

**(2011) 01 P&H CK 0425**

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

**Case No:** Regular Second Appeal No. 645 of 1985

Dalip Singh

APPELLANT

Vs

Kewal Singh

RESPONDENT

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**Date of Decision:** Jan. 21, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Specific Relief Act, 1963 - Section 16

**Citation:** (2011) 3 RCR(Civil) 971

**Hon'ble Judges:** Rakesh Kumar Jain, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Rakesh Kumar Jain, J.

The defendant is in second appeal against the judgment and decree of the Courts below by which suit filed by the plaintiff for specific performance of the agreement to sell, has been decreed.

2. The case of the plaintiff is that the defendant had agreed to sell 24 Kanals of agricultural land falling in Khasra Nos. 881 and 882, situated in village Surghuri, Tehsil and District Faridkot for a consideration of Rs. 36,000/- on 10.06.1978/10.07.1978. Out of the total sale price, defendant had received a sum of Rs. 9,000/- at the time of execution of agreement, Rs. 26,000/- of old mortgage amount of Mehnga Singh S/o Kesar Singh of village Surghuri was to be retained by the plaintiff for payment to Mehnga Singh and balance sale consideration of Rs. 1,000/- was agreed to be paid by the plaintiff to the defendant on 15.06.1979 at the time of execution of the "sale deed. The expenses of the stamp duty and registration of the sale deed were to be borne by the plaintiff. The plaintiff had averred that he has always been ready and willing to perform his part of the contract and to pay the balance sale consideration of Rs. 1,000/- to the defendant,

but the defendant had been avoiding execution of the sale deed despite a notice having been served upon him through Shri Inder Pal, Advocate. Thus, he prayed for a decree of specific performance on the payment of balance sale consideration and in the alternative for refund of Rs. 9,000/- paid as advance and Rs. 4,000/- as damages. In reply, both the execution of the agreement to sell as well as the receipt of consideration were denied by the defendant. It was alleged that the suit is bad being vague as the plaintiff had not given area of each of the Khasra number specifically. On the pleadings of the parties, following issues were struck by the learned Trial Court :-

1. Whether the defendant executed the agreement in question in favour of the plaintiff? OPP.
2. Whether the defendant received a sum of Rs. 9000/- at the time of execution of that agreement ? OPP.
3. Whether the plaintiff has been ready and willing to perform his part of the contract ? OPP.
4. What is the effect of non-giving the area of each of the khasra number in the plaint ? OPD.
5. Relief.

3. The learned Trial Court decided issue Nos. 1 to 3 in favour of the plaintiff and issue No. 4 against the defendant and while deciding issue No. 5 (relief), decree for specific performance was granted on the terms contained in the agreement subject to the condition that the plaintiff was to deposit a sum of Rs. 1,000/- within a period of 15 days of the order and in case of his failure to pay or deposit the said amount within the stipulated period, his suit was to be dismissed automatically. It was also held that if the amount is deposited within the stipulated period, the plaintiff then serve a registered notice on the defendant to execute the sale deed in his favour within 15 days thereof, failing which the plaintiff shall be entitled to get the sale deed executed through the Court.

4. The defendant went in appeal where he did not assail findings of the learned Trial Court recorded on issues No. 1 and 2 as it is observed in para No. 8 of its judgment by the learned First Appellate Court. All that has been argued was in respect of issues No. 3 and 4. The learned First Appellate Court maintained the finding of the learned Trial Court on issues No. 3 and 4 as well and dismissed the appeal. It may be pointed out that after the Trial Court decree, the plaintiff had deposited Rs. 1,000/- as balance sale consideration.

5. Still aggrieved, the defendant has preferred this second appeal, in which notice of motion was issued on 25.03.1985 and execution of the decree was stayed. The appeal was admitted on 28.05.1985 with the following order :-

Admitted Stay execution of the decree meanwhile. The plaintiff is allowed to withdraw the amount deposited by him without prejudice to his right in appeal.

6. Since the defendant/appellant had not assailed the findings recorded by the learned Trial Court on issues No. 1 and 2 before the First Appellate Court, the only question which is raised before this Court is with regard to the finding on issue No. 3 that the plaintiff was not ready and willing to perform his part of the contract. In this regard, it is submitted by learned counsel for the appellant that according to Section 16(c) of the Specific Relief Act, 1963 [for short "the Act"], the plaintiff is required to aver and prove his readiness and willingness with respect to the agreement to sell.

7. I am afraid that this argument raised by learned counsel for the appellant has no legs to stand because the plaintiff has specifically averred in para No. 2 of the plaint that he has always been ready and willing to perform his part of the contract, to pay the balance sale consideration, to bear the stamp and registration charges and to do all other acts which are necessary for completion of the sale deed and he is still ready and willing to perform his part of the contract. When the plaintiff appeared in the witness box, at that time also he had made a statement that he is ready and willing to perform his part of the contract. Since the amount of balance sale consideration was only Rs. 1,000/-, it cannot be presumed that the plaintiff was not ready and willing to pay that amount when the defendant had come forward to execute the sale deed. Thus, I do not find any substance in the argument raised by learned counsel for the appellant in this regard.

8. No other point has been raised.

9. In view of the aforesaid discussion, the present appeal is found to be without any merit as no substantial question of law is involved in it as envisaged u/s 100 of the Code of Civil Procedure, 1908. Hence, the same is hereby dismissed, however, without any order as to costs.

10. Before parting with the judgment, it may be clarified that at the time when the appeal was admitted, the plaintiff, who had deposited the balance sale consideration of Rs. 1,000/- in terms of the learned Trial Court decree, had withdrawn the said amount without prejudice to his right in appeal. Ms. Alka Sarin, learned counsel appearing on behalf of the respondent, has prayed that the respondent/plaintiff may be allowed to re-deposit the said amount. In view thereof, a period of one month is granted to the respondent/plaintiff to deposit the amount of Rs. 1,000/- withdrawn by him in pursuance of the order dated 28.05.1985.