

(2012) 07 PAT CK 0060

Patna High Court

Case No: Second Appeal of 464 of 1990

Chandradeep Yadav

APPELLANT

Vs

Ram Saran Prasad

RESPONDENT

Date of Decision: July 20, 2012

Acts Referred:

- Specific Relief Act, 1963 - Section 16(c)

Hon'ble Judges: Mungeshwar Sahoo, J

Bench: Single Bench

Advocate: S.S. Dwivedi and Mr. Bhanu Pratap Singh with him, for the Appellant;

Final Decision: Allowed

Judgement

Mungeshwar Sahoo, J.

The defendant is the appellant. He has filed this appeal against the judgment and decree dated 25th July 1990 passed by the 2nd Additional District Judge, Aurangabad in Title Appeal of 14 of 1986/ 1 of 1990 confirming the judgment and decree dated 28.2.1986 passed by 2nd Additional Sub Judge, Aurangabad in Title Suit of 115 of 1982/ 20 of 1985. The plaintiff respondent filed aforesaid title suit praying for specific performance of contract i.e. the plaintiff prayed that the defendant be directed to perform the "Chit Badlain" of the registered sale deed dated 16.4.1980 which was executed by the defendant in favour of the plaintiff with respect to the suit property for a consideration of Rs. 6000/- after taking balance consideration amount. Alternatively, plaintiff also prayed that if the defendant has withdrawn the original sale deed from the registry office he be directed to handover the same to the plaintiff after payment of the balance consideration amount and further the possession of the suit land be delivered to the plaintiff.

2. The plaintiff respondent prayed the aforesaid relief alleging that on 16.4.1980 the sale deed was executed with respect to Schedule 1 of the land for Rs. 6000/-. Rs. 1150/- was paid as earnest money and the balance amount was agreed to be paid at

the time of the "Chit Badlain". After one month of the execution of the sale deed plaintiff went to the defendant to pay the balance amount and asked him to perform "Chit Badlain" after taking the balance consideration. The defendant avoided on one pretext or the other. Lastly, he refused to take the balance consideration amount and perform the "Chit Badlain" on 1.8.1982. The plaintiff has been and is still ready and willing to pay the balance consideration amount and get the "Chit Badlain".

3. According to the defendant's case the plaintiff had no money so it was agreed that balance amount of Rs. 4850/- would be paid at the time of "Chit Badlain" which was to be done within 15 days of the execution of the sale deed. It was agreed between the parties that the title and possession of the suit land would pass only after the payment of full consideration amount. After the execution of the sale deed the defendant many times went to the plaintiff with respectable person and requested him for payment of balance consideration amount for getting the "Chit Badlain" but every time the plaintiff expressed his inability to do so for want of money. The defendant also sent Advocate notice on 27.7.1980, 6.8.1980, 8.9.1980 and 10.9.1980 requesting the plaintiff to pay the balance consideration but the plaintiff did not pay.

4. After trial the learned trial court recorded a finding that the plaintiff never denied the payment of the consideration amount to the defendant and from the filing of the case it is clear that the plaintiff has been eager and he is still ready to perform his part of contract although it is also apparent that for some time the plaintiff could not manage the consideration money and thus the matter was a bit delayed and on this ground the plaintiff's suit for specific performance was decreed. On appeal, the appellate court recorded the same finding.

5. On 23.2.1994 at the time of admission of this second appeal the following substantial question of law was formulated :

The substantial question of law, involved in this appeal is whether when the plaintiff had no ready money to fulfill his part of contract, can he enforce the suit for specific performance of contract

6. The learned counsel for the appellant submitted that both respondent was not ready to perform his part of the contract because of want of money but because has filed the suit he is still ready to perform his part of the contract. According to the learned counsel for getting decree of the specific performance of contract it is essential to state and prove that the plaintiff was always ready and willing to perform his part of the contract. Mere averment in the plaint is not sufficient to decree the suit for specific performance but the statement must be proved by convincing evidence either oral or documentary. Admittedly, in the present case, on consideration of the evidences both the courts below held that the plaintiff had no money and, therefore, inspite of repeated demand made by the appellant and

inspite of notice by the defendant to the plaintiff to pay the balance consideration amount he did not pay and moreover the suit has been filed after two years although the parties had agreed that within 15 days the balance consideration amount will be paid by the plaintiff to the appellant. In view of the above facts when there is clear finding of both the courts below that the plaintiff had no money in such circumstances there was no question of granting equitable relief of specific performance of contract arises. As stated above nobody appears on behalf of the respondent.

7. Admittedly, both the courts below have recorded clear finding that during the period when the defendant was demanding money the plaintiff had no money and therefore, he was postponing the payment of consideration amount.

8. In the case of [Smt. Sundari devi Vs. Deo Narayan Prasad](#) this Court has held that averment of readiness and willingness in the plaint should not be a mathematical formula which should not be in specific word only. The conduct of the plaintiff should be reflected from the circumstances and his subsequent conduct. Readiness and willingness could not be treated as a straight jacket formula and that has to be determined from the entirety and circumstances relevant to the intention and conduct of the party concerned. The averment must be proved by convincing and reliable evidence. In the present case, no doubt, there is pleading in the plaint in terms of Section 16(C) of the Specific Relief Act but according to the findings of the both the courts below the said pleading is not proved by the evidences.

9. In the case of [N.P. Thirugnanam \(D\) by L.Rs., Vs. Dr. R. Jagan Mohan Rao and others](#), the Apex Court at paragraph 5 held that the continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. The Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with the 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 executing till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract.

10. In the case of [R.C. Chandiok and Another Vs. Chuni Lal Sabharwal and Others](#), the Apex Court has held that readiness and willingness cannot be treated as a straight jacket formula and the issue has to be decided keeping in view the circumstances relevant to the intention and conduct of the party concerned. The same view has been taken by the Apex Court in the case of [P. D'Souza Vs. Shondriilo Naidu](#), .

11. Recently, the Apex Court in the case of [Narinderjit Singh Vs. North Star Estate Promoters Ltd.](#), considering the aforesaid decisions of the Apex Court at paragraph 22 quoted paragraph 5 of the earlier decision in the case of N.P. Thirugnanam, which is being reproduced hereinbelow :

22. In N.P. Thirugnanam v. R. Jagan Mohan Rao the Court found that the appellant was dabbling in real estate transaction without means to purchase the property and observed :(SCC pp. 117-18, para 8)

5.... Section 16(c) of the Act envisages that the plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. 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 along with 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 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. In view of the above well settled principles of law in the present case, it cannot be said that the plaintiff has been all along willing and ready to perform his part of the contract because both the courts below clearly found that he had no money to pay the consideration amount. It appears that none of the courts below have considered the well settled principles of law laid down by the Apex Court and by this Court and, therefore, the judgment and decree passed by the courts below are vitiated. In my opinion, both the courts below have approached the case in wrong angle against the well settled principles of law. The finding of the courts below to the effect that the plaintiff is still ready because he has filed the suit is unsustainable. In the result, the substantial question of law formulated is answered in favour of the appellant and it is held that the plaintiff has failed to prove his readiness and willingness continuously, in other words the plaintiff has failed to prove that he has been all along ready and willing to perform his part of the contract. Therefore, he is not entitled for the grant of equitable relief for specific performance of contract. Thus, this second appeal is allowed. The judgment and decree of both the courts below are hereby set aside. The plaintiff's suit is dismissed.