

**(2000) 02 P&H CK 0016**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 3967 of 1999

Gulzar Kaur

APPELLANT

Vs

Bara Singh

RESPONDENT

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**Date of Decision:** Feb. 1, 2000

**Citation:** (2001) 2 CivCC 20 : (2000) 3 RCR(Civil) 458

**Hon'ble Judges:** R.L. Anand, J

**Bench:** Single Bench

**Advocate:** R.K. Battas, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

R.L. Anand, J.

This is Defendant's appeal and has been directed against the judgment and decree dated 5.8.1999 passed by the Additional District Judge, Ropar, who modified the judgment and decree of the trial Court which granted a money decree for a sum of Rs. 41,000/- alongwith interest at the rate of 12% per annum from 15.6.1989 till recovery in favour of the Plaintiff Bara Singh and against Smt. Gulzar Kaur, who has filed the present appeal.

2. Some facts can be noticed in the following manner. Bara Singh filed a suit for possession by way of specific performance against Smt. Gulzar Kaur with regard to the land measuring 12 Kanals 3 Marias on the plea that the said land was agreed to be sold by Gulzar Kaur in his favour on 15.6.1989 at the rate of Rs. 50,000/- per acre and in pan performance of the agreement Smt. Gulzar Kaur received a sum of Rs, 41,000/- by way of earnest money, the last date for execution of the sale deed was 15.6.1989. The Defendant was called upon several times to execute the sale deed. So much so the Plaintiff even served a notice upon the Defendant through counsel on 18.6.1990 calling upon the Defendant to execute the sale deed but to no effect. The Plaintiff appeared before the Sub Registrar along with the remaining sale consideration but the Defendant did not turn up, as a result of which, the suit for possession was tiled with an alternate prayer that a money decree for a sum of Rs.

41,000/- may be passed in favour of the Plaintiff.

3. The trial Court vide judgment and decree dated 3.3.1994 and for the reasons given in its judgment came to the conclusion that Plaintiff was not entitled to decree for possession by way of specific performance. Rather a money decree should be granted in favour of the Plaintiff for a sum of Rs. 41,000/- as state above.

4. Aggrieved by the judgment and decree of the trial Court Shri Bara Singh filed an appeal before the Additional District Judge. Ropar who modified the judgment and decree of the trial Court and came to the conclusion that since the agreement of sale has been executed by the Defendant and that the Defendant has failed to prove that she incurred the amount by way of loan and that the Plaintiff was not ready and willing to perform his part of the contract, therefore, the first appellate Court granted a decree for possession by way of specific performance with regard to the land in question. The reasons for modifying the judgment and decree and contained in para Nos. 8, 9 and 10 of the judgment of the first Appellant Court which are quoted as follows.:

8. Learned Counsel for the Defendant-Respondent has vehemently argued that the Plaintiff-Appellant was not in a capacity to pay Rs. 41,000/-. He has stated that he had taken Rs. 20,000/- as loan from his brother Avtar Singh whereas he did not produce that witness. He also did not produce Commission Agent from where he claims to have borrowed some small amount of Rs. 9,000/-. Dev Raj. Manager of the said firm M/s Ram Gopal Hari Krishan appeared as DW3 to deny the loan of Rs. 9000/- to the Plaintiff-Appellant. I find that Rs. 40,000/- is not that big amount which cannot be paid by the Plaintiff-Appellant. His source of money is not to be examined critically and exhaustively when the scribe and respectable of the village affirmed the payment of earnest money and are willing to swear in the village Gurudwara. Therefore, I hold that trial Court has rightly concluded that agreement of sale was executed in favour of the Plaintiff-Appellant and that Defendant-Respondent received Rs. 41,000/- as earnest money. The authorities Gulian Bibi v. Nazir-ud-din Mis, AIR 1975 Gau 30 and [Smt. Kartari Vs. Kewal Krishan and Others](#), regarding execution of document by an illiterate are not applicable to the facts of the present case in view of my findings recorded above. Therefore, no heavy burden lies on the Plaintiff-Appellant to prove that no undue influence was exercised.

9. The important question now risen for consideration, is as to whether trial Court is justified in refusing the primary relief of specific performance, to the Plaintiff-Appellant on the ground that he has alleged not ready and willingness in the plaint. I find that Plaintiff-Appellant has proved the due execution of the agreement and the evidence over-whelming shows that Plaintiff-Appellant was ready and willing and is still ready and willing to perform his part of the contract. He is entitled to the primary relief. The averment in the plaint supported by document would show that after the agreement when the Plaintiff-Appellant doubted the intention of the Defendant-Respondent, he had been asking the

Defendant-Respondent to execute the sale deed and even before the date fixed, he issued a notice dated 8.6.1990 calling upon him to execute the sale deed on 15.6.1990. Copy of the said notice is Ex.P.1. Defendant-Respondent did not turn up on the said date and Plaintiff-Appellant sworn an affidavit on 15.6.1990 showing that he came present in the office of Sub Registrar, Kharar to execute the sale deed. He was ready with the balance sale consideration. Plaintiff-Appellant did not lose hope and even attended the office of Sub Registrar, Kharar on 18.6.1990. It goes to show that Plaintiff-Appellant was ready and willing to perform his part of the contract. The fact that immediately after the last date of the sale 15.6.1990 and after appearing before the Sub Registrar, Kharar on 18.6.1990 he immediately filed the suit on 21.6.1990. It goes to show the promptness with which the Plaintiff-Appellant approach the Court. It clears his intention that he is still ready and willing to perform his part of the contract and wants the Defendant-Respondent to execute the sale deed. It comes out that in the plaint though Plaintiff-Appellant has alleged that he had issued a notice and came to the office of Sub Registrar, Kharar on 15.6.1990 but did not specifically mention that he was ready and willing and is still ready and willing to perform his part of the contract. An amendment application to make this averment is also pending. The trial Court while declining the relief of specific performance heavily relied upon the missing of these averments in the plaint and relied upon the authority of the Apex Court titled as Abdul Khader Rowther v. Sara Bai, 1989(43) ELT797(SC) and reproduced head note B in the judgment. It is to be seen that head notes cited in the authorities are always deceptive. The head note which was taken out of para No, 1 does not reflect true facts. In para 11 Hon"ble Supreme Court observed as under:

The High Court is, in our view, justified in coming to this conclusion. While it was the definite case of the Plaintiff that the documents in question passed neither possession nor title from the Plaintiff to the Defendant and no consideration was paid thereunder, the trial Court rejected that contention and accepted the contention of the Defendant that possession and title passed under the documents and the stipulated consideration had been fully paid to the Plaintiff. These findings were not challenged by the Plaintiff in answer to the Defendants appeal in the High Court. His sole contention in defence of the impugned judgment was that the Trial Court rightly held that the Plaintiff was entitled to a decree for specific performance of the covenant for reconveyance. It is thus clear that this is a case where the Plaintiff seeks specific performance of a contract stated to be evidenced by an allegedly sham document which did not come into effect. His plaint does not contain the requisite pleading necessary to obtain a decree for specific performance. This equitable remedy recognised by me Specific Relief Act cannot be had on the basis of such pleadings and evidence.

The apex Court further observed that:

The Plaintiff did not plead either in the plaint or at any subsequent stage that he was ready and willing to perform the agreement pleaded in the written statement of the Defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the CPC Code. In a suit for specific performance it is incumbent upon the Plaintiff not only to set out agreement on the basis of which he sues in all its details, he must go further and plead that he has applied to the Defendant specifically to perform the agreement pleaded by him but the Defendant has not done so. He must further plead that he has been and is still ready and willing to specifically perform his part of the agreement. Neither in the plaint nor at any subsequent stage of the suit the Plaintiff has taken those pleas.

It goes to show that head note cited by the trial Court is out of context. Facts of the said cases are entirely different. The matter was of ready and willingness was again examined by Hon'ble Bench of Supreme Court of India in N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao and others, 1996 (1) CCC 27 (SC). The Hon'ble Division Bench observed as under:

To adjudge whether the Plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the Plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the Defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The Court may either infer from the facts and circumstances whether the Plaintiff was ready and was always ready and willing to perform his part of the contract"

It goes to show that ready and willingness is to be inferred from circumstances. Though in the plaint it is not specifically mentioned that Plaintiff-Appellant is ready and willing but averment in the plaint and conduct of the Plaintiff-Appellant in immediately approaching the Court goes to show that Plaintiff-Appellant was and is ready and willing to perform his part of the contract. Hence he is entitled to the primary relief of specific performance of the contract. Ld. Counsel for Defendant has argued that the agreement is dated 15.6.1989 and the date of sale is 15.6.1990. Giving of one year time goes to show that agreement was only to secure loan. It is to be seen that 15.06.1990 was the last date for execution of the sale deed and not the exact date on which the sale deed was to be executed. Even if one year time is given, there is no presumption that the agreement is only to secure the loan. The denial of chakota by the Plaintiff-Appellant and admission of the same by Sarpanch is immaterial. The Court is to see what was the intention of the parties. The agreement coupled with the previous sale deed Ex.PW5/A executed one year before

the agreement goes to show that intention was to sell the property. Hence findings of the trial Court on issues No. 1 and 2 are modified to hold that Plaintiff-Appellant is entitled to specific performance of the agreement dated 15.6.1989 on the payment of balance sale consideration.

10. The finding on issue No. 3 has not been assailed before me. Since the suit of the Plaintiff-Appellant is to be decreed for the primary relief, therefore, application for amendment has become infructuous and dismissed as such.

5, In this manner, the Defendant Smt. Gulzar Kaur has filed the present appeal.

6. Two fold submissions have been raised: firstly that the relief of specific performance is a discretionary relief and once the trial Court has exercised a discretion and though proper that Plaintiff should not be granted a decree for possession by way of specific performance such discretion properly exercised by the Court ought not and should not have been disturbed by the first appellate Court. Second contention raised by the counsel appearing on behalf of the Appellant is that it is not proved on the record that Plaintiff was ready and willing throughout to perform his part of the contract. More so, when the Plaintiff has not even so alleged in the plaint which is mandatory and in these circumstances, the suit of the Plaintiff for possession by way of specific performance could not and should not have been decreed by the first appellate Court. Yet another contention was developed by the counsel for the Appellant that the Defendant is a woman. She is an illiterate lady. There was nobody accompanying her at the time of agreement and the possibility cannot be ruled out that Plaintiff might have taken undue advantage of the situation by getting an agreement of sale in his favour in place of loan document. Shri Battas also raised an argument that the land measuring one and half acres has been allegedly sold at the rate of Rs. 50,000/- per acre. This itself suggests that the agreement of sale is not a genuine document executed by Smt. Gulzar Kaur with the intention that she wanted to sell her land.

7. I have considered all the submissions raised by the learned Counsel for the Appellant and these contentions are liable to be rejected.

8. There is consistent evidence on the record that agreement was executed by the lady. This agreement was executed in the year 1989. A judicial notice can always be taken that in the year 1989 the terrorism was at peak in the State of Punjab and nobody was interested to purchase the land or invest money in the immovable properties. The prices were down at that stage in this part of the country. Be that as it may, we have to see whether there was an agreement of sale duly executed by Smt. Gulzar Kaur in favour of Bara Singh Plaintiff or not? The Plaintiff in this case has led satisfactory evidence to prove the execution of the sale and the advancement of the earnest money of Rs. 41,000/-. The plea taken up by the Defendant appears to be an after thought just to deprive the Plaintiff of his legitimate right under the contract. There cannot be any dispute with the proposition of law that relief of

specific performance is a discretionary relief but this discretion has to be exercised by the Courts below judiciously. The Civil Courts can always take care of the fact that when a person has undertaken an obligation under a contract such a person ordinarily should be directed to discharge that obligation with the passage of time or at the instance of somebody. A person who has undertaken to discharge the obligation should not be allowed to run away. Otherwise the very purpose of specific performance will become a mockery until and unless the circumstances are so cogent and convincing that the relief of possession by way of specific performance should not be granted or alternative decree for money should be granted.

9. In the present case, the only agreement which deserves to be considered in view of this Court is as to whether the Plaintiff was ready and willing to perform his part of the contract or whether he made sufficient averments in the plaint so as to express his intention and conduct that he was ready and willing to perform his part of the contract.

10. With the assistance of Shri Battas, I have been able to go through the averments mentioned in para No. 7 of the plaint, which are as follows:

In para No. 7 of the plaint it has been stated by the Plaintiff that the Defendant was requested to complete the sale deed of the suit land and accept the balance sale price of Rs. 34,937.50 but Defendant refused to do so, day before yesterday. Hence this suit.

11. We all know that the plaints are drafted by the lawyers at the Munsif level. The trial Court has rightly relied upon the judgment of the Supreme Court reported as N. P. Thirugnanam v. Dr. R. Jagan Mohan Rao. 1996 (1) CCC 27 wherein the Supreme Court observed as follows:

To adjudge whether the Plaintiff is ready and willing to perform his part of the contract, the Court must take into consideration the conduct of the Plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances. The amount of consideration which he has to pay to the Defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The Court may either infer from the facts and circumstances whether the Plaintiff was ready and was always ready and willing to perform his part of the contract.

12. The last argument of the learned Counsel for the Appellant that the sale consideration is too inadequate is no ground to reject the relief of possession by way of specific performance. Mere inadequacy of consideration is no ground to reject the relief of specific performance.

13. In this view of the matter, I do not see any illegality or impropriety in the impugned judgment dated 5.8.1999 passed by the first appellate Court. The same is hereby maintained and affirmed.

14. Resultantly, this appeal is devoid of any merit and the same is hereby dismissed. The Defendant is directed to execute the sale deed within two months from today failing which it will always be open to the Plaintiff-Respondent to get the sale deed executed through Court of law. No order as to costs.