

(1997) 09 AHC CK 0044**Allahabad High Court****Case No:** F.A. No. 486 of 1980

Smt. Jamila Khatoon

APPELLANT

Vs

Ram Niwas Gupta

RESPONDENT

Date of Decision: Sept. 9, 1997**Acts Referred:**

- Specific Relief Act, 1963 - Section 21(2)

Citation: AIR 1998 All 138 : (1998) 2 AWC 852 : (1998) 2 CivCC 336**Hon'ble Judges:** R.N. Ray, J**Bench:** Single Bench**Advocate:** H.S. Nigam, for the Appellant; Virendra Kumar, for the Respondent**Final Decision:** Partly Allowed

Judgement

R. N. Ray, J.

Plaintiff-respondent filed suit which was numbered as Suit No. 123/78 in the Court of Civil Judge, Saharanpur. The suit was for specific performance of an agreement to sell the disputed land and that was decreed on 6.8.1980.

2. In brief, the case of the plaintiff-respondent was that the defendant-appellant agreed to sell the property in dispute for a consideration of Rs. 31,350 under the agreement dated 10.1.75. The agreement was duly registered and the amount of Rs. 5,000 was alleged to have been paid as part of the sale consideration. It was agreed between them that the defendant would obtain permission to sell at her own expense from the competent authority within six months and after obtaining the same she would give written notice to the plaintiff fixing five months time to get the deed executed. The plaintiff has always been in possession of funds to pay the balance of sale consideration and bear the expenses of getting the same deed executed and registered and plaintiff had that capacity even on the date of filing of the suit and he was always ready and willing to perform his part of contract under the agreement to purchase the disputed land and was also willing on the date of

filings of the suit. The defendant refused to execute the sale deed on accepting the balance consideration and so he filed the suit which was decreed. Oral and documentary evidences had been adduced by the parties in this appeal. The judgment and decree was challenged mainly on two grounds.

3. It was argued that to get decree for specific performance of the contract, plaintiff must prove both willingness and readiness but the instant suit was filed wherein plaintiff failed to prove willingness and that there was a case of readiness only so plaintiff was not entitled to get decree for specific performance of contract. It was further contended that since the plaintiff claimed damages and the suit was filed within the period of limitation so the Court should have granted alternative relief of compensation u/s 21(2) of the Specific Relief Act. It has been contended that in no way it has been averred that the plaintiff was willing and there was no evidence that plaintiff was willing to fulfill his part of contract. There was an agreement that he was ready to pay the money to get the sale deed executed. In the notice given by the defendant, plaintiff did not mention that he was willing to purchase and was ready to pay the balance amount and to get the sale deed executed in his favour. It has been further contended that since the plaintiff made a prayer for damages and also the prayer for refund of the earnest money, the learned Court was not justified in allowing the suit for specific performance of contract. Where there is no prayer for refund of the earnest money or compensation in that event the Court may direct the plaintiff to amend the plaint for incorporating alternative prayer, but in the Instant case there was such a prayer for refund of earnest money together with damages, so the learned Court below erred in law in not allowing alternative prayer. Moreover, the plaintiff made inordinate delay in filing the suit. As the price of the land was soaring high granting of alternative relief was more suitable. However, the suit was not barred by limitation but definitely it was filed after long delay, so, the Court was not justified in decreeing the suit for specific performance of contract. In this regard, learned counsel for appellant referred the following decisions before me as in Kanshi Ram Vs. Om Prakash Jawal and others, wherein it has been held that readiness and willingness of plaintiff to perform his part of contract must be proved for getting a decree for specific performance of contract, otherwise, he may be granted an alternative relief, if prayed for. Learned Advocate for the appellant has referred another decision in K. S. Vidyanandan and others v. Vairavan 1997 SCC 1 (Vol. 3), wherein the Hon'ble Apex Court held suit was filed after long lapse of time, so the decree for specific performance of contract may not be granted but alternative relief may be granted. Learned counsel for the appellant cited another decision as in AIR 1996 SC331.

4. Learned counsel for the plaintiff-respondent supported the judgment and submitted that the plaintiff was ready to make his part of agreement as agreed upon in that contract, notice was given to the defendant but the defendant was not ready to perform her part of contract. If the plaintiff was not ready, then there was no necessity to issue notice for purchasing stamp paper. The defendant did not turn

up and she had no business to claim that the plaintiff was not ready to pay the balance money. It has been contended by the respondent that the learned Court below was justified in decreeing the suit on the reasons as assigned by learned Court below.

5. Duly considered the submissions of both sides and also went through the evidence both oral and documentary, as adduced by the parties in the Court below and also perused the judgment of the learned Court below.

6. I have also considered the legal proposition. In the instant case, the plaintiff prayed for alternative remedy also, i.e., for refund of earnest money together with damages, so it was not a case where the Court should provide with an opportunity to the plaintiff for making an alternative claim. However, the fact remained that plaintiff did not file the suit with right promptitude though it was filed within the period of limitation. Since there was inordinate delay in presentation of the suit without giving proper explanation for filing the suit after a long lapse of time, I think that the learned Court below was not justified in decreeing the suit for specific performance of contract. Learned Court below should have granted alternative relief as prayed for by the plaintiff. However, the plaintiff made statements on oath that he was although ready and willing to purchase the disputed property on payment of balance money, that implied that he was willing to purchase the land. However, in view of the materials on record, I am inclined to grant alternative relief and as such this appeal stands allowed partly by modification of the decree as given hereunder : the decree is hereby set aside and is modified by allowing a decree for refund of earnest money along with simple interest at the rate of Rs. 9% per annum from the date of presentation of suit together with damages of Rs. 5.000 by the defendant to the plaintiff. The suit thus stands partly allowed in the nature of modification of decree as stated above, and the plaintiff is to get the costs of the suit accordingly, but as the appeal stands partly allowed as Indicated above, I do not order as to costs in this appeal.