

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****266****RSA-2914-2022 (O&M)****Date of decision: 05.05.2026****Ashok Kumar****...Appellant(s)****Vs.****Braham Parkash and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sumit Gupta, Advocate
for the appellant.

Mr. Manish Mehta, Advocate
for respondent No.1.

NIDHI GUPTA, J.

Defendant No.1 is in Second Appeal against the judgment of reversal; whereby suit filed by the plaintiff/respondent No.1 herein for specific performance of Agreements to Sell dated 09.01.2006 had been decreed for recovery of Rs.3 lacs by the learned Trial Court. However, in Civil Appeal filed by the plaintiff, the suit has been decreed for specific performance by the First Appellate Court vide impugned judgment and decree dated 13.10.2022.

2. It was the pleaded case of the plaintiff/respondent No.1 that appellant had executed 2 Agreements to Sell both dated 09.01.2006 in favour of the plaintiff. It was pleaded in the plaint that defendants No.1 and 2 are owners in possession of suit land total measuring 54K-7M as described in para 1 of the plaint to the extent of 1/2 share; whereas defendant No. 3 is owner in possession of the suit property to the extent



of remaining 1/2 share. It was pleaded that defendant No.1 on his own behalf as well as proclaiming that he had taken consent from the said defendants No.2 and 3 for sale of suit land, had entered into Agreement to Sell the suit property in favour of the plaintiff on 09.01.2006 Ex.P2 for a sale consideration of Rs.4,50,000/- per acre i.e. Rs.30,57,107/-. At the time of execution of Agreement, an amount of Rs.3 lacs was stated to have been paid by the plaintiff to defendant No.1 as earnest money. Remaining amount was to be paid at the time of execution of Sale Deed on target date of 30.04.2006. It was further asserted that possession of the suit property had been delivered to the plaintiff at the time of execution of the said Agreement, which was executed and signed in the presence of attesting witnesses. It was further averred that after some time of execution of Agreement, defendant No.1 had again contacted the plaintiff and stated that defendants No.2 and 3 are agreeable to sell the suit property only for a total sale consideration of Rs.32,60,000/-. Plaintiff had agreed to the said amount also and consequentially, the second Agreement to Sell dated 09.01.2006 Ex.P3 was executed between the parties. Plaintiff had further averred that as 29.04.2006 and 30.04.2006 were holidays being Saturday and Sunday, plaintiff had duly gone to the Tehsil office on 01.05.2006 alongwith balance sale consideration for execution of Sale Deed. It was averred that although defendants were present in the office of Sub Registrar, Narnaul but Sale Deed was not executed as defendants No.1 and 2 sought further enhancement of sale price which the plaintiff was not agreeable to. Plaintiff had accordingly got



his presence marked before the Sub Registrar. At that time defendants No.1 and 2 had also appeared and insisted for payment of balance sale consideration by way of draft and not by cash. It was averred that the Sub Registrar accordingly made a specific Endorsement that defendants were asking the balance amount by draft and were not willing to get the Sale Deed registered otherwise. With these pleadings, present suit was filed on 24.09.2009.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Narnaul had partly decreed suit of the plaintiff vide judgment and decree dated 11.03.2015 holding that the plaintiff had failed to prove the Agreements in question; and that the alleged payment of earnest money was in actual fact a loan transaction; and therefore, money decree was passed as follows: -

“32. As a sequel to my findings on issues no. 1 to 3 above, the suit of plaintiff is decreed. A decree for recovery of Rs.3,00,000/- alongwith interest at the rate of 12% per annum from the date of loan till realization is passed in favour of the plaintiff and against the defendant no.1 and defendant no.1 is directed to make the payment within three months. In the peculiar facts and circumstances of the case the parties are left to bear their own costs. Decree sheet be prepared accordingly. File be consigned to record room, after due compliance.”

4. However, the Civil Appeal filed by the plaintiff was accepted by the learned Additional District Judge, Narnaul vide judgment and



decree dated 13.10.2022 and suit of the plaintiff came to be decreed for specific performance to the extent of share of the appellant, as follows: -

“24. Hence, as a sequel to my aforesaid discussion and observations the relief granted by the trial court stands modified from money decree to the decree of specific performance in favour of plaintiff while decreeing this suit with costs against the defendant no.1, who executed the agreements to sell Ex. P2 and thereafter Ex. P3 on the same day after receiving earnest money Rs. 5 lacs. Therefore, these documents being signed by him alone cannot bind defendants Ashwani Kumar and Jiwan Lal who never authorized defendant no.1 to execute such documents on their behalf. Consequently, in these circumstances earnest money received by defendant no.1 would be presumed to have been received by him in lieu of his share in the suit property. So, he is directed to get the sale deed executed to the extent of his share in the suit property detailed in agreement Ex. P3 in terms of it on receiving proportionate balance sale consideration amount to the extent of his share in the suit property at the costs and expenses of the plaintiff at the earliest possible time preferably within a period of three months from getting certified copy of this judgment. Resultantly, in view of the above terms this appeal stands disposed of being allowed with costs throughout. Decree sheet be drawn accordingly. Trial court record alongwith copy of this judgment be sent back to the concerned court. Appeal file be consigned to record room after due compliance.”

Hence, the present second appeal by the defendant No.1.

5. It is *inter alia* submitted by learned counsel for the appellant that learned First Appellate Court was in patent error in decreeing the suit



of the plaintiff in entirety for specific performance qua share of the appellant, as it failed to appreciate that plaintiff had failed to prove the alleged Agreements to Sell. It is submitted that Ld. 1st Appellate Court has failed to appreciate the statement of DW-1 Krishan Kumar (Stamp Vendor) from whom both stamp papers upon which alleged Agreement to Sell Ex.P-2 and Ex.P-3 have been written, have been purchased. While deposing before the Court on oath he has stated that the stamp papers have been simultaneously purchased by the appellant for the purpose of affidavits, therefore the serial numbers of both the stamp papers is consecutive i.e. 18318 of Ex. P-2 and 18319 of Ex.P-3 and on that day he had sold stamp papers from Sr. No. 18253 to Sr. No. 19332 and also proved the Photostat copy of his register as Ex.D-1. Moreover, purchasing of 2 stamp papers with consecutive numbers itself falsifies the story of the plaintiff about the enhanced rates.

6. Learned counsel for the appellant further submits that while passing the impugned judgment and decree Ld. ADJ has failed to appreciate that the alleged agreement to sells has not been scribed by any regular deed writer rather the same have been typed by some typist. The plaintiff has failed to prove the execution of the said Agreements as he has failed to examine the Scribe of the alleged Agreements, which are fatal to his case.

7. It is further argued that the plaintiff has also failed to prove his readiness and willingness to perform the contract *in as much as* it had been contended by the plaintiff that balance sale consideration was available with him in cash on the target date of 01.05.2006. However, the plaintiff has



failed to demonstrate the availability of the said funds; and even the source of the said amount. In this regard, learned counsel refers to the cross-examination of the plaintiff; wherein he has admitted that he maintains a balance of Rs.10,000/- to Rs.20,000/- in his account. It is contended that clearly, therefore, plaintiff did not have the balance sale consideration.

8. Learned counsel submits that while passing the impugned judgment and decree the Id. Ist Appellate Court has totally overlooked the admission made by the plaintiff in his cross examination to the effect that he kept only Rs.10-20 thousand in his account and he arranged the sale consideration from the sale of land asserted to be sold by him. However, he could not bring on record any document pertaining to sale of his land and stated that the same was not traceable and further stated that the agreement to sell which he had executed for sale of his own land had been cancelled and no sale deed had been executed. From the cross examination of the plaintiff himself clearly reveals that there is no agreement to sell had ever been executed between the parties rather the document has been executed for the purpose of securing the loan advance by the plaintiff.

9. It is further submitted by learned counsel for the appellant that the appellant has consistently maintained that the said Agreement has been executed by way of security for a loan. It is submitted that while passing the impugned judgment and decree it has also been further ignored by Id. 1st Appellate court that in the present case the target for execution and registration of the sale deed was 30.04.2006 and the present suit has been filed by the plaintiff on 24.09.2009 and both the parties are resident



of Tehsil Narnaul and the plaintiff remained silent till about 3 years and has filed the suit immediately before the expiry of the limitation, despite there being a fact that the legal notice has been given by the plaintiff on 30.05.2006 through his counsel. From the above said facts and circumstances it is clearly reflects that the plaintiff was infact waiting for return of his loan amount instead of getting the sale deed executed.

10. It is reiterated that Id. 1st Appellate court while passing the impugned judgment and decree has further failed to appreciate the fact that why two stamp papers of consecutive number would be purchased by a prudent man for execution of agreement to sell; and when a hefty amount is being paid to the vendor despite that the vendee neither gets the same scribed by any regular deed writer who makes entry in ordinary course; nor get the same attested by any notary public despite there being a fact the attesting witness of the said document is an advocate and is close relative of the vendee. These facts and circumstances clearly reveal that the document Ex.P-2 and P-3 are the security document.

11. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 13.10.2022 passed by learned Additional District Judge, Narnaul be set aside.

12. *Per contra*, learned counsel for the plaintiff/respondent No.1 vehemently opposes submissions of the appellant and submits that the Agreements and payment of earnest money have not been denied by the defendants. It is further submitted that plaintiff has duly proved his readiness and willingness to perform the contract by submitting his Affidavit



of Attendance Ex.P1 before the Sub Registrar Narnaul on 01.05.2006. The said Affidavit duly bears the Endorsement of Sub Registrar to the effect that defendants had refused to accept balance sale consideration in cash. It is contended that therefore, plaintiff has duly proved his readiness and willingness to perform the contract. It is accordingly prayed that the judgment of learned First Appellate Court suffers from no error. No reason is made out by the appellant as to why specific performance should be denied to the plaintiff. He accordingly prays for dismissal of the present Appeal.

13. No other argument is raised on behalf of learned counsel for the parties. I have heard Id. counsel and perused the case file in detail. I find merit in the submissions advanced on behalf of the appellant/defendant No.1.

14. The first Appellate Court has held that the execution of the Agreements to Sell dated 09.01.2006 Ex.P2 and Ex.P3 in respect of the suit property by the appellant/defendant No.1 on his behalf and on behalf of defendants No.2 and 3 in favour of the plaintiff duly stand proved from the statement of PW2 Banwari Lal Sharma, attesting witness who has deposed in support of the plaintiff.

15. In decreeing suit of the plaintiff, the learned First Appellate Court has further observed that in the said Agreement to Sell dated 09.01.2006, there is no wording to indicate that the same was a loan transaction between the parties. First Appellate Court also observed that defendant No.1 has been unable to establish that defendants No.2 and 3



had authorized him to sell the suit property on their behalf; or that any document has been signed by the remaining defendants in favour of defendant No.1.

16. Learned First Appellate Court also held that plaintiff has succeeded in proving his readiness and willingness by submitting his Affidavit of Attendance dated 01.05.2006 Ex.P1, which was duly proved from the evidence of PW3 Yadram, Tehsildar, who has admitted that on 01.05.2006, plaintiff has produced Affidavit Ex.P1 for marking the attendance before the Sub Registrar. PW3 has also deposed that he had attested the said Affidavit. Accordingly, suit of the plaintiff was decreed for specific performance by the learned First Appellate Court.

17. However, I am in complete disagreement with the abovesaid reasoning of the learned First Appellate Court, as the same are based on a piecemeal reading of the evidence on record.

18. The Agreements to Sell dated 09.01.2006 could not have been held to be proved merely on the basis of evidence of one attesting witness. Learned first Appellate court has failed to appreciate in this regard it has been the consistent case of the appellant that he had purchased the two stamp papers bearing consecutive Numbers i.e. 18318 and 18319 on the same date, 09.01.2006 for only Rs. 5 each for purpose of executing affidavit in pursuance to the loan taken by the appellant. Plaintiff is unable to explain as to why 2 stamp papers bearing consecutive numbers i.e. 18318 and 18319 were bought on the same date i.e. 09.01.2006 for only Rs. 5 by the defendant No.1. This stance of the appellant is further fortified from the



evidence of DW1 Krishan Kumar, Stamp Vendor is important, who has deposited that: -

“....I sold two stamp papers No. 18318 & 18319 on 9.1.2006 for Rs. 5/- only to Sh.Ashok Kumar son of Sh. Radhu Ram, Rewari Road, Narnaul, which were meant for Affidavit. Both the said serial numbers are lying entered in my register and bearing signature of said Ashok Kumar. Its photocopy is duly attested by me, which is Ex. D-1.”

19. Ld. Civil Judge has duly taken a note of the fact that DW1 has categorically deposited that on the said date 9.1.2006, 79 stamp papers had been sold by DW1; and therefore, *“... the two stamp papers purchased by the parties should not have consecutive numbers. In other words, there should have been a reasonable gap between the time of purchase of the two stamp papers and their serial numbers. It is further significant to note that no reasonable explanation has been given by the plaintiff in said regard.”* However, the first Appellate Court has totally overlooked these facts.

20. Moreover, the alleged Agreements to Sell have not been scribed by any regular deed writer rather the same have been typed by some typist. The plaintiff has even failed to examine the Scribe. Keeping in view the above facts, the learned trial court has correctly observed that the said Agreements to Sell were executed as security transaction; and therefore, plaintiff is not entitled to decree of specific performance.

21. Even as far as readiness and willingness of the plaintiff to perform the contract is concerned, the same is not proved on record. It



cannot be held that merely because plaintiff has submitted his Affidavit of Attendance before the Sub Registrar on target Date, his readiness and willingness is proved. As per law, plaintiff was also required to demonstrate availability of balance sale consideration. It is the case of the plaintiff that he has given earnest money of Rs.3 lacs to the defendant No.1. However, as sale price was increased by defendants, at the time of execution of second Agreement to Sell Ex.P3, total earnest money of Rs.5 lacs was received by defendant No.1; and the remaining sale consideration amount of Rs.27,61,000/- was to be paid on the target date of 30.04.2006/01.05.2006.

22. In "***R. Shama Naik v. G. Srinivasiah (SC)***": ***Law Finder Doc Id # 2670489 d/d 28.11.2024***, the Hon'ble Supreme Court has held that two specific ingredients are required to establish readiness and willingness: (a) presence in the Tehsil; (b) demonstrate availability of funds. It has been held that "*Plaintiff must not only make specific averments in the plaint but also adduce oral and documentary evidence to show availability of funds and capacity to perform the contract in time. Readiness and willingness - Distinction - Readiness refers to financial capacity and ability to perform the contract, while willingness relates to the conduct of the plaintiff.*"

(Emphasis added)

23. In part compliance of ***R. Shama Naik (supra)***, plaintiff has duly proved his appearance before the Sub Registrar on 01.05.2006 vide his Affidavit of Attendance Ex.P1. However, it is to be noted that contrary to the story set up by the plaintiff, in the said Affidavit Ex.P1 defendants are not shown to be present in the office of Sub Registrar. Further, plaintiff has also



been unable to demonstrate availability of balance sale consideration of Rs.27,61,000/-. In this regard, cross-examination of the plaintiff is of great importance; wherein he has admitted that:

".....The agreement to sell was got executed in Court premises. The said agreement to sell was got typed from some typist, as no Deed Writer was available at that time. It was around 4.00/4.30 P.M. at that time. It is correct that the timing of Tehsil office is upto 5.00 P.M. We all four persons were present at the time of getting typed the said deed. A stamp paper was purchased for getting scribed the said deed. It took around 15 minutes for getting typed the said deed. After getting typed, the said deed was completed. The said deed was not got attested by any Notary Public or Gazetted Officer, nor got entered in register of any Deed Writer. I didn't ask Ashok to get attested the said deed from Notary Public or get it entered in register of any Deed Writer...As stated by me, I made a payment of Rs. 3 lac to Ashok Kumar at the time of execution of above noted deed...I don't know as to from whom the stamp paper for first agreement to sell was purchased. I am also not aware about the name of stamp vendor, however he was sitting in a cabin. The Doctor purchased another stamp paper after revising the rate. The said stamp paper was also purchased from the Stamp Vendor, from whom the first one was purchased. The first deed was not cancelled before purchasing the second stamp paper & getting typed deed on the same. The second deed was also got typed from same typist...There is no reference about first deed in the second deed. It is correct that I have not so far got cancelled the first deed at any stage. As stated by me, an earnest money for Rs. 5 lac was paid to the Doctor. Voluntarily said that I had paid Rs. 2 lac at the time of execution of second deed and the sum of Rs.3



lac, paid at the time of execution of first deed, was automatically adjusted therein...It is correct that Sr. No. 18318 is lying mentioned on overleaf of stamp paper, used for first deed & Sr. No.18319 on second deed. It is correct that Ashok Kumar, defendant No. 1 has not mentioned regarding receipt of Rs. 3 lac &Rs. 5 lac respectively on first deed Ex.P-2 & second deed Ex. P-2. It is wrong that Ashok Kumar may not have got mentioned regarding payment, because the amounts mentioned in both the deeds may not have paid...Voluntarily said that I paid a sum of Rs. 3 lac at the time of execution of first deed and then Rs. 2 lac at the time of execution of second agreement to sell. Hence payment of total sum of Rs. 5 lac was duly got mentioned in second agreement to sell...It is correct that both the said deeds are not bearing signatures of Ashok Kumar on front page. It is also correct that Deed Ex. P-3 not got attested from Notary Public, not got entered in register of Deed Writer...It is correct that there is addition with pen at 5 points on first page of Ex. P-2. Similarly, there is some cutting in 6th line at Page No. 3 of Ex. P-3. It is correct that the said cuttings contain no initial or signature by anyone. I have gone through my suit & Ex. PW-5/A, filed before Ld. Court. It is correct that I have not mentioned regarding cancellation of Ex. P-2 and payment of Rs. 2 lac vide Ex. P-3 in my affidavit Ex.PW-5/A. It is also correct that similarly, I have not mentioned regarding payment of Rs.3 lac + 2 lac in my affidavit Ex. PW-5/A. Voluntarily said that I have mentioned about the consolidated payment of Rs. 5 lac. It is correct that the said facts are not got mentioned in my suit...I am having land measuring 2-1/4 acre, from which I get income of about Rs.20/30,000/- per annum. I am also having ancestral land, which is measuring 3 acres, while the said amount of Rs. 2 acres is purchased by me, which I have purchased since past about 10 years. I can't tell the



value of said land, as for how much amount the same was purchased. I am having Bank Account. The said school building is constructed in the land purchased by me. I am having account in Punjab National Bank, B.O. Ateli. I maintain a balance of Rs.10/20,000/- in my said account. I have sold out my land in 1st week of January and received its sale proceeds. I don't remember as to for how much amount I sold the said land. Earnest money was received at that time. I am not aware about total value of land at the time of entering into agreement to sell. Voluntarily said that I received a sum of Rs.5 lac on account of earnest money. The said land was measuring about 2500 Sq. Yds. I didn't issue any legal notice to the defendants before 30.4.2006. I am not aware as to what was my balance in bank account as on 30.4.2006. I am also not aware as to what was my balance in bank account as on 1.5.2006...I don't remember the value of land sold & purchased by me during the period from 1.1.2006 to 30.1.2006. I was having a sum of Rs.30 lac as on 26.4.2006.I got the said amount of Rs. 30 lac from sale of my land. I am not presently having papers pertaining to said land, however, I can produce the same on next date of hearing.”

24. From the above admissions made by the plaintiff himself, it is clear that plaintiff was unable to demonstrate availability of balance sale consideration of Rs.27,61,000/-. Thus, readiness and willingness of the plaintiff to perform the contract is not proved. Contention of the plaintiff that the Affidavit of Attendance Ex.P1 bore the endorsement from the Sub Registrar to the effect that plaintiff was present with the balance sale consideration, is not sufficient, as plaintiff himself has admitted that he is having only Rs.10,000/- to Rs.20,000/- in his account. Although plaintiff has



stated that he has sold land measuring 2500 sq.yds. however, no details thereof, are forthcoming from the evidence of the plaintiff.

25. The fact that plaintiff was not ready and willing is also proved from the fact that plaintiff admittedly did not serve any legal notice upon the defendants.

26. Another very important factor which has been overlooked by the learned First Appellate Court is that the target date was set for 30.04.2006/01.05.2006; whereas the present suit has been filed only on 24.09.2009 i.e. well after the period of limitation. It would appear from the record that no objection in this regard was taken by the defendants in their respective written statements. However, even if that be so, the same being a legal issue, it was required to be considered and adjudicated upon by the District Courts. Reference judgment passed by Hon'ble Supreme Court in **S. Shivraj Reddy v. S. Raghuraj Reddy, (SC) : Law Finder Doc Id # 2580551, D/d.16.05.2024**; wherein it is held that *"Suit for dissolution of firm and rendition of accounts - Even if plea of limitation is not set up as defence, Court has to dismiss suit if it is barred by limitation."*

27. Thus, keeping in view the entirety of the afore-noted facts and circumstances and legal position, it is my view that the impugned judgment and decree suffers from material errors of law and fact. The same can therefore not be sustained. Accordingly, the present Appeal is **allowed**. Impugned judgment and decree dated 13.10.2022 passed by learned Additional District Judge, Narnaul is set aside. Judgment and decree dated 11.03.2015 passed by learned Additional Civil Judge (SD), Narnaul is upheld.

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

05.05.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No