

Partap Singh Vs Harinder Singh and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 14, 2015

Acts Referred: Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2, 10, 100

Contract Act, 1872 - Section 47, 48, 50

Limitation Act, 1963 - Section 3

Specific Relief Act, 1963 - Section 15, 16(c), 20, 22

Hon'ble Judges: Fateh Deep Singh, J

Bench: Single Bench

Advocate: Sukhdip Singh Brar, for the Appellant; H.N.S. Gill, Advocates for the Respondent

Judgement

Fateh Deep Singh, J.

What got initiated way back on 10.6.1988 when the then plaintiffs-Harinder Singh, Joginder Singh, Harvinder Singh,

Daljit Singh and Harbahajan Singh preferred against Tara Singh, the original owner (defendant No. 1) and Partap Singh (defendant No. 2)

subsequent purchaser a suit for possession by way of specific performance of a registered agreement to sell dated 25.11.1983 Ex.P1 in respect of

land measuring 34 kanals and 14 marlas detailed and described in the headnote of the plaint and which suit stood decreed, wherein, the relief for

permanent injunction stood declined vide judgment and decree dated 7.2.2000 by the learned Civil Judge (Junior Division) Amritsar. These

findings were upheld by the learned first Appellate Court of learned District and Sessions Judge, Amritsar through impugned judgment and decree

dated 29.8.2000, whereby, two separate appeals of Partap Singh as well as Tara Singh defendants stood dismissed with costs. It is against these

consecutive findings, the unsuccessful subsequent purchaser-Partap Singh has preferred the instant regular second appeal before this Court.

2. Heard, learned counsel for the parties. The concise factual situation emancipating from the arguments and the records of the lower Court shows

that defendant No. 1-Tara Singh happens to be the owner of the suit property and it is claimed by the plaintiffs that they entered into a registered

agreement to sell Ex.P1 with this defendant, who has agreed to sell the same for a total sum of Rs. 1,80,000/- and out of which plaintiffs claim that

they have paid Rs. 50,000/- as earnest money. It is claimed by the plaintiffs that since the land fell into the conglomeration of Urban Land Ceiling

and Regulation Act it was agreed upon that the seller would seek prior permission of the authorities and, thereafter, would execute the sale deed

and then deliver the actual possession of suit property. Though, it is alleged that thereafter, a sum of Rs. 27,000/- was paid out of the remaining

sale consideration on various occasions by the plaintiffs and Tara Singh even executed a pronote of sum of Rs. 10,000/- in their favour and

remaining amount was received orally. It is alleged further that only a sum of Rs. 1,03,000/- remained due to be paid by the plaintiffs out of this

total sale consideration. It is further accepted by the plaintiffs that earlier they have filed a suit for permanent injunction against the defendant-owner

from alienating suit land and, thus, prayed that inspite of having received requisite permission from the concerned authority has failed to execute the

sale deed as per his obligation and hence suit in question was preferred thereafter, claiming that they were ready and willing to undergo their part of

the contract.

3. The stand of the seller defendant No. 1 is that the suit was barred by limitation as well as questioned maintainability of the suit in the light of the

previous suit for permanent injunction and has claimed that he has earlier entered into an agreement to sell dated 8.10.1983 Ex.PX with defendant

No. 2- Partap Singh, present appellant for a total consideration of Rs. 1,75,000/- as prior to this Partap Singh was cultivating the land in question

as a lessee by virtue of agreement of mortgage dated 5.8.1983 Ex.DW4/2\Ex.DW5/1 and that he had received a sum of Rs. 1,25,000/- from

Partap Singh and has termed the agreement to sell Ex.P1 to be under undue influence, coercion and pressure and being not an outcome of

voluntariness and free accord. It is claimed by the seller that he had already brought this to the knowledge of the plaintiffs who inspite being aware

of it and out of their own personal enmity with Partap Singh had gone ahead with it for obvious reasons.

4. The stand of the defendant No. 2-Partap Singh, present appellant, besides, taking usual preliminary objections of lack of locus standi, cause of

action, maintainability, estoppel, limitation and the suit being barred under Order II Rule 2 CPC has filed reply on merits, wherein, he claimed that

Tara Singh was owner of suit land and he had entered into an agreement to sell on 8.10.1983 Ex.PX also denoted as Ex.DW4/1 with Partap Singh

and denied any knowledge of agreement between Tara Singh and the plaintiffs. The stand of this defendant is that prior to the alleged agreement to

sell Ex.P1 he was in cultivating possession of the suit land as a lessee on year to year basis and that Tara Singh had also entered into an agreement

for mortgage for sum of Rs. 80,000/- with him and has acknowledged having received a sum of Rs. 70,000/- on 5.8.1983 and that it was on the

basis of this situation Tara Singh executed an agreement to sell Ex.PX in his favour and, thus, sought to claim that he was a bonafide purchaser for

a valuable consideration having no knowledge of the transaction between plaintiffs and defendant No. 1 Tara Singh. The learned trial Court framed

the following issues:-

1. Whether the defendant No. 1 executed an agreement to sell the suit property dated 25.11.83 in favour of plaintiffs and plaintiff paid Rs.

50,000/- to defendant No. 1 OPP?

2. Whether the plaintiffs were ready and willing to perform their part of the agreement, if so, whether they are entitled to get the sale deed executed

in their favour and to the possession of the suit land? OPP

3. Whether the suit is liable to be stayed u/s 10 CPC? OPD

4. Whether the suit is time barred? OPD

5. Whether the agreement dated 25.11.1983 was not executed by the free mind and will by the defendant No. 1 ? OPD

6. Whether the plaintiffs have knowledge of agreement to sell dated 8.10.83 executed by defendant No. 1 in favour of defendant No. 2? OPD 6A

Whether the suit is barred under Order 2 Rule 2 of CPC? OPD

7. Relief.

5. The plaintiffs to prove their case examined PW1 Gurdeep Singh, Deed Writer, PW2 Sukhwinder Singh, Lambardar and PW3 Ajmer Singh

both were attesting witnesses of the agreement to sell Ex.P1 and, thereafter, examined PW4 Surinder Monga, Clerk of the Advocate to prove the

previous suit by way of Ex.PW4/1 and, thereafter, plaintiff-Harinder Singh himself stepped into the witness box as PW5 and proved documents

Ex.PA to Ex.PC.

6. The defendants examined DW1 Gurdip Singh, who proved agreement to sell by way of Ex.DW1/1 and Ex.DW1/2; DW2 Ram Rattan, proved

agreement to mortgage by way of Ex.DW2/1; DW3 Shiv Kumar Sodhi, Deed Writer, proved the agreement between Tara Singh and Partap

Singh by way of Ex.DW1/1 and, thereafter, remaining witnesses DW4 Swaran Singh (sic) and DW5 Joginder Singh (sic) proved agreement to

mortgage and agreement to sell being an attesting witnesses and scribe. Lakhwinder Kaur DW6 (sic) mortgagor of Harinder Singh- plaintiff

testified against the plaintiff and DW7 (sic) Gurcharan Singh Sandhu, Advocate has proved agreement to sell by way of Ex.DW4/1. Lastly

defendant-Partap Singh testified as DW9. Consequent thereupon, the impugned findings have come to crystallise.

7. This Court has framed by the concurrence of the contesting parties the following substantial question of law:-

Whether the suit of the plaintiff is barred by limitation as well as his own act and conduct and by the provision of Order II Rule 2 CPC, if so to

what effect; and whether the plaintiff is entitled to a decree for specific performance or not?

8. Appreciating the arguments. The counsel for the appellants has laid multifarious attacks on the impugned findings. It has been contended that the

very plea regarding permission from Urban Land Ceiling Authority is a guise for condonation of the limitation as neither this is depicted in the

agreement to sell Ex.P1 and it is only at a belated stage it has come up as a face saving device and has sought to stress on the fact that plea of part

payment orally by the plaintiffs has never been depicted in the alleged agreement in any manner. It is with much elance counsel has argued that the

suit was barred by limitation as it was filed beyond the period of 3 years and that even by virtue of provisions of Order II Rule 2 CPC by initially

filing a mere suit for permanent injunction the subsequent suit out of which the present appeal has arisen was not maintainable and submitted that

since the time was the essence of the contract and after expiry of period of 6 months the same came to an end on its own and that right from the

execution of the disputed agreement to sell till the filing of the suit and even thereafter, there is no element of readiness and willingness established

and proved on the records by the plaintiffs upon whom onus lay heavily and concluding his arguments has submitted that even the material

document of sale deed which has put to an end the entire claim of the plaintiffs has never been challenged and cited judgments T.L.

Muddukrishanan and another Vs. Smt. Lalitha Ramchandra Rao, AIR 1997 SC 772 : (1997) 1 Crimes 160 : (1997) 1 JT 540 : (1997) 1 SCALE

321 : (1997) 2 SCC 611 : (1997) 1 SCR 11 : (1997) AIRSCW 593 : (1997) 1 Supreme 483 ; 1997(3) PLR 760 (P&H) Rao Narain vs. Durga

Devi; Rao Narain Singh (Deceased) and Others Vs. Smt. Durga Devi (Deceased) and Others, (1997) 117 PLR 760 ; 2000(3) RCR (Civil) 595

R.K. Mohammad vs. Hajee C. Abdul Wahab; Ajit Prasad Jain Vs. N.K. Widhani and Others, AIR 1990 Delhi 42 : (1989) 38 DLT 456 : (1990)

26 ECC 284 ; Nirmala Anand Vs. Advent Corporation (P) Ltd. and Others, AIR 2002 SC 3396 : (2002) 7 JT 428 : (2002) 7 SCALE 144 :

(2002) 8 SCC 146 : (2002) 2 SCR 706 Supp : (2002) 2 UJ 1392 ; Jagsir Singh and Another Vs. Punjab Kaur and Others to enliven his

arguments.

9. Mr. Bikramjit Aroura, learned counsel representing the LRs of respondent No. 6 vociferously controverted the findings firstly on the grounds

that there is no provision under the law for seeking sanction of Urban Land Ceiling Authority and since the time is essence of contract the suit ought

to be filed within limitation period and has sought to highlight that the learned Courts below have failed to appreciate the evidence and the pleadings

in the right earnest has called upon this Court to have reappraisal and relook in the exercise of its power as a special case to enable the Court to

judiciously adjudged the matter and has sought to claim that since the relief of specific performance is purely discretionary and where even if a valid

agreement to sell is there but in the absence of any proof of continuous readiness and willingness does not makes it obligatory for the Court to

grant relief and in support of his arguments cited Sushila Devi (Deceased) through Lrs. Vs. Adeline D. Lall (Deceased)

through Lrs. and Another, (2014) 140 DRJ 431 : (2013) 139 DRJ 594 ; Mrs. Saradamani Kandappan Vs. Mrs. S. Rajalakshmi and Others, AIR

2011 SC 3234 : (2011) 8 JT 129 : (2011) 4 RCR(Civil) 130 : (2011) 12 SCC 18 : (2011) 8 SCR 874 ; K.S. Vidyanadam and Others Vs.

Vairavan, AIR 1997 SC 1751 : (1997) 1 CTC 628 : (1997) 2 JT 375 : (1997) 1 SCALE 739 : (1997) 3 SCC 1 : (1997) AIRSCW 956 :

(1997) 2 Supreme 597 ; 2009(1) RCR (Civil) 570 Ravinder Kumar vs. Harcharan Singh; N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan

Mohan Rao and others, AIR 1996 SC 116 : AIR 1995 SC 116 : (1995) 5 JT 553 : (1995) 4 SCALE 465 : (1995) 5 SCC 115 : (1995) 2 SCR

53 Supp .

10. Mr. HNS Gill, Advocate representing respondents No. 1,3 and 5 to controvert the arguments of the counsel for the other respondents has

sought to highlight the fact that after the findings of the learned first Appellate Court, Tara Singh has never challenged these findings and seeking

support from Ram Prakash Vs. Smt. Charan Kaur and Another, AIR 1997 SC 3760 : (1997) 2 JT 527 : (1998) 118 PLR 709 : (1997) 2

SCALE 58 : (1997) 9 SCC 543 : (1997) 1 SCR 840 : (1997) AIRSCW 1828 : (1997) 2 Supreme 409 has argued that by virtue of this principle

of res judicata bars Tara Singh to any relief much less his right to controvert the allegations. Learned counsel for the respondents has gone through

the testimonies of the witnesses of the plaintiffs to hammer home the point that there was proven case of the plaintiffs as to their readiness and

willingness to undergo their part of the contract and, thus, has sought to highlight that there are consecutive findings of the two Courts below calls

for dismissal of the appeal being hopelessly without any merit.

11. Appreciating the rival contentions, it is a fundamental principle of law as has been laid down in Punjab Urban Planning and Dev. Authority Vs.

M/s. Shiv Saraswati Iron and Steel Re-Rolling Mills, (1998) 3 AD 359 : AIR 1998 SC 2352 : (1998) 2 JT 587 : (1998) 2 SCALE 451 : (1998)

4 SCC 539 : (1998) AIRSCW 2326 : (1998) 3 Supreme 269 that the pleadings are the very foundations of a case of a party besides the

established law that it is for the plaintiff to establish his case and to stand on his own legs and cannot in any manner take undue advantage of the

weaknesses of the other side. The very stand of the plaintiffs taken in their plaint shows that there is an averment that the said land being within the

conglomeration of Urban Land Ceiling and Regulation Act and defendant No. 1 was to apply to the competent authority for getting the permission

to sell the same and defendant No. 1 was to submit the requisite form to the competent authority and, thereafter, obtain permission to get the sale

deed executed in favour of the plaintiffs and it is on the basis of this averment it is further highlighted in the plaint that the plaintiffs have been

requesting defendant No. 1 to get the permission from the competent authority and to execute the sale deed and who had been postponing the

execution of the sale deed on one pretext or the other and had been informed the plaintiffs having received permission from the authority in

question and claims further for creating a cause of action to file the instant suit that it was only about a week back when they went to the competent

authority and came to know that necessary permission has been obtained by the defendant No. 1 to execute the sale deed. As has been pointed

out on behalf of the appellants the very own document of the plaintiffs i.e. agreement to sell Ex. P1 which covers this alleged contract between the

parties goes to show that there is no pre-condition imposed in this agreement upon defendant No. 1 and rather it finds mentioned that the sale deed

would be executed within six months from today (i.e. Agreement) and, thus, enunciates that the time was the essence of this contract and,

therefore, by virtue of Sections 47,48 of the Indian Contract Act 1872 enjoins that the same ought to be respected and followed in letter and spirit

and, therefore, in terms of Section 50 of the Indian Contract Act, if any agreement states that a particular act relating to the furtherance of a

contract is to be done in a particular manner it should be done in that manner and it is not open to the parties to chalk out his own manner of

performing his part of the contract and, therefore, this plea that has been raked up regarding approval from competent authority is a falsified

belated afterthought one solely set up by the plaintiffs on his own without there being a provision in the original contract and to the mind of this

Court is purely and purely with a malafide intention of the plaintiffs to wriggle out of the bar of limitation as the suit in question stood filed on

10.6.1988 after more than five years of the execution of the agreement to sell contrary to the stipulations therein and, thus, even is hopelessly time

barred in view of the provisions of the Limitation Act, 1963 by way of Section 3 and there is not even an iota of grounds set up for condonation of

this delay in the legitimate manner. The schedule to the Limitation Act serial No. 54 provides the period of limitation for filing a suit for specific

performance of a contract to be three years from the date fixed for the performance or if no such date is fixed when the plaintiff had notice that

performance is refused. Thus, in this situation as is the position of law laid down in K.S. Vidyadnam and Others Vs. Vairavan, AIR 1997 SC

1751 : (1997) 1 CTC 628 : (1997) 2 JT 375 : (1997) 1 SCALE 739 : (1997) 3 SCC 1 : (1997) AIRSCW 956 : (1997) 2 Supreme 597 relied

upon on behalf of defendant-Tara Singh which lays down the proposition that it would be inequitable to give relief of specific performance in such a

case where time is essence of the contract. Law on this point is well enunciated in Mrs. Saradhamani Kandappan Vs. Mrs. S. Rajalakshmi and

Others, AIR 2011 SC 3234 : (2011) 8 JT 129 : (2011) 4 RCR(Civil) 130 : (2011) 12 SCC 18 : (2011) 8 SCR 874 and cited on behalf of

learned counsel for defendant No. 2 Tara Singh. What reasons are forthcoming on behalf of the plaintiffs for such an inordinate delay is not at all

proved on the records nor sought to be adduced by any manner. More so, a close look at the document of competent authority by way of

Ex.PW5/2 shows that it was issued on 26.5.1987 and even by that analogy the suit is hopelessly barred by principle of laches as the plaintiffs

ought to have immediately knocked at the doors of the Court. As has been vociferously argued by Mr. Arora learned counsel for the owner-

vendor, who has sought to place reliance on Sushila Devi (Deceased) through Lrs. Vs. Adeline D. Lall (Deceased) through

Lrs. and Another, (2014) 140 DRJ 431 : (2013) 139 DRJ 594 ; Mrs. Saradhamani Kandappan Vs. Mrs. S. Rajalakshmi and Others, AIR 2011

SC 3234 : (2011) 8 JT 129 : (2011) 4 RCR(Civil) 130 : (2011) 12 SCC 18 : (2011) 8 SCR 874 ; 1997 (2) RCR (Civil) 312 K.S. Vidyadnam

vs. Vairavan; 2009(1) RCR (Civil) 570 Ravinder Kumar vs. Harcharan Singh to derive the point as learned counsel for the plaintiffs-respondents

could not show by any manner under what provisions there was a requirement of seeking such a permission and there is not even an iota of

evidence in this regard of covered under the conglomeration of Urban land and being a pure agricultural land this Court has its doubts as to the

applicability of Urban Land Ceiling Act on such a property as it is according to the revenue records on the file and is being used for purely

agricultural purposes and, therefore, even by that analogy this plea of the plaintiffs does not fructifies and similar is the proposition laid down in Ajit

Prasad Jain Vs. N.K. Widhani and Others, AIR 1990 Delhi 42 : (1989) 38 DLT 456 : (1990) 26 ECC 284 ; Nirmala Anand Vs. Advent

Corporation (P) Ltd. and Others, AIR 2002 SC 3396 : (2002) 7 JT 428 : (2002) 7 SCALE 144 : (2002) 8 SCC 146 : (2002) 2 SCR 706 Supp

: (2002) 2 UJ 1392 , and others; relied upon on behalf of the counsel for the appellants which provides that it is not an essentiality for seeking a

relief for specific performance of such a contract. Since in the impugned findings the Courts below have failed to take note of this fact as well as

misconstruing and misinterpreting the pleadings and the evidence and, therefore, in view of the settled position of law reliance of which can be

placed on 2009(1) RCR (Civil) 570 Ravinder Kumar vs. Harcharan Singh where within the ambit of Section 100 CPC when the pleadings and

material evidence have been invariably wrongly interpreted gives rise to specific question, enables this Court to exercise its jurisdiction and

appraise the same even in a regular second appeal.

12. The stand of the plaintiffs in his plaint that they have been making certain payments after the execution of the agreement to sell intermediately

amounting to Rs. 27,000/- including a pronote of Rs. 10,000 is only an uncorroborated oral stand and neither is highlighted in the agreement to sell

by way of any endorsement or mention therein as the term of payment nor is cogently and substantially proved on the records by any means are

matters which have a bearing on the case of the plaintiffs.

13. Looking from another angle to this plea of limitation as well as bar of the provisions of Order II Rule 2 CPC, the plaintiffs as per their own

admission have filed a suit for permanent injunction prior to the filing of the instant suit on 11.4.1985 and which suit as per the orders of dismissal

Ex.DW9/8 was dismissed as withdrawn on 15.12.1988 i.e. during the period when the second suit had been filed out of which the present appeal

has arisen and it is undisputed plea reflected in the arguments and the records that cause of occurrence in that very suit for permanent injunction

and in the subsequent suit for specific performance are invariably one and the same, thus, arguments that have sought to be advanced on behalf of

the appellants by Mr. S.S. Brar based on Rao Narain Singh (Deceased) and Others Vs. Smt. Durga Devi (Deceased) and Others, (1997) 117

PLR 760 ; Smt. Ralli and Others Vs. Smt. Satinderjit Kaur, (1998) 118 PLR 666 and, therefore, having been aware of the cause of action having

arisen as per the agreement to sell Ex.P1 at the time of filing of the suit for permanent injunction on 11.4.1985 the plaintiffs could have easily

preferred the relief of specific performance in a suit for permanent injunction which they failed to do. Further in the light of this stand of the plaintiffs

foundation of the case of the plaintiffs being resting on the same cause of action being one and the same and Hon"ble Supreme Court in

Sidramappa Vs. Rajashetty and Others, AIR 1970 SC 1059 : (1970) 1 SCC 186 : (1970) 3 SCR 319 have laid similar proposition holding that in

such an eventuality bar of Order 2 Rule 2 CPC comes into play and to the mind of this Court relief of specific performance in the subsequent suit

certainly been barred in view of the provisions of Order II Rule 2 CPC.

14. Though, not much of a significant nature, it is the stand of the appellant-Partap Singh, who happens to be defendant No. 2-subsequent

purchaser that prior to entering into contract with the plaintiffs defendant No. 1 original owner had on the basis of agreement to mortgage dated

5.8.1983 Ex.DW4/2/Ex.DW5/1 mortgaged this land to him for sum of Rs. 80,000/- and he was in cultivating possession of the same by virtue of

revenue records Ex.DW9/2 to Ex.DW9/5 and which have not been controverted by any means. Though, not very essentiality, the agreement to

sell claimed by defendant No. 2- present appellant that the vendor had executed an agreement to sell dated 8.10.1983 Ex.PX much prior to the

time when the agreement to sell was executed and, therefore, it was incumbent upon the plaintiffs to have verified the antecedents of the appellants

as the parties to this lis belongs to the same village and were fully aware of the status of the parties and in support of his contentions Mr. S.S. Brar

learned counsel for the plaintiffs has placed reliance on 2000(3) RCR (Civil) 595 R.K. Mohammad vs. Hajee C. Abdul Wahab to hammer home

the point on the basis of Hon"ble Apex Court"s ratio that a person in possession is deemed to have some title or interest in the property and a

prospective vendee is obliged to make a proper enquiry of the status of the person in possession regarding any lease, agreement or deed executed

by the owner in his favour and, thus, it was held by Their Lordships that if no such proper enquiry is made it is deemed that the person in question

have notice of the existing affairs and since it is proved on the records and is not otherwise rebutted that at the time of execution of agreement to

sell Ex.P1 there was an encumbrance on the land in question with the present appellant. Though, Mr. HNS Gill, learned counsel for the plaintiffs

had argued at length to highlight that in his written statement Tara Singh vendee admits having entered into an agreement with the plaintiffs and

which even fairly conceded on behalf of the other counsel and, thus, not much of an advantage can be derived by Tara Singh on account of such a

stand that it was not an outcome of free will and accord. However, there being no requirement of law for getting such an agreement to sell

registered, it appears to this Court that the plaintiffs by getting the agreement to sell registered is trying to over emphasise apparently with an

ulterior motive and apprehensive of the possession of the present appellant for an oblique motive are matters which have effect on the conduct of

the parties.

15. The most contentious issue over which the entire arguments of the parties revolve is the very element of readiness and willingness on the part of

the plaintiffs to undergo their part of the contract. There is only an ambiguous and fake averment in the plaint of the plaintiffs that they remained

ready and willing throughout this period to perform their part of the contract and even are now ready and willing to perform their part of the

agreement. As has been highlighted during the course of arguments that statement of the plaintiff-Harinder Singh himself as PW5 attains all the

more importance and his cross-examination as has been brought to the notice of this Court shows that plaintiff-Harinder Singh admits that he did

not give any notice in writing to Tara Singh to execute the sale deed in his favour and further that the date of maturity of the agreement has come to

an end when permission from the competent authority was received and that he did not give any notice thereafter to Tara Singh to undergo his part

of the contract and though has tried to wriggle out of this commitment and that he along with Ajmer Singh went to Tara Singh to ask him to execute

the sale deed when confronted was unable to give any date when he claims it so or the number of times he had gone there and further accepts

above all that he did not move any application to competent authority including Sub-registrar for marking his presence as to his readiness and

willingness and further it is admitted by plaintiff that he took the khasra numbers of the land from the Patwari to get the same executed in his favour

leaves no scope to doubt that the plaintiffs were aware of the status of this property prior to this agreement. Since the parties have come up before

the Court under the provisions of Section 15, 16(c), 20 and 22 of the Specific Relief Act, 1963 and it is well settled position of law as is laid down

in the case of N.P. Thirugnanam (D) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others, AIR 1996 SC 116 : AIR 1995 SC 116 : (1995) 5 JT

553 : (1995) 4 SCALE 465 : (1995) 5 SCC 115 : (1995) 2 SCR 53 Supp by the Hon"ble Apex Court holding that remedy for specific

performance is an equitable remedy on the sole discretion of the Court which needs to be exercised based on the settled principle of law holding

further that under the provisions of Section 20 of the Specific Relief Act, 1963 the Court is not bound to grant such relief merely because it is

lawful or there is a valid reason, thus, sufficiently rebut the arguments of Mr. HNS Gill, learned counsel for the plaintiffs that even if his agreement

Ex.P1 is legally executed document even when the circumstances may deny the grant of relief to the plaintiffs the provisions of Section 16(c) of the

Specific Relief Act, 1963 envisages that the plaintiff himself must plead and prove that he had performed and has always been ready and willing to

perform the essential terms of the contract which are to be performed by him from the date of the agreement till the end of the proceedings of the

suit which element is certainly missing.

16. Reverting back to the instant case, there is no material evidence to support the case of the plaintiffs that they were ready and willing to perform

their part of the contract after the execution of the agreement till the filing of the suit. It is a normal human reaction that the plaintiffs were expected

to have issued a legal notice calling upon vendor to have undergone his part of the contract or as is commonly undertaken in the rural areas to have

moved appropriate application before the Sub- registrar for marking their presence or could have taken some measures in support of their stand

and rather what has come up in their evidence goes against the plaintiffs on all counts. What could be enunciated from the testimony of PW1

Gurdeep Singh, Deed Writer is regarding execution of agreement to sell but not much to hold and so is the fate of PW2 Sukhwinder Singh,

Lambardar, witness of this agreement to sell including PW3 Ajmer Singh attesting witness of this agreement, whereas, PW4 Surinder Monga,

Clerk has brought about only the filing of previous suit for permanent injunction by his counsel. On the other hand, deposition of DW1 Gurdip

Singh has sought to bring about agreement to sell in favour of defendant No. 2 by defendant No. 1 by virtue of Ex.DW1/1/Ex.DW1/2, whereas,

DW2 Ram Rattan has proved agreement to mortgage in favour of plaintiffs by way of Ex.DW2/1 and this agreement to sell inter se between two

defendants is proved by DW3 Shiv Kumar Sodhi, Deed Writer who has proved this document by way of Ex.DW1/1 along with the attesting

witnesses DW4 Swaran Singh (sic), DW5 Joginder Singh (sic) Deed Writer, who have proved the agreement to mortgage and having scribed the

agreement to sell and agreement to mortgage respectively and supported in toto by the deposition of DW7 Sardara Singh (sic) a witness to this

agreement inter se between the two defendants coupled with the deposition of DW8 Gurcharan Singh (sic) who has proved this agreement to sell

by way of Ex DW4/1.

17. Thus, in the light of this evidence and the utter failure of the plaintiffs to prove the very essential element of readiness and willingness and

seeking support from J.P. Builders and Another Vs. A. Ramadas Rao and Another, (2010) 12 JT 588 : (2011) 1 RCR(Civil) 604 : (2010) 12

SCALE 400 : (2011) 1 SCC 429 : (2010) 10 UJ 5288 and Smt. Sandhya Rani Sarkar Vs. Smt. Sudha Rani Debi and Others, AIR 1978 SC

537 : (1978) 2 SCC 116 : (1978) 2 SCR 839 this Court comes to the conclusion that the distinction between readiness and willingness is clear as

readiness pertains to financial capacity and willingness involves the conduct of the party wanting to perform contract and, therefore, willingness

follows readiness and in terms of Section 16(c) of the Specific Relief Act, 1963 the plaintiff in such a suit himself proves the essential requirements

of continuous readiness and willingness to perform part of his contract from the date of contract till filing of the suit and subsequent thereto which

the plaintiffs have miserably failed.

18. Now the million dollar question comes up before this Court in view of this situation of the parties whether the Court was justified in granting a

relief for specific performance of the contract and to the mind of this Court in such a situation when the suit is not only hopelessly time barred by

limitation by own laches of the plaintiffs his unfair conduct in proving the element of readiness and willingness and that it was after the expiry of the

period of time envisaged in the agreement to sell in favour of the plaintiffs the subsequent agreement to sell leading to sale in favour of the defendant

No. 2-present appellant having arisen certainly goes against the plaintiffs and, thus, the plaintiffs cannot derive any advantage over the defendants-

appellants by their such a conduct. Though, by virtue of own conduct of vendor Tara Singh, who has failed to assail the impugned judgment after

the findings against him was recorded by the learned trial Court as well as learned first Appellate Court and in view of the law laid down in Ram

Prakash Vs. Smt. Charan Kaur and Another, AIR 1997 SC 3760 : (1997) 2 JT 527 : (1998) 118 PLR 709 : (1997) 2 SCALE 58 : (1997) 9

SCC 543 : (1997) 1 SCR 840 : (1997) AIRSCW 1828 : (1997) 2 Supreme 409 has attained finality qua Tara Singh and he cannot be relegated

to his original position by virtue of this. However, at the same time to ward off any such eventuality of hobnobbing inter se between plaintiffs and

defendant No. 1 and to protect the interest of subsequent purchaser-Partap Singh it cannot be held that this conduct of Tara Singh in not assailing

the judgments of the two Courts below would have adverse impact on the case of the present appellant and the factual situation in Jora Singh Vs.

Lakhwinder Kumar and Others, (2011) 161 PLR 251 : (2011) 1 RCR(Civil) 130 relied upon by the plaintiffs does not comes to their aid.

19. In the totality of this evidence and what has been discussed above, the two Courts below in the impugned findings have certainly failed to take

cognizance of these essentialities in this case and has totally misconstrued the evidence and the law qua the issue of limitation, the question as to the

readiness and willingness of the plaintiffs to undergo their part of the contract and the fact that the suit of the plaintiffs was barred by the provisions

of Order II Rule 2 CPC and which findings of the two Courts below needs to be outrightly struck down holding these findings to be perverse and

illegal and, thus, are set aside by way of acceptance of the instant appeal holding that the appellant- Partap Singh by this situation become bonafide

purchaser for valuable consideration on the strength of the sale deed.