



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
116**

**RSA-4852-2019 (O&M)
Date of decision: 22.01.2026**

Somwati

...Appellant(s)

Vs.

Noor Jahan and another

...Respondent(s)

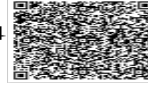
CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Manoj Sood, Advocate
for the appellant.

NIDHI GUPTA, J.

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the appellant for specific performance of Agreement to Sell dated 28.05.2008 and possession with consequential relief of permanent injunction, has been dismissed by both the Courts below.

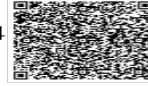
2. It was the pleaded case of the appellant that defendant had agreed to sell suit land measuring 4K to the appellant by way of Agreement to Sell dated 28.05.2008 for total sale consideration of Rs.40 lacs. It was contended that plaintiff had made part payment of Rs.32 lacs i.e. by way of 3 cheques and Rs.1 lac by cash. Target date for execution of the Sale Deed was 27.11.2008. The appellant had issued legal notice dated 14.06.2012 and then another legal notice dated 02.07.2012 to the defendant/respondent but to no avail. As such, appellant had filed the present suit on 31.07.2012.



3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Faridabad had dismissed the suit of the plaintiff vide judgment and decree dated 09.03.2017. The Civil Appeal filed by the appellant was dismissed by the learned Additional District Judge, Faridabad vide judgment and decree dated 06.03.2019. Hence, present second appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the appellant that the learned Courts below were in error in non-suiting the appellant as they failed to appreciate that the appellant had duly demonstrated her readiness and willingness to perform the contract. It is submitted that at the time of executing the Agreement in question, the appellant had given cheques worth Rs.32 lacs to the respondent, but it was respondent who did not present the cheques. The appellant had demonstrated that she had balance amount of Rs.7 lacs in the account of her father. Thus, it was proven that the appellant was always ready and willing to perform the contract but it was the respondent who kept delaying the execution of Sale Deed on one ground or the other. It is submitted that the appellant had mistakenly relied upon the words of the respondent, which resulted in some delay in filing the suit. However, the same is not sufficient to deny specific performance.

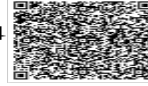
5. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.



6. No other argument is raised by learned counsel for the appellant. I have heard Id. counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellant.

7. There are concurrent findings of fact by both the Courts below that the appellant was unable to prove Agreement to Sell dated 28.05.2008 Ex.PW1/1. It is admitted position that in the year 2008, defendant was not owner of the suit land; whereas in the Agreement, she is described as owner of the suit land. Further, there are numerous unexplained and unreconciled discrepancies in the Agreement *in as much* as the Agreement was allegedly executed by defendant No. 1 alongwith one Ibrahim for sale of 8K of land. During the course of hearing, on a Court query in this respect, learned counsel for the appellant has stated that Ibrahim has not signed the Agreement; and it was for this reason that the civil suit was filed only qua 4K of land which was in the ownership of defendant No.1. Notwithstanding the above contention of the appellant, admittedly the Agreement Ex.PW1/1 was executed in respect of 8K of land; whereas plaintiff is seeking specific performance only in respect of 4K of land. Admittedly, the agreement is between the plaintiff, defendant, and one Ibrahim. However, appellant is seeking to enforce the agreement only qua the defendant.

8. Even the alleged payment of ₹32 lakhs made by the appellant to the defendant No.1, is not made out. The said sum of Rs.32 lacs is stated to have been paid by way of 3 cheques. However, perusal of the cheques reveals that 2 cheques bear the same No. 032301. The appellant



has been unable to explain this discrepancy. Even otherwise, the said cheques were issued from the bank account of the father of the plaintiff. Perusal of statement of account of father of plaintiff which was on record as 'Annexure A' shows that the same did not have enough funds to honor the cheques.

9. Plaintiff has also failed to demonstrate her readiness and willingness to perform the contract. The Hon'ble Supreme Court in **R.Shama Naik vs. G.Srinivasiah (SC): Law Finder Doc Id # 2670489**, has held that in order to establish readiness and willingness, two specific ingredients are required to be fulfilled: (a) presence in the Tehsil office; and (b) demonstrate availability of funds.

10. In the present case, plaintiff has failed to demonstrate her financial capacity to pay the balance sale consideration. Not only that, but plaintiff has even failed to prove payment of earnest amount. In any event, plaintiff had admitted in her cross-examination that the said cheques amounting to Rs.32 lacs were never presented by the defendant. As such, amount of Rs.32 lacs did not pass from the plaintiff to the defendant. Thus, at best, it can be said that the plaintiff has paid only an amount of Rs.1 lac to the defendant in cash; which is contrary to the recital in the Agreement.

11. It is also very important to note that plaintiff herself did not step into witness box and was represented through PW2, who was her son and her GPA holder. PW2 in his evidence has stated that an amount of Rs.7 lacs was paid by the plaintiff to the defendant within 7 weeks of



entering into Agreement. Purportedly therefore, the entire sale consideration of Rs.40 lacs stood paid; which is contrary to the averments made in the plaint - wherein the plaintiff has averred that balance sale consideration of Rs.7 lacs was to be paid at the time of execution of Sale Deed.

12. Last, but not the least, Agreement to Sell is dated 28.05.2008; target date for execution of Sale Deed was 27.11.2008; whereas plaintiff has instituted suit on 31.07.2012. Learned Trial Court has rightly noted that for grant of discretionary relief of specific performance, the plaintiff has to demonstrate her continuing readiness and willingness to perform the contract. However, in the present case, plaintiff has failed to do so as there is no explanation for the intervening silence of 3 years, or for the delay in filing the suit.

13. Version of the plaintiff that the defendant had sought extension of time in executing the Sale Deed remains unsubstantiated. It has been submitted by learned counsel for the appellant that defendant No.1 was having Bhondedari rights in the suit property; and that she had filed for title before the revenue authorities; which ownership rights were granted to her on 15.03.2012; whereafter plaintiff had filed instant suit on 31.07.2012. However, this version of events remains unsubstantiated and is contrary to the version in the Agreement. At that time Bhondedari Act has not been enacted. Even if the said factors were taken into consideration, it remains undisputed that plaintiff had remained mute spectator till July 2012. It is inconceivable that after having paid an



amount of Rs.33 lacs, plaintiff would not actively and aggressively pursue the Agreement. It clearly shows that plaintiff was not ready and willing to perform the contract.

14. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings of the learned Courts below.

15. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees passed by both the Courts below. The present Regular Second Appeal is hereby **dismissed**.

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

22.01.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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