



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

(202)

**RSA-1647-1997 (O&M)
Reserved on:-01.04.2026
Pronounced on: 10.04.2026
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AMARJIT SINGH

....Appellant

Vs

**KARTAR SINGH (SINCE DECEASED) THROUGH LRS AND
OTHERS**

...Respondents

CORAM:- HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Prateek Mahajan, Advocate with
Mr. Daanish Mahajan, Advocate,
Mr. Mayank Vashisth, Advocate and
Ms. Archi Anant, Advocate
for the appellant.

Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for respondent Nos. 1, 7 to 9.

VIRINDER AGGARWAL, J. (Oral)

1. The present regular second appeal has been filed by the appellant/plaintiff challenging the judgment and decree dated 20.03.1997, passed by the learned Additional District Judge, Patiala, whereby the appeal filed by the appellant/plaintiff was dismissed and the judgment and decree of the Sub Judge, 1st Class, Nabha, dated 04.06.1991, were upheld.

2. Briefly stated, the appellant/plaintiff filed a suit for specific performance of a contract dated 01.12.1988, seeking to restrain the defendants from executing a sale deed in respect of the agricultural land detailed in the headnote of the suit. It was alleged that Zora Singh s/o Ram Kishan (real brother of the defendants) was the owner of the suit land and

had entered into an agreement to sell the land to the plaintiff for a consideration of Rs. 62,000/-, of which Rs. 12,000/- was paid as earnest money. The sale deed was to be executed on 15.06.1989. The plaintiff claimed that he remained ready and willing to perform his part of the contract, but after the death of Zora Singh, the defendants, having succeeded to his estate, failed to perform their obligations under the agreement. Consequently, the plaintiff sought a decree for specific performance, adjusting the Rs. 12,000/- already paid as mortgage money due to the Punjab Agricultural Development Bank. Defendant No.6 was proceeded against ex-parte, while the remaining defendants filed a joint written statement denying the execution of the alleged agreement. They contended that the document was forged, fabricated, executed under undue influence, and without consideration. It was further alleged that the plaintiff, due to consumption of alcohol and drugs, may have obtained Zora Singh's thumb impression while he was intoxicated. The defendants also pointed out that Zora Singh held only a 1/6th share in the suit land, making the agreement self-contradictory, and that he was not in possession of the land, so delivery of possession could not arise. Additional pleas included non-joinder of necessary parties and questioning the plaintiff's readiness and willingness to perform the contract. Based on the pleadings, following issues were framed:

- 1. Whether the defendant Zora Singh entered into an agreement to sell dated 1.12.88 with the plaintiff to sell the suit land for Rs.62000/- and received Rs. 12000/- as earnest money? OPP.*
- 2. Whether the plaintiff always ready and willing to perform his part of the contract? OPP*
- 3. Whether the plaintiff is entitled to specific performance of the agreement dt. 1.12.1988 ? OPP*

4. Whether the plaintiff is entitled to alternative decree for recovery of Rs. 12000/- as interest and damages and for permanent injunction? OPP

5. Whether the suit is not maintainable? OPD

6. Whether the alleged agreement is forged fabricated document and the result of fraud and undue influence and is without consideration? OPD

7. Whether the suit is false, frivolous and vexatious and defendants are entitled to special costs? OPD

8. Relief.

3. Both the parties were granted ample opportunities to lead evidence and after hearing arguments, the learned trial court dismissed the suit primarily on the basis of Issue No.5, holding that no decree could be passed in favour of the plaintiff without the presence of a Class-I legal heir of Zora Singh, who inherited the estate. The defendants were treated as trespassers. However, issues concerning the execution of the agreement and the plaintiff's readiness and willingness were decided in favour of the plaintiff. Aggrieved by the trial court's judgment, the plaintiff filed an appeal. During the appeal, additional issues 7-A and 7-B were framed. The learned Additional District Judge reversed the trial court's findings on Issue Nos. 2 and 5, holding that the plaintiff had failed to prove his readiness and willingness to perform the agreement. Consequently, the appeal was dismissed. Dissatisfied with the judgment and decree passed by the learned Additional District Judge, the appellant/plaintiff has filed the present second appeal. Notice of motion was duly served upon the respondents, who appeared through counsel and contested the appeal. The relevant record has been called for adjudication.

4. I have heard counsel for the parties and gone through the record carefully.

5. Learned counsel for the appellant/plaintiff contended that the findings recorded on Issue No.2 by the learned First Appellate Court are wholly based on conjectures and speculative assumptions, rather than a proper appreciation of the evidence. It was submitted that the learned First Appellate Court failed to consider the entirety of the pleadings, the documentary and oral evidence adduced, and the conduct of the parties throughout the trial. Counsel emphasized that the trial proceedings demonstrate, beyond doubt, that the appellant/plaintiff at all times remained ready and willing to perform his obligations under the agreement to sell.

5.1 Learned counsel for the appellant contended that non-suiting the appellant/plaintiff on the basis of surmises undermines the principles of justice and equitable relief, particularly in a suit for specific performance, where readiness and willingness are of primary importance.

5.2 Learned counsel further submitted that the conduct of the parties during the trial, including repeated attempts by the plaintiff to fulfil his contractual obligations, clearly establishes that he continues to be ready and willing to perform his part of the contract. On these grounds, it was urged that the appeal deserves to be allowed and the decree of specific performance be granted in favour of the appellant/plaintiff.

6. In response, learned counsel for the respondents contended that the findings of the learned First Appellate Court are based upon a careful and correct appreciation of the evidence on record.

6.1 It was argued that the court has rightly considered the documentary evidence, testimonies of witness, and circumstances of the case before concluding that the appellant/plaintiff failed to prove his readiness and willingness to perform the agreement. Learned counsel submitted that the conclusions reached by the First Appellate Court are supported by the material evidence, consistent with legal principles, and do not suffer from any error warranting interference by this Court. In view of these submissions, it was contended that the appeal is devoid of merit and should be dismissed.

7. The learned First Appellate Court, after examining the pleadings, evidence, and additional material filed during the proceedings, recorded its findings as under:

15. The last date fixed in the agreement for execution and registration of the sale deed in 15.6.89. The plaintiff has placed on the file, his affidavit Ex.P1, got attested from the Executive Magistrate, Nabha on 15.6.89, containing deposition about the execution of the agreement by Zora Singh. It is also mentioned in the affidavit that Zora Singh died on 2.6.89 and that the plaintiff had requested the heirs of Zora Singh orally to execute the sale deed in his favour. No heir of Zora Singh had come present in the Tehsil complex for this purpose on 15.6.89 from 9 AM to 5 PM, though the plaintiff remained present there on the said date and during the aforesaid hours. Learned counsel for the respondents has argued that the plaintiff/appellant has failed to prove his readiness to get the sale deed executed. He has argued that the plaintiff fails to prove that he was having the balance sale price with him on 15.6.89. There is no mention in the affidavit Ex.P1 that the plaintiff had brought the remaining sale consideration with him for payment to the defendants and also for stamps. Plaintiff as PW2 has not deposed as to how much amount was



available with him on 15.6.89 or payment to the defendants and for expenses on stamps and registration. No notice in writing was given to the defendants about the existence of the agreement to sell. Learned counsel for the respondents has argued that in this way, the plaintiff, who was required to prove readiness as well as willingness to perform his part of the contract has failed to prove the part of readiness and that he has failed to prove that he was having sufficient money with him on 15.6.89 for payment of the balance sale consideration to the defendants. On the other hand, learned counsel for the appellant has argued that the statement of the plaintiff on oath coupled with the affidavit EX.P1 proved the readiness and willingness of the plaintiff to perform his part of the contract. He has argued that no suggestion was given to the plaintiff in his cross-examination to the contrary.

16. *I have considered the arguments carefully. In my view, the plaintiff fails to prove that he remained always ready and willing to perform his part of the contract as per terms and conditions mentioned in the agreement. What affidavit of the plaintiff Ex.P1 proves is that he appeared in the office of the Sub Registrar, Patiala on 15.6.89 and remained present therefrom 9 AM to 5 PM for the purpose of execution and registration of the sale deed. However his mere presence does not go to prove readiness as well as willingness so to perform his part of the contract on the part of the plaintiff. Willingness means mental preparedness for getting the sale deed executed and readiness means the availability of necessary funds/consideration for payment to the vendor. A perusal of the affidavit Ex.P1 simply shows that the plaintiff remained present in the office of the Sub Registrar on 15.6.89 from 9 AM to 5 PM. It is nowhere mentioned in the affidavit that the plaintiff had brought the necessary money required for payment to the vendors or for spending on the expenses on stamps and registration with him. On oath, the plaintiff does say that he had brought the remaining sale consideration and necessary expenses for the purpose of execution of the sale deed with him. but this*



appears to be an improvement and after thought. Moreover, the plaintiff has failed to show that at the relevant time, he was having necessary amount for payment to the vendors, either in cash or in any bank account. No bank account has been proved. The plaintiff stepped into witness box on 22.3.90. The suit was filed on 8.7.89. No evidence has been led by the plaintiff to prove that on 8.7.89 and 22.3.90, he was having sufficient money for payment of the balance sale consideration to the vendors and for spending on stamps and registration. He has not stated these facts on oath. In the absence of proof of this fact, it cannot be said that the plaintiff remained every ready and willing to perform his part of the contract. It is true that no specific suggestion on the point has been given in the cross-examination of the plaintiff, yet the onus is on the plaintiff to prove this issue by cogent evidence, which on account of the aforesaid discussion, he fails to prove.

17. *There is another aspect of the controversy also. As per Jamabandi Ex.P3, the suit land alongwith four kanals of other land comprised in Khasra No.5 was under mortgage with the Punjab Agricultural Development Bank, Nabha for a consideration of Rs. 18,000/-. There is no mention in the agreement as to who would be liable to pay the mortgage money to the bank. Therefore, the correct construction of the terms and conditions of the agreement is that vendee was purchasing the suit land subject to mortgage and it was his duty to discharge the mortgage debt and not of the vendor. It may be stated that in the agreement, the vendor has not stated that the land was free from all encumbrances. The plaintiff has neither pleaded nor proved that the factum of mortgage was concealed by the vendor. Rather on oath he states that the suit land was earlier under mortgage for an amount of Rs. 18000/- and that this mortgage money was to be adjusted against the balance sale consideration. In the plaint, the amount of mortgage sought to be adjusted is mentioned as Rs.12,000/- while on oath, the plaintiff claims adjustment of a sum of Rs. 18,000/-. Forcing the vendor to adjust the amount of*



mortgage in the circumstances amounts to change and variation in the terms and conditions of the agreements and since the plaintiff wants the execution of the sale deed after deducting the proportional amount of the mortgage vis Rs. 18,000/-to perform it shows that he is not ready and willing his part of the contract as per terms and conditions of the contract and consequently, on this score also, the plaintiff cannot succeed. Consequently, Issue No.2 is decided against the plaintiff and finding of the learned trial court on this issue is reserved.”

8. The learned First Appellate Court recorded that, on perusal of the affidavit Ex.P-1 filed by the appellant/plaintiff, it is established that the affidavit demonstrates his willingness to perform his part of the contract. However, the court observed that there is no evidence on record specifically demonstrating his readiness to perform. It was further noted that the affidavit does not aver that the plaintiff was present in the office of the Sub-Registrar on the stipulated date with the balance sale consideration and necessary expenses. The court also observed that even in the present suit, the plaintiff has sought specific performance of the contract after offering to pay Rs. 38,000/- as the balance consideration instead of Rs. 50,000/-, intending to adjust Rs. 12,000/- as mortgage money payable to the bank. The court held that the mortgage money was required to be paid by the appellant/plaintiff.

9. Learned counsel for the appellant/plaintiff, however, contended that the appellant/plaintiff was entitled to deduct the mortgage amount in order to obtain the land free from encumbrances. He submitted that when the land was subject to a mortgage, the plaintiff's adjustment of Rs. 12,000/- for repayment to the bank was entirely proper, as it ensured that the property

could be redeemed and delivered unencumbered. Counsel further argued that the court should assess the overall conduct of the parties and not confine its findings solely to the technicalities of the law. It was further submitted that the presence of the appellant/plaintiff in the office of the Sub-Registrar on the stipulated date is, in itself, sufficient evidence of readiness and willingness to perform his part of the contract. Counsel argued that, otherwise, there would have been no reason for the plaintiff to appear at the office of the Sub-Registrar. Additionally, evidence on record demonstrates that the matter was first taken to the Panchayat, and even an injunction suit was filed prior to the suit for specific performance. When the defendants failed to execute the sale deed on the stipulated date, the plaintiff promptly filed the present suit for specific performance. Counsel contended that such conduct clearly demonstrates continuous readiness and willingness on the part of the appellant/plaintiff.

10. It was further contended that, given the defendants' total denial of the contract, they cannot be permitted to challenge the plaintiff's readiness and willingness. Counsel submitted that the plaintiff's financial capacity also supports a presumption of readiness. The appellant/plaintiff was employed in permanent service, earning a salary of Rs. 1,500/- per month, and possessed three kilas of land, indicating sufficient financial means to perform the contract. Considering all material circumstances, evidence, and pleadings, the only reasonable conclusion is that the appellant/plaintiff was fully ready and willing to perform his part of the contract.

11. Counsel further argued that the issue of the mortgage could not be taken against the plaintiff in the absence of any specific plea or evidence to that effect. In support of this position, Hon'ble Supreme Court in **Sukhbir Singh and others vs. Brij Pal Singh and others, (1997) 2 SCC 200**, has held as under:

“what requires to be considered is whether the essential facts constituting the ingredients under Section 16(1)(c) of the Act were pleaded and that found mentioned in Forms 47 and 48 prescribed in Appendix AA of CPC do in substance point to those facts. The procedure is the handmaid to the substantive rights of the parties. It was clear in this case from a perusal of the pleadings and the forms that the averments were consistent with the forms. When the respondents had pleaded and proved by the Sub-Registrar's endorsement that the respondents were present in the office of the Sub-Registrar for having the sale deed executed and registered by the petitioners. it would be explicit that the respondents were ready and willing to perform their part of the agreement. The facts that the petitioners did not attend the office would prove positively that the petitioners had avoided execution of the sale deed. It is not a condition that the respondents should have ready cash with them. The fact that they attended the Sub-Registrar's office to have the sale deed executed and waited for the petitioners to attend the office of the Sub-Registrar is a positive fact to prove that they had necessary funds to pass on consideration and had with them the needed money with them for payment at the time of registration. It is sufficient for the respondents to establish that they had the capacity to pay the sale consideration. It is not necessary that they should always carry the money with them from the date of the suit till the date of the decree. Therefore, respondents' suit for specific performance of the agreement of reconveyance of the land was rightly decreed.”

12. In ***Sunder Lal and others vs. Cholar Ram, 2025 SCC Online P&H 14463***, the Coordinate Bench of this Court observed and held as under:

27. Under Section 16(c) of the Specific Relief Act, 1963, the plaintiff must aver and prove that he has performed or has always been ready and willing to perform his parts the contract. The requirement is to establish readiness in mind and willingness in conduct, not necessarily to produce documentary proof of cash in hand. The Supreme Court in *Syed Dastagir v. T.R. Gopalakrishna Setty* ((1999) 6 SCC 337: AIR 1999 SC 3029) and *Azhar Sultana v. B. Rajamani* ((2009) 17 SCC 27: (2011) 1 SCC (Civ) 761) has clarified that the plaintiff's consistent conduct and credible oral testimony are sufficient to satisfy this statutory requirement. The plea of "readiness and willingness" to perform a contract can be inferred from the facts and circumstances of the case, even if the exact words are not used in the pleading.

28. In the present case, the plaintiff's contemporaneous actions i.e.. repeated requests to the defendant, filing of the injunction suit, and immediate institution of the present suit upon learning of the collusive decree, constitute unimpeachable evidence of continuous readiness and willingness.

29. Accordingly, this Court finds no infirmity or perversity in the finding of the trial Court that the plaintiff had proved his readiness and willingness to perform his part of the contract. The contention of the appellant to the contrary is devoid of any merit and stands rejected.

13. In ***Lal Chand Vs. Tek Chand, 2013 (5) RCR (Civil) 104***, this Court has held as under:

9. 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 & Ors 2007(1) RCR (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.

14. The Hon'ble Apex Court has held in ***Madhukar Nivrutti Jagtap and others vs. Pramilabai Chandulal Parandekar (Dead) through Legal Representatives and others***, (2020) 15 SCC 731, that:

“Readiness and willingness of plaintiffs

The question as to whether the plaintiff seeking specific performance has been ready and willing to perform his part of the contract is required to be examined with reference to all the facts and the surrounding factors of the given case. The requirement is not that the plaintiff should continuously approach the defendant with payment or make incessant requests for performance. For the relief of specific performance, which is essentially a species of equity but has got statutory recognition in terms of the Specific Relief Act, 1963, the plaintiff must be found standing with the contract and the plaintiff's conduct should



not be carrying any such blameworthiness so as to be considered inequitable. The requirement of readiness and willingness of the plaintiff is not theoretical in nature but is essentially a question of fact, which needs to be determined with reference to the pleadings and evidence of parties as also to all the material circumstances having bearing on the conduct of parties, the plaintiff in particular.”

15. In the present case, the facts and circumstances clearly indicate that the plaintiff was fully aware that the suit land was subject to a mortgage even before entering into the agreement to sell. During cross-examination, the plaintiff, Amarjit Singh (PW-2), admitted that he knew the land was mortgaged with the bank, yet this fact was not recorded in the agreement to sell. This demonstrates that both parties were conscious of the encumbrance, and the land was never represented as free from mortgage at the time the agreement was executed. The agreement in question, marked as Ex. P-2, contains no condition stipulating that the sale deed was to be executed in respect of unencumbered land. Therefore, when the parties entered into the agreement with full knowledge that the land was mortgaged, it must be inferred from the conduct of the parties and the terms of the contract that the sale deed was intended to be executed “as it is,” subject to the existing encumbrance. However, the appellant/plaintiff’s insistence on adjusting a proportionate amount of the mortgage at the time of execution of the sale deed indicates an attempt to alter the agreed terms of the contract. By seeking to deduct Rs. 12,000/- from the sale consideration, the appellant/plaintiff effectively proposed to modify the original agreement (Ex. P-2) rather than performing it as agreed. Such conduct demonstrates

that the appellant/plaintiff was not genuinely ready and willing to perform his obligations under the contract as originally agreed.

16. In view of the above, the learned First Appellate Court rightly concluded that the appellant/plaintiff failed to establish his readiness and willingness to specifically perform his part of the contract. Consequently, the appellant/plaintiff is not entitled to a decree for specific performance. Finding no merit in the appeal, it is hereby **dismissed** and decree and judgment of the First Appeal Court is hereby affirmed.

17. Pending applications(s), if any, shall stand disposed of.

(VIRINDER AGGARWAL)
JUDGE

10.04.2026

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