made the above statements.

27.3. In any event, it is **not open to the defendants to raise the plea of readiness and willingness**, in view of the fact that respondents have outrightly denied the Agreement in question. In this I rely upon judgment of this Court in “**Lal Chand vs. Tek Chand 2012 SCC OnLine P&H 24572**”, the relevant para 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)

28. Reference is also made to a judgment of this Court passed in **"Mahabir and others v. Satbir, (Punjab And Haryana) : Law Finder Doc Id # 2777629"**; wherein, after considering the entire case law on the subject, it is held as under: -

"A. Specific Relief Act, 1963 Section 16(c) Plaintiff seeking specific performance of an agreement to sell - Readiness and willingness to perform the contract - Held, plaintiff proved his readiness and willingness through affidavits, legal notices, and evidence of availability of funds - Defendant's denial of the agreement and plea of fraud found to be unsubstantiated and inconsistent.

D. Specific Relief Act, 1963 Section 20 Equitable relief - Mere increase in market value of the property cannot be a ground to deny specific performance of a valid agreement to sell."

The relevant paras are as under: -

*"29. In face of the above said facts and circumstances, it is apposite to refer to the following case law which is relevant. Reference is made to a judgment of this Court in **Bhupinder Singh v. Karnail Singh, (Punjab and Haryana) : Law Finder Doc ID # 2667029**, wherein it is held as under:-*

"15. Plaintiff propounded agreement to sell executed by the defendant dated 8th of March 1989. In order to prove the same, scribe of the agreement to



sell, Balkar Singh appeared as PW-2. Balkar Singh proved copy of register Exhibit P-2 showing entry made by him at Serial No.121. Vidya Sagar, Stamp Vendor appeared as PW-1. He produced his Register. He proved that defendant Bhupinder Singh purchased stamp-paper for execution of agreement. Entry was made at Serial No.5842 dated 7th of March 1989 in the Register against which defendant appended his signatures. The said stamp-paper was identified by him as the one used for scribing original agreement dated 8th of March 1989, Exhibit P-1. Attesting witness Jhirmal Singh (PW-3) fully established that Bhupinder Singh signed and executed agreement to sell, Exhibit P-1, in favour of the plaintiff after having heard and admitting the contents of the same and after receiving Rs. 5000/- as earnest money.

16. The defendant originally pleaded fraud without giving any details thereof. Apart from bald statement made in the written statement claiming that the agreement to sell was result of fraud and manipulation, neither were the particulars of the fraud played revealed, nor was any cogent evidence led to dislodge the agreement to sell.

xxx

19. Coming on to the plea w.r.t. readiness and willingness, the plaintiff proved his presence before the Sub Registrar on the appointed date by way of affidavit Exhibit P-3. Thus, so far as willingness is concerned, same stands proved. The present suit was filed within 2 months pleading readiness and willingness. In plaint, the plaintiff pleaded as under:



"6) That the plaintiff is ready and willing, was ready and willing and will remain ready and willing to execute the sale deed in his favour from the defendant after payment of balance sale consideration."

20. The response thereto in the written statement, reads as under:

"6. That the para No 6 is denied being wrong, false and baseless. The plaintiff has got no legal right or authority to get the sale deed executed."

21. Plaintiff Karnail Singh appeared as PW-4 wherein he specifically pleaded that he remained present on the appointed date in the premises of Sub Registrar, Dasua office from 9.00 am to 5.00 pm along with balance sale consideration. Defendant did not turn up. He further stated that he remained ready and willing to get the sale deed executed and is still ready and willing to get the sale deed executed in his favour on payment of balance sale consideration. He was cross-examined. Not even a suggestion was put to him that he was not ready or willing to get the sale deed executed or was not in possession of the finances to execute the sale deed."

30. Reliance is placed upon judgment of this Court in **Gurmail Singh v. Rajinder Kumar (P&H) : Law Finder Doc ID # 636915**, wherein it is held as under:-

"8. Learned counsel for the appellant has further made an attempt to raise argument that willingness and readiness of the plaintiff-respondents has not been proved; however, keeping in view the defence taken whereby



execution of the agreement to sell in question has been denied, it was not open to the appellant to raise such an argument.”

31. The judgment of this Court in **Hardeep Singh v. Sharanjit Kaur, (Punjab And Haryana) : Law Finder Doc ID # 1996358**, is also relevant wherein it is held as under:-

“8. The onus of proving the execution of agreement to sell was on the plaintiff. In order to prove the execution of the agreement to sell dated 09.09.2013, the plaintiff examined the marginal witness to the agreement to sell i.e. PW-2 Surjit Singh. Besides this, the plaintiff also examined PW-3 Vijay Guleria, who scribed the the agreement to sell. While stepping into the witness-box, both of these witnesses duly proved the execution of the agreement to sell, dated 09.09.2013 and nothing adverse came to the fore during their cross-examination. No doubt, the defendant alleged that the agreement to sell was a result of fraud and fabrication, however, he miserably failed to substantiate his plea of fraud and fabrication of the agreement to sell by way of any cogent evidence inasmuch as except for his bald assertion, the defendant did not place any material on record nor even examined any handwriting expert in support of his submissions.

9. The defendant, no doubt, asserted that since the father of the defendant had instituted a civil suit against the father-in-law of the plaintiff, which was decreed in favour of the father of the defendant and ever since then the plaintiff and



her family had been eying the suit property, however, no judgment or order was produced by the defendant in support of his submissions. The readiness and willingness of a party to execute the contract being a matter of fact can be inferred from the conduct of the parties. The submissions made by the learned counsel that the defendant/plaintiff had miserably failed to show her readiness and willingness to execute the sale-deed by any cogent and convincing material, thus is devoid of any merit and deserves to be rejected.

10. As per the terms & conditions of the agreement to sell, the date fixed for execution of the sale-deed was 09.05.2014. The plaintiff went to the office of Sub-Registrar, Gurdaspur, along with balance sale consideration. The factum of the plaintiff going to the office of Sub- Registrar, Gurdaspur, stands corroborated by Ex.P2, which is an affidavit duly attested by the Executive Magistrate showing her presence. Since the defendant failed to turn up on 09.05.2014, the plaintiff served him with a legal notice (Ex.P3), asking him to come to the office of Sub-Registrar, Gurdaspur for the execution and registration of the sale-deed on 06.06.2014. Since the defendant yet again did not turn up for the execution and registration of the sale-deed on the given date, the plaintiff got her presence marked in the office of Sub-Registrar, Gurdaspur vide her affidavit dated 06.06.2014 (Ex.P4). The defendant failed to give any cogent reason



during his deposition before the trial Court qua his non-appearance on 09.05.2014 and 06.06.2014 before the Sub-Registrar, Gurdaspur. From the conduct of the respondent/plaintiff, it is discernible rather it leaves no manner of doubt that she was always ready and willing to get the sale-deed executed.

11. Upon being pointedly asked, learned counsel for the appellant/defendant failed to refer to anything on record to show that the conclusions so arrived at by the Courts below were either contrary to the record or suffered from any material illegality. Still further, no question of law, much less, substantial question of law arises for consideration in the present appeal. The appeal, being devoid of merit, is accordingly dismissed. The judgments and decrees of the Courts below are affirmed.”

32. A judgment of the Andhra Pradesh High Court in **Veeramareddy Nagabhushana Rao v. Jyothula Venkateswara Rao, (A.P.)(DB) 2011 (1) CivCC 705**, wherein it is held as under:-

“19. It appears, the terms of the agreement of sale between the plaintiff and the defendant is mainly intended to divide the land of the defendant into house plots, obtain an approved layout and sell house plots. The recitals show that the defendant agreed for division of the land into house plots and also apply to panchayat for approval of layout. It is well settled that specific performance of contract will ordinarily be granted even if there is default in



carrying out the contract within the specified period having regard to the expressed stipulations of the parties, nature of property and other circumstances. It is one thing to admit the suit agreement of sale and to contend that the plaintiff has failed to establish readiness, but it is altogether a different thing to take a defence that the suit agreement of sale is fabricated and still require the plaintiff to establish readiness and willingness. Therefore the plea put forth by the defendant that he signed on blank papers and plaintiff fabricated the agreement of sale Ex.A-1 does not merit consideration. The facts in a latest decision of the Supreme Court in Laxman Tatyaba Kankate v. Taramati Harischaandra Dhatrak are an agreement to sell dated 8-1-1991 was entered into between the parties in terms whereof the defendant-appellant therein had agreed to sell the land ad-measuring 1H.60R of the land and that a sum of Rs. 10,000/- only was paid at that time. Though the defendants therein assured that they would execute the sale deed, they failed to do so, hence, notice was served and thereafter the plaintiff filed suit for specific performance and in the alternative for recovery of amount was filed before the trial Court, and that the trial Court partially decreed the suit dismissing his claim for specific performance and ordered for refund of earnest money with interest. On appeal, the lower appellate Court decreed the suit in its entirety granting decree for specific performance. The



legality and correctness of the aforesaid decree was challenged before the High Court of Judicature at Bombay at its Aurangabad Bench and the same was confirmed. The appellant-defendant took pleas that there was rapid increase in the market value of the land, that they wanted to obtain loan and had agreed to sign certain papers by way of security, that the plaintiff on the pretext got certain blank papers signed and that there was no intention to sell the property in question that sale of suit was land was barred under Maharashtra Co-operative Societies Act, 1961. The Supreme Court considering those circumstances held that restriction placed by 1961 Act is conditional and goes once loan of the society is cleared, and bar to sale under re-settlement act also disappears once permission of Government is obtained, as Sections 13 and 20 of the Act protect the right of the plaintiff, decree passed for specific performance cannot therefore be faulted. It was further held by the Supreme Court as follows:-

"....The onus to prove that the respondent had obtained signatures of the appellants on blank papers on the pretext of advancing a loan of Rs. 2,000/- was entirely upon the appellant. No evidence, much less cogent documentary and oral evidence was led by the appellants to discharge this onus. The averment has rightly been disbelieved and the plea was rightly rejected by the concerned Courts in the judgment under appeal. The appellants led no



evidence and nothing was brought to our notice, even during the course of the hearing, to show that this plea could be accepted.."

*20. Once the defendant has failed to prove that the suit agreement of sale is fabricated, all other defences taken by him such as readiness and willingness of the plaintiff and there is no requirement of selling the suit schedule property are all being supplementary, based on which, equitable relief of decreeing the suit cannot be refused to the plaintiff when it is otherwise legal and justified to do so. Be that as it may, the defendant has also not raised any issue on the price of the suit schedule property being Rs. 2 lac per acre. Though it was contended by the learned counsel for the defendant that there is considerable increase in prices of land, that cannot be a ground for denying the decree for specific performance and the defendant has also not chose to lead any evidence on that aspect. Therefore, it has to be construed that there is no grievance from the defendant that the suit schedule property is being taken away for a paltry consideration. As per the evidence, the suit agreement of sale entered into on 13-2-1993 and the time fixed for performance is one year. Time begins to run from the expiry of period fixed for performance i.e. from 13-2-1994 and the suit was filed within three years from 13-2-1994. The Supreme Court in **Mademsetty Satyanarayana v. G. Yelloji Rao** observed that*



delay in filing the suit itself should not disentitle grant of relief of specific performance.”

33. The Hon’ble Supreme Court in “**Muddasani Venkata Narsaiah (Dead) through Legal Representatives Vs. Muddasani Sarojana**” (2016) 12 SCC 288, has held as under:-

*“15. Moreover, there was no effective cross-examination made on the plaintiff's witnesses with respect to factum of execution of sale deed, PW 1 and PW 2 have not been cross-examined as to factum of execution of sale deed. The cross-examination is a matter of substance not of procedure one is required to put one's own version in cross-examination of opponent. The effect of non-cross-examination is that the statement of witness has not been disputed. The effect of not cross-examining the witnesses has been considered by this Court in **Bhoju Mandal v. Debnath Bhagat**. This Court repelled a submission on the ground that the same was not put either to the witnesses or suggested before the courts below. Party is required to put his version to the witness. If no such questions are put the Court would presume that the witness account has been accepted as held in **Chuni Lal Dwarka Nath v. Hartford Fire Insurance Co. Ltd.***

*16. In **Maroti Bansi Teli v. Radhabai**, it has been laid down that the matters sworn to by one party in the pleadings not challenged either in pleadings or cross-examination by other party must be accepted as fully established. The High Court of Calcutta in **A.E.G. Carapiet v. A. Y. Derderian** has laid down that the party is*



*obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. A Division Bench of the Nagpur High Court in **Kuwarlal Amritlal v. Rekhlal Koduram** has laid down that when attestation is not specifically challenged and witness is not cross-examined regarding details of attestation, it is sufficient for him to say that the document was attested. If the other side wants to challenge that statement, it is their duty, quite apart from raising it in the pleadings, to cross-examine the witness along those lines. A Division Bench of the Patna High Court in **Karnidan Sarda v. Sailaja Kanta Mitra** has laid down that it cannot be too strongly emphasised that the system of administration of justice allows of cross-examination of opposite party's witnesses for the purpose of testing their evidence, and it must be assumed that when the witnesses were not tested in that way, their evidence is to be ordinarily accepted. In the aforesaid circumstances, the High Court has gravely erred in law in reversing the findings of the first appellate court as to the factum of execution of the sale deed in favour of the plaintiff.”*

(Emphasis mine)

29. **BONAFIDE PURCHASERS:-**

29.1. Before parting, reference needs to be made to the conduct of the respondents. The plea of the defendants no. 14 to 16 that they are



bonafide purchasers is also false as defendants no. 14 to 16 are none other than immediate family members of LR of Ram Singh as Defendant no. 14 is daughter in law of defendant no 1; and defendant no. 15 is daughter of defendant no. 2; and defendant no. 16 is son of defendant no 3. This fact was clearly admitted by defendant no. 16 while appearing as DW11. There is no evidence of payment of any sale consideration and the alleged sale deed dated 28.04.1981 was executed only to defeat the right of the appellant only after the appellant sent a legal notice on 10.02.1981 (Ex P-5). The very fact that the respondents had admittedly sold the suit property to their grandchildren/defendants No. 14 to 16 shows that they are not ready and willing to perform their obligations. In this regard, reference may be made to a judgment of Hon'ble Supreme Court passed in **Silvey v. Arun Varghese (SC) 2008(2) RCR (Civil) 591**. The relevant para of the said judgment is as under:-

*"13. As regards the false plea of the defendants, the effect needs to be noted. It was pleaded that defendant No. 3 had gone to the house of plaintiff No. 2 in Alleppey prior to the receiving any letter from the plaintiffs and had spoken that they had told him that they were not keen in enforcing the application under Exh. A1. But when examined as DW1, the said defendant No. 3 admitted that he had never met the plaintiff as pleaded in the written statement and that he or any other defendant had never gone to Alleppey to meet plaintiff No. 2 at his residence to speak about the performance of the contract. The plea stated in the written statement was abandoned in evidence. In **Lourdu Mari David and Others v. Louis Chinnaya Arogiaswamy & Others, 1997(1) RCR (Civil)***



286: 1996(5) SCC 589, it was noted that the conduct of the defendant cannot be ignored while weighing the question of exercise of discretion for decreeing or denying a decree for specific performance. The High Court has, after analyzing the factual position, come to the conclusion that the defendants were really not ready to perform their obligation in terms of the contract and had taken a false plea in the written statement.”

29.2. Objection that the legal notice was served by the plaintiff through his GPA Ramdaas is also liable to be rejected as the **Bombay High Court** in “**Santosh Vadiya vs. Namdeo Budde and others, 2016 SCC OnLine Bom 16088**”, has held as under: -

“8. I have heard learned counsel for the rival parties at length. I have also perused the entire record, documentary as well as oral. I have perused the reasons recorded by the Courts below. This Court had at the time of admission on 27.02.2007, framed three substantial questions of law, which are as under with my answers:

(1) whether the Power of Attorney holder for the proposed vendees could validly depose about the existence of readiness and willingness on the part of the plaintiff/proposed vendees to perform their part of the contract when this fact could have been within the special knowledge of the plaintiffs themselves?

XXX XXX XXX XXX

Answer to Question No. 1: Yes.

12. Now coming to the controversy in the suit and the submissions made before me, the argument made by the learned counsel for the appellant on the point of power of attorney holder and his evidence, it will have be necessary to have a look at Order VI, Rule 14 of the CPC which reads thus:



"Order VI: Pleadings generally:

14. Pleading to be signed. Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf."

13. The aforesaid proviso to Rule 14 categorically shows that a person authorised is entitled to file and prosecute the suit till its disposal. In the instant case, it is not in dispute that the plaintiffs had authorised Dhairyasheel (PW1) to act as their power of attorney holder for signing of various documents, prosecuting and contesting the litigations etc. It is not at all disputed by any of the plaintiffs or defendant No. 2. None of the plaintiffs or defendant No. 2 have stated that they have not authorised Dhairyasheel (PW1) the power of attorney holder. Insofar as the aspect of attestation at a later point of time after execution of the power of attorney is concerned, I do not think any significance can be given to it since none of the persons giving authority have disputed the authority of the power of attorney holder either orally or in writing to plead and prosecute their lis. In the light of the above provision, therefore, it is not possible to accept the submissions about the incompetence of power of attorney. The counsel for the appellant then argued that the power of attorney holder had no personal knowledge about the execution of agreement and, therefore, his evidence is worthless and should not have been relied upon by the appellate Judge. In this context, I have perused the pleadings as well as entire evidence of Dhairyasheel (PW1) and the cross-examination. In the examination-in-chief, the power of attorney holder deposed about the entire transaction in question, readiness and willingness, details about the



*agreement, payments made and so on and so forth, which clearly shows his personal knowledge about the transaction in question and the filing of the litigation i.e. the suit in question. If according to the appellants, he had no personal knowledge about the transaction, there ought to have been appropriate pleadings in the written statement and appropriate cross-examination to him to bring out from his mouth that he did not have any personal knowledge about the transaction. However, it is significant to note that not only that there is no cross-examination on that point but there is no even a single suggestion to him that he does not know anything about the transaction and that he was not a witness to depose on behalf of the plaintiffs or the proposed vendees. In the absence of appropriate pleadings and the cross-examination, it would be difficult to accept such a submission. Secondly, the submissions that his evidence was hearsay evidence, again will have to be rejected as he deposed about the whole transaction. There is further submission that the contents of the power of attorney were not proved by the power of attorney holder and the answer obviously would be that Dhairyasheel (PW1) deposed about details of the power of attorney in his favour which was also exhibited and there is no cross-examination that he was not authorised by the plaintiffs and defendant No. 2 nor the plaintiffs and defendant No. 2 disputed his authority to act on their behalf. As to his evidence before the Court, in this context the learned counsel for the appellants vehemently relied on some judgments about the evidence of power of attorney holder, numbering 1 to 7 is in the list of reliance. I have carefully gone through all these decisions. The first decision was rendered in the case of **Janki Bhojwani ((2005) 2 SCC 217: AIR 2005 SC 439) (supra)**. In that case, the Apex*



Court specifically found on facts that the power of attorney holder did not have personal knowledge about the matters of the appellants and, therefore, he could not depose about his personal knowledge of the matter of the appellants and therefore he could neither depose on his personal knowledge nor could be cross-examined on those facts which were to the personal knowledge of the principal. As stated earlier, there is no even remote suggestion or pleading anywhere or admission in the evidence about want of personal knowledge. On the contrary, Dhairyasheel (PW1) deposed on his personal knowledge about each and every details of the transaction which was not challenged. Hence, such matters cannot be resolved by merely raising questions but there has to be foundation in pleadings as well as evidence which is absent in the present case. The existence of readiness and willingness on the part of the plaintiffs or the proposed vendees to perform their part of contract has, in fact, been deposed by Dhairyasheel (PW1) the power of attorney holder of the plaintiffs.....” (Emphasis added)

30. In view of the above discussion, the present Regular Second Appeal is **allowed**; the impugned judgment and decree dated 26.08.1991 passed by learned Additional District Judge, Kapurthala is set aside; and the judgment and decree dated 20.05.1988 passed by learned Senior Sub Judge, Kapurthala is restored. The suit of the plaintiff stands decreed.

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

10.02.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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