

(2010) 08 P&amp;H CK 0370

## High Court Of Punjab And Haryana At Chandigarh

Case No: None

Jora Singh

APPELLANT

Vs

Lakhwinder Kumar and Others

RESPONDENT

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**Date of Decision:** Aug. 11, 2010**Citation:** (2011) 2 CivCC 113 : (2011) 161 PLR 251 : (2011) 1 RCR(Civil) 130**Hon'ble Judges:** L.N. Mittal, J**Bench:** Single Bench**Final Decision:** Dismissed

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**Judgement**

L.N. Mittal, J.

This is second appeal by defendant Jora Singh, having remained unsuccessful in both the courts below.

2. The suit was filed by Inderjit Singh (since deceased and now represented by respondents as his legal representatives) alleging that the defendant-appellant agreed to sell the suit land measuring 18 bighas 09 biswas to the plaintiff @ Rs. 42,000/- per bigha, vide agreement dated 13.11.2002 and received Rs. 4,00,000/- as earnest money. Sale deed was to be executed on or before 30.11.2003. However, 29.11.2003 and 30.11.2003 being holidays (Saturday and Sunday), the plaintiff appeared before the Sub Registrar on 28.11.2003 for getting the sale deed executed in terms of agreement, but the defendant did not turn up. Notice sent to the defendant was received back undelivered. The defendant has committed breach of the agreement, whereas the plaintiff always remained ready and willing to perform his part of the contract. On these averments, the plaintiff sought specific performance of the agreement to sell and in the alternative, for recovery of Rs. 7,74,900/-.

3. The defendant denied the plaintiff allegations. The defendant also denied to having agreed to sell the suit land to the plaintiff or having executed the agreement or having received Rs. 4,00,000/- as earnest money. The defendant alleged that he

used to sell his crop at the shop of Vijay Singla - Commission Agent, who used to obtain thumb impressions/signatures of the defendant on blank papers as collateral security and after settling accounts with him in June 2004, the defendant shifted to another Commission Agent, but Vijay Singla has forged the alleged agreement in connivance with plaintiff and marginal witnesses. Various other pleas were also raised.

4. Learned Civil Judge (Junior Division), Dhuri, vide judgment and decree dated 30.01.2007, instead of granting the relief of specific performance of the agreement, decreed the plaintiff's suit for recovery of Rs. 4,51,000/- i.e. Rs. 4,00,000/- advanced as earnest money and Rs. 51,000/- as interest till the date of filing of the suit. Pendente lite and future interest @ 6% per annum was also granted. First appeal preferred by the plaintiff has been allowed by learned District Judge, Sangrur, vide judgment and decree dated 04.11.2009 and thereby, plaintiff's suit for specific performance of the agreement to sell has been decreed. Feeling aggrieved, defendant has preferred the instant second appeal.

5. I have heard learned counsel for the appellant and perused the case file.

6. Learned Counsel for the appellant vehemently contended the plaintiff's readiness and willingness to perform the impugned agreement is not proved, and therefore, the plaintiff is not entitled to relief of specific performance, as rightly held by the trial court. The contention cannot be accepted. There is un rebutted evidence of the plaintiff that he was always ready and willing to perform his part of the contract. He appeared before the Sub Registrar on 28.11.2003 to get the sale deed executed in terms of the agreement. The plaintiff also got attested affidavit dated 28.11.2003 (Ex.P-3) from Notary Public depicting his readiness and willingness to perform his part of the contract. The plaintiff also sent notice Ex.P-6 by registered post to the defendant, but the said notice was received back undelivered as the defendant did not meet the postman, when he went to deliver the notice to the defendant on different dates mentioned on the envelope. The plaintiff thereafter filed the instant suit. The very fact that the plaintiff went to the office of Sub Registrar on 28.11.2003 and got affidavit Ex.P-3 attested from the Notary Public and also sent notice to the defendant and thereafter also filed the instant suit is sufficient to depict that the plaintiff has always been ready and willing to perform his part of the contract.

7. In addition to the aforesaid, the defendant has even denied the execution of the agreement itself. Consequently, it is apparent that the defendant was never ready and willing to perform his part of the contract. It, therefore, does not lie in the mouth of the defendant to contend that the plaintiff was not ready and willing to perform his part of the contract. Moreover, time is not essence of the agreement to sell immovable property, unless so made by the intention of the parties. In the instant case, time was not the essence of agreement at all. Even defendant has not pleaded that time was essence of the agreement. In this view of the matter also, sending of notice by plaintiff to defendant requiring him to execute the sale deed as

per agreement and thereafter filing of suit by the plaintiff would suffice to prove his readiness and willingness to perform his part of the contract.

8. It may also be added that lower appellate court is the final court of fact. Finding of fact recorded by the lower appellate court that plaintiff was always ready and willing to perform his part of the contract is based on appreciation of evidence and cannot be said to be perverse or illegal in any manner so as to warrant interference in second appeal. No question of law, much less substantial question of law, arises for determination in the instant second appeal. The plaintiff has duly proved the execution of the agreement by himself entering into the witness box and also by examining scribe of the agreement as well as one attesting witness of the agreement. On the other hand, there is sole self-serving oral and bald statement of the defendant. The defendant has not even pleaded as to what is the link between the plaintiff and Vijay Singla. The defendant has simply alleged that Vijay Singla used to obtain thumb impressions/signatures of the defendant on blank papers. However, when there is no link alleged or proved between plaintiff and Vijay Singla, question of fabrication of impugned agreement by the plaintiff, on the basis of thumb impressions of the defendant allegedly obtained by Vijay Singla on blank papers, would not arise.

9. Learned Counsel for the appellant, relying on two judgments of Hon"ble Supreme Court namely [Parakunnan Veetill Joseph's Vs. Nedumbara Kuruvila's and Ors,](#) and [Ganesh Shet Vs. Dr. C.S.G.K. Setty and Others,](#) . contended that relief of specific performance of the agreement could not be granted to the plaintiff. The contention cannot be accepted. Normal rule is to grant the relief of specific performance of the agreement. For declining the said relief, there has to be some special circumstance. In the instant case, however, the defendant has neither pleaded nor proved any special circumstance for declining the relief of specific performance of the agreement to the plaintiff. In the reported cases mentioned above, relief of specific performance was declined in the facts and circumstances of those cases. In the instant case, however, there is no circumstance for declining the relief of specific performance of the agreement to sell to the plaintiff.

10. For the reasons recorded herein above, I find no merit in the instant second appeal. The same is accordingly dismissed in limine.