

IN THE HIGH COURT OF JUDICATURE AT PATNA

Radha Krishna Prasad

vs.

Ram Bilas Prasad And Others

First Appeal No.15 of 2008

21 October 2024

Hon'ble Mr. Justice Sunil Dutta Mishra

Issue for Consideration

Whether the agreement of sale relied upon by the plaintiff dated 25.01.2002 was genuine, valid, and enforceable, or whether the real agreement was dated 18.09.2001 at the rate of Rs.1,35,000/- per kattha?

Headnotes

The present appeal under Section 96 of Code of Civil Procedure has been preferred against the Judgment and decree dated 29.11.2007 passed by learned Subordinate Judge IV, Patna in Title Suit No.35 of 2004 (15 of 2006) whereby and where under the suit filed on behalf of plaintiff/appellant has been dismissed on contest without cost.

THE. defendant being owner agreed to sell the disputed land for Rs.1,05,000/- per kattha, totalling for two kattha Rs.2,10,000/- in respect of which the plaintiff paid Rs.60,000/- as earnest money to the defendant and an agreement for sale was executed in favour of the plaintiff on 25.01.2002 wherein it was agreed - that within six months from the date of the agreement, on receipt of the balance consideration amount, the sale deed will be executed. It was also agreed that by that time the defendant would obtain necessary permission for the sale of the said land from the competent authority under the Urban Land Ceiling Act.

The defendant denied to perform the specific part of his contract ,inspite of Readiness & willingness shown by the Plaintiff – Plaintiff's Suit Dismissed - Hence this Appeal .

The appellant has submitted that the plaintiff/appellant has discharged his onus to prove his case as such the burden shifted on defendant/respondents to prove their defence that Ext. 2 is a fraudulent and fabricated document which was for extension of time for the execution of sale but the same was converted into deed of agreement of sale (Ext. 2). The law is well settled that onus to prove fraud is upon the party who alleges fraud –trial court has wrongly shifted onus upon the plaintiff and thereby came to a perverse finding - the appellant has further submitted that the signature and endorsement of defendant on the agreement of sale dated 25.01.2002 was done with his free will and consent .

Per contra, the respondents has submitted that the plaintiff relied upon agreement for sale dated 25.01.2002 (Ext.-2) whereas the defendant relied upon agreement for sale dated 18.09.2001 (Ext.-E) and both are unregistered documents and the same cannot be received in evidence. He has further submitted that it is well settled that if , there is no valid and enforceable contract between the parties, the Court should not exercise its discretion in granting decree for specific performance.

HELD , In the present case, it is admitted by the parties and not in dispute that the defendant is the owner of the disputed land and the agreement of sale was executed between the parties for the suit land and Rs.60,000/- was paid to the defendant as earnest money .

The Hon'ble Supreme Court in **R. Hemlata Vs. Kashturi** reported in **2023 SCC OnLine 381** observed that unregistered agreement to sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49. In **K.B. Saha and Sons Pvt. Limited Vs. Development Consultant Limited** reported in **(2008) 8 SCC 564**, the Hon'ble Supreme Court held that a document is required to be registered, but if unregistered can still be admitted in evidence of a contract in a suit for specific performance.

In a suit for specific performance, a proposed purchaser must necessarily

prove his financial capacity i.e. he was always ready and willing to perform his part of contract to pay the balance sale consideration - The Hon'ble Supreme Court in **N.P. Thirugnanam (D) by LRs Vs. Dr. R. Jagan Mohan Rao & Ors.** reported in (1995) 5 SCC 115 . *“it is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the Court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963. Under Section 20 of the Specific Relief Act, the Court is not bound to grant the relief just because there was valid agreement of sale. Section 16 (c) of the Act envisages that 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.*

The law is well settled that relief of specific performance, the plaintiff has to prove that he was ready and willing to perform the part of contract - In case of **U.N. Krishnamurthy (since deceased) thr. LRs. Vs. A.M. Krishnamurthy (2022) SCC OnLine SC 840** it was observed in paragraph 46 - Section 16(c) of the Act mandates “readiness and willingness” on part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance.

The Hon'ble Supreme Court in **His Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar** reported in (1996) 4 SCC 526 made a distinction between ‘readiness’ and ‘willingness’ and the manner in which the said parameters are to be scrutinized in deciding a suit for specific performance. The observation also by the Hon'ble Supreme Court in **K.S. Vidyanadam & Ors. Vs. Vairavan** reported in (1997) 3 SCC 1 that every suit for specific performance need not be decreed because it is filed within the period of limitation by ignoring the time limits stipulated in the agreement. - The Court will also “frown” upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years

does not mean that a purchaser can wait 1 or 2 years to file a suit- -The three-year period is intended to assist the purchasers in special cases as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser. These observations were reiterated in **Saradamani Kandappan Vs. S.Rajalakshmi and Ors.** reported in **(2011) 12 SCC 18**. In the present case, the suit has been filed on 04.02.2004, without any explanation as to why such steps were not taken soon after the expiry of six months period stipulated in the agreement of sale and reply of legal notice.

The Hon'ble Supreme Court in the case of **Basavaraj Vs. Padmavathi & Anr.** reported in **(2023) 4 SCC 239** referred the judgment in the case of **Ramrati Kuer Vs. Dwarika Prasad Singh** reported in **AIR 1967 SC 1134 : 1967 (1) SCR 153** (para-9), **Indira Kaur & Ors. Vs. Sheo Lal Kapoor** reported in **(1988) 2 SCC 488** (para- 8, 9 & 10) and subsequent decision in the case of **Beemaneni Mahalakshmi Vs. Gangumalla Appa Rao (since dead) by LRs.** reported in **(2019) 6 SCC 233** (para-14) on the aspect of readiness and willingness on the part of buyer.

In the present case - It is clear that the plaintiff has concealed the fact regarding the previous agreement to sell, thus the plaintiff has not approached the Court with clean hands.

In view of the aforesaid decision, it is rightly held by the learned trial Court that the agreement of sale (*Bai Beyana*) with respect to suit land was executed by defendant in favour of plaintiff on 18.09.2001 in which consideration amount with respect to suit land was Rs.1,35,000/- per kattha.- The plaintiff is not entitled to get the decree of specific performance on the basis of alleged agreement of sale dated 25.01.2002 and accordingly, the suit was liable to be dismissed - The equity demands that the said admitted amount of Rs.60,000/- should be returned by defendant to the plaintiff .

Accordingly, I do not find any justification to interfere with the Judgment

and decree of the learned trial Court. The impugned judgment and decree passed by the learned Trial Court is confirmed.

THIS APPEAL IS DISMISSED

Parties are directed to bear their respective costs

Case Law Cited

R. Hemlata Vs. Kashturi reported in **2023 SCC OnLine 381**; K.B. Saha and Sons Pvt. Limited Vs. Development Consultant Limited reported in **(2008) 8 SCC 564**; N.P. Thirugnanam (D) by LRs Vs. Dr. R. Jagan Mohan Rao & Ors. reported in **(1995) 5 SCC 115**; U.N. Krishnamurthy (since deceased) thr. LRs. Vs. A.M. Krishnamurthy **(2022) SCC OnLine SC 840**; His Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar reported in **(1996) 4 SCC 526**; K.S. Vidyanadam & Ors. Vs. Vairavan reported in **(1997) 3 SCC 1**; Saradamani Kandappan Vs. S.Rajalakshmi and Ors. reported in **(2011) 12 SCC 18**; Basavaraj Vs. Padmavathi & Anr. reported in **(2023) 4 SCC 239**; Ramrati Kuer Vs. Dwarika Prasad Singh reported in **AIR 1967 SC 1134 : 1967 (1) SCR 153**; Indira Kaur & Ors. Vs. Sheo Lal Kapoor reported in **(1988) 2 SCC 488** (para- 8, 9 & 10); Beemaneni Mahalakshmi Vs. Gangumalla Appa Rao (since dead) by LRs. reported in **(2019) 6 SCC 233 (para-14)**; Aloka Bose Vs. Parmatma Devi & Ors. reported in **AIR 2009 SC 1527**

List of Acts

Code of Civil Procedure, 1908 Section 96; Specific Relief Act, 1963; Registration Act, 1908, Section 17, Section 49; Transfer of Property Act, 1882;

List of Keywords

Specific Performance; Agreement to Sell/Bai Beyana; sale deed; Readiness and Willingness; Equitable Relief; Earnest Money

Case Arising From

The case arises from a dispute regarding specific performance of an agreement to sell land, with conflict over the validity of agreements dated 18.09.2001 and 25.01.2002, and the plaintiff's readiness and willingness to perform the contract.

Appearances for Parties

For the Appellant/s : Mr. V.M.K. Sinha, Advocate, Mr. Ajay Prasad, Advocate, Mr. Ajit Kumar, Advocate.

For the Respondent/s: Mr. Shashi Nath Jha, Advocate; Mr. Sunny Kumar, Advocate

Headnotes prepared by reporter: Sharang Dhar, Retired Judicial Officer

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.15 of 2008

Radha Krishna Prasad S/o Sri Shivnandan Prasad, Resident of Village-
Mirachak, P.O.- Bind, P.S.- Asthawan, District- Nalanda.

... .. Appellant/s

Versus

1. Ram Bilas Prasad, S/o Sri Ram Prasad Singh Yadav, Resident of Village-
Chaudhary Tola, P.O.- Mahendru, P.S.- Sultanganj, District- Patna at present
residing at Village- Kanauji, P.S.- Gaurichak, P.O.- Manoharpur Kahuara,
District- Patna.
2. Kundan Kumar, Son of Ram Bilas Prasad, Resident of Village- Chaudhary
Tola, P.O.- Mahendru, P.S.- Sultanganj, District- Patna at present residing at
Village- Kanauji, P.S.- Gaurichak, P.O.- Manoharpur Kahuara, District-
Patna.
3. Chandan Kumar, Son of Ram Bilas Prasad, Resident of Village- Chaudhary
Tola, P.O.- Mahendru, P.S.- Sultanganj, District- Patna at present residing at
Village- Kanauji, P.S.- Gaurichak, P.O.- Manoharpur Kahuara, District-
Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. V.M.K. Sinha, Advocate.
	:	Mr. Ajay Prasad, Advocate.
	:	Mr. Ajit Kumar, Advocate.
For the Respondent/s	:	Mr. Shashi Nath Jha, Advocate.
	:	Mr. Sunny Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

Date : 21-10-2024

Heard learned counsel for the parties.

2. The present appeal under Section 96 of Code of Civil Procedure has been preferred against the Judgment and decree dated 29.11.2007 passed by learned Subordinate Judge IV, Patna in Title Suit No.35 of 2004 (15 of 2006) whereby and whereunder the suit filed on behalf of plaintiff/appellant has been dismissed on contest without cost.



3. For the sake of convenience, the parties shall be referred to in terms of their status before the trial Court. Defendant nos.2 and 3/respondent nos.2 and 3, who are sons of defendant no.1 (hereinafter referred as defendant), were minor at the time of filing of suit, became major.

4. The case of plaintiff/appellant, in short, is that the defendant being owner agreed to sell the disputed land mentioned in Appendix-I of the plaint to the plaintiff for Rs.1,05,000/- per kattha, totalling for two kattha Rs.2,10,000/- in respect of which the plaintiff paid Rs.60,000/- as earnest money to the defendant and an agreement for sale was executed in favour of the plaintiff on 25.01.2002 wherein it was agreed that within six months from the date of the agreement, on receipt of the balance consideration amount, the sale deed would be executed. It was also agreed that by that time the defendant would obtain necessary permission for the sale of the said land from the competent authority under the Urban Land Ceiling Act.

5. Apart from this, the defendant also assured the plaintiff that the said land is free from all title defects and encumbrances. The claim of plaintiff is that he was always ready to pay the balance consideration amount and to get the sale deed and accordingly he requested the defendant for the



same. The plaintiff also sent a legal notice dated 09.07.2002 through his advocate to the defendant with respect to receive the balance consideration money and to execute and register the sale deed within 25.07.2002, the time fixed by the agreement, to which the defendant sent a reply on 16.07.2002 through his lawyer alleging wrong and baseless allegations that sale consideration was fixed at the rate of Rs.1,35,000/- per kattha, for a total sum of Rs.2,70,000/- for which agreement for sale was executed on 18.09.2001. It was further alleged that on 25.01.2002, the plaintiff by misrepresenting the fact and playing fraud on defendant got another agreement for sale executed for consideration amount at the rate of Rs.1,05,000/- per kattha.

6. The specific case of the plaintiff is that the price of the suit land was never fixed at the rate of Rs.1,35,000/- per kattha, nor any agreement of sale was executed on 18.09.2001 with the knowledge of the plaintiff. The plaintiff through his lawyer replied to the said reply notice stating the correct facts on 12.08.2002 that he is still ready to pay the actual balance consideration amount of Rs.1,50,000/- and is willing to get the sale deed at once. The defendant again sent reply notice dated 13.09.2002 through his lawyer that plaintiff is avoiding in getting the sale deed and demanded against price of the suit land



at the rate of Rs.1,05,000/- per kattha alleging the same to be present market value of the land. It is further claimed that the defendant always avoiding the execution and registration of the sale deed on one or other frivolous and baseless ground and they did not require to obtain the permission from the competent authority. Thus, the defendant violated the conditions mentioned in the agreement with the plaintiff, while the plaintiff was always willing and ready to pay the balance consideration money and to perform his part of contract and is still ready for the same but as the defendant failed to comply the terms of contract which resulted in filing the suit for specific performance of the contract for sale on the basis of agreement for sale dated 25.01.2002.

7. The defendant in his written statement denied the claim of the plaintiff and stated that this suit is not maintainable in the eyes of law; the suit is barred by Section 34 of the Specific Relief Act, 1963 (hereinafter referred to as the 'Act'), along with estoppel, waiver, acquiescence and also by limitation. The defendant fell in need of money for meeting his legal necessity and proclaimed to sell two kattha land in plot no.14, which the plaintiff agreed to buy at the market price of the year 2001 and after due negotiation, the plaintiff agreed to



purchase the said two kattha land at the rate of Rs.1,35,000/- per kattha and defendant agreed to sell the said land at the said price. It was also decided between the plaintiff and the defendant that within six months from the date of the agreement, the sale deed would be executed and registered and the plaintiff gave Rs. 60,000/-, out of the total amount of Rs.2,70,000/-, as earnest money on 18.09.2001, against which the defendant executed an agreement for sale in favour of the plaintiff on the same date, which was prepared in duplicate, one copy of same was handed over to the plaintiff and the other copy was remained with the defendant and despite repeated requests by the defendant, the plaintiff began to avoid to get the sale deed executed by paying remaining consideration money either on one plea and other. The defendant was always ready to execute the sale deed in favour of plaintiff on receipt of the balance of consideration money of Rs.2,10,000/-. On 24.01.2002, the plaintiff met the defendant and requested to extend the period for executing the sale deed, because the plaintiff was not in a position to arrange the balance of consideration money and there was no chance of arrangement of same within two or three months which was going to be expired as agreed earlier. The defendant, believing the version of the plaintiff, signed the



document on 25.01.2002 and made the endorsement over the same as per the plaintiff's instructions.

8. The true fact as per defendant is that the alleged sale was finalized by the defendant at the rate of Rs.1,35,000/- per kattha for a total consideration amount of Rs.2,70,000/- and the defendant never executed the agreement for sale on 25.01.2002, nor did he receive Rs.60,000/- on 25.01.2002 as advance, rather on 18.09.2001 the defendant received Rs.60,000/- as advance from the plaintiff and executed an agreement for sale in his favour for a total amount of Rs.2,70,000/- and signed the document dated 25.01.2002 for extension of the period merely believing the words of the plaintiff and on the said date he did not receive any amount of Rs.60,000/- as advance from the plaintiff. The plaintiff himself was avoiding to get sale deed executed and registered as he had no ready money and was not inclined to pay the balance of consideration money of Rs.2,10,000/- and to get the sale deed executed.

9. On the basis of pleadings mentioned in the plaint of the plaintiff and the written statement of the defendant, the following issues were framed for adjudication:-

i. Whether the suit of the plaintiff as framed is maintainable?



ii. Does the plaintiff have the legal standing to bring this suit?

iii. Is this suit subject to the principles of estoppel, waiver and acquiescence?

iv. Is this suit time-barred?

v. Whether the suit is barred under Section 34 of the Specific Relief Act?

vi. Whether the suit value has been correctly shown by the plaintiff and adequate court fees has been paid thereon?

vii. Whether the agreement for sale executed in respect of the suit land mentioned in Appendix 1 to the plaint has been actually executed by the defendant in favour of the plaintiff on 18-09-2001 or 25.01.2002?

viii. Whether the sale agreement dated 25-01-2002 executed in respect of the disputed land mentioned in Appendix-1 to the plaint is a valid and correct document?

ix. Was the land rate fixed between the plaintiff and the defendant in respect of the disputed land at Rs.1,05,000/- (Rupees one lakh five thousand) per kattha or Rs. 1,35,000/- (Rupees one lakh thirty five thousand) per kattha?

x. Whether the plaintiff is entitled to a decree of specific performance of the contract for sale?

xi. Whether the plaintiff is entitled to any other reliefs?

10. The learned trial Court after hearing the parties and considering the evidence, decided the main Issue Nos.(vii), (viii) and (ix) against the plaintiff and held that the agreement



for sale of the suit land between the parties was executed on 18.09.2001 after receiving Rs.60,000/- as advance amount, for consideration amount of Rs.2,70,000/- for two kattha i.e. at the rate of Rs.1,35,000/- per kattha and alleged agreement of sale dated 25.01.2002 was indirectly extension of time period of the agreement of sale dated 18.09.2001 which was done taking trust under the circumstances whereby inserting the less rate of agreed consideration amount and accordingly the agreement of sale dated 25.01.2002 is not a valid and legal document. Issue Nos.(iii), (iv) and (v) were not pressed by the defendant. Issue Nos.(i), (ii), (vi) & (x) were decided against the plaintiff and it was held that the main Issue Nos.(vii), (viii) and (ix) were decided against the plaintiff and thus these issues are also decided against the plaintiff.

11. Learned counsel for the appellant has submitted that the plaintiff/appellant has discharged his onus to prove his case as such the burden shifted on defendant/respondents to prove their defence that Ext. 2 is a fraudulent and fabricated document which was for extension of time for the execution of sale but the same was converted into deed of agreement of sale (Ext. 2). The law is well settled that onus to prove fraud is upon the party who alleges fraud but the learned trial Court has



wrongly shifted onus upon the plaintiff and thereby came to a perverse finding. The learned trial Court has wrongly disbelieved the evidence of the witnesses who deposed on behalf of the plaintiff/appellant in which they completely failed. He has submitted that agreement of sale dated 18.09.2001 (Ext. E) is a fabricated document and no reliance should have been placed on it. Six months stipulated period for execution of sale was likely to be expired on 18.03.2002, hence there was no reason to execute any document for extension of time much prior to that on 25.01.2002. Learned counsel has submitted that all the important and relevant facts are admitted viz, necessity of defendant to sell land, declaration made by defendant for selling land, execution of *Bai Beyana* (Ext. 2) and receipt of Rs.60,000/- by him as advance amount, fixation of six months period for execution of the proposed sale deed but in spite thereof the learned trial Court dismissed the suit under misconception and upon erroneous consideration. The plaintiff was willing and ready to perform the contract but the same was not considered by the learned trial Court.

12. Learned counsel for the appellant has further submitted that the signature and endorsement of defendant on the agreement of sale dated 25.01.2002 was done with his free



will and consent, the contents of the agreement stood proved. The plaintiff was ready, willing and able to discharge his obligation under the agreement and he had called upon the defendant to discharge his part of the obligations thereunder, the plaintiff was entitled to a decree for specific performance.

13. *Per contra*, learned counsel for the respondents has submitted that the plaintiff relied upon agreement for sale dated 25.01.2002 (Ext.-2) whereas the defendant relied upon agreement for sale dated 18.09.2001 (Ext.-E) and both are unregistered documents and the same cannot be received in evidence. He has further submitted that it is well settled that if there is no valid and enforceable contract between the parties, the Court should not exercise its discretion in granting decree for specific performance. If the contract itself suffers from defects, the same is not enforceable. Both the parties have not signed on the agreement of sale in question and the same is not a valid agreement to enforce. The suit was not filed immediately after the alleged breach of contract without any proper explanation. The plaintiff/appellant failed to discharge his burden to prove his case and there was no readiness and willingness of plaintiff to pay the balance consideration except only bald and vague averment that he was ready and willing to



perform his part. He has submitted that there is no merit in the instant appeal and the findings and conclusions arrived at are based on cogent reasons by the learned trial Court which do not require any interference. Great weight is due to the decision of a Judge of first instance. The perspective function of Trial Judge must be respected by the Appellate Court.

14. In view of above rival contentions and submissions on behalf of parties, the following points arise for consideration in this First Appeal, which shall be considered together:

- (i) Whether the agreement of sale (*Bai Bayana*) with respect to suit land was executed by defendant in favour of plaintiff on 18.09.2001 in which the consideration amount of the suit land was Rs.1,35,000/- per kattha or 25.01.2002 in which the consideration amount of suit land was Rs.1,05,000/- per kattha?
- (ii) Whether the plaintiff is entitled to get decree of specific performance on the basis of agreement of sale dated 25.01.2002?
- (iii) Whether the learned trial Court was justified in dismissing the suit?

15. In respect of their respective cases, the parties have adduced oral as well as documentary evidence. Seven witnesses have been examined on behalf of the plaintiff. PW.1 is Deep Narayan Singh, PW.2 is Chandeshwar Rai, PW.3 is Radha



Krishna Prasad (plaintiff), PW.4 is Radhe Shyam, PW.5 is Mukesh Kumar, PW.6 is Mithilesh Kumar, PW.7 is Shailesh Prasad, in which PWs.1, 2, 6 and 7 are formal in nature.

16. The plaintiff adduced documentary evidences which are exhibited as Exhibit-1, the copy of notice dated 09.07.2002 sent to defendant. Exhibit-2, original deed of agreement of sale dated 25.01.2002. Exhibit-3, copy of reply to legal notice. Exhibit-4, application dated 24.05.2006 filed by the plaintiff.

17. On the other hand, ten witnesses have been examined on behalf of the defendant in support of his case. DW.1 is Uma Prasad, DW.2 is Sudhir Kumar, DW.3 Ramesh Prasad, DW.4 Raghunandan Prasad, DW.5 Raj Kumar, DW.6 Somendra Prasad, DW.7 Chandradeep Ram, DW.8 Santosh Kumar, DW.9 Ram Pravesh Paswan and DW.10 is Ram Bilas Prasad (defendant himself), in which the DWs.1, 2, 3, 8 and 9 are formal witnesses in nature.

18. The defendant produced documentary evidences which are exhibited as Exhibit-A, the signature of defendant on the photocopy of page no.6 of the agreement of sale dated 18.09.2001. Exhibit B/1, the reply to the notice dated 16.07.2002. Exhibit C, the medical prescription of Ram Bilas



Prasad (defendant). Exhibit D, the signature of Samendra Prasad (witness) on the agreement dated 18.09.2001. Exhibit D/1, the signature of Ram Bilas Prasad on the said agreement. Exhibit D/2, signature of Ram Bilas Prasad on the agreement dated 18.09.2001. Exhibit E, the agreement dated 18.09.2001 and the photocopy of the deed of agreement for sale dated 25.01.2002 marked as 'Mark X' for identification.

19. In the present case, it is admitted by the parties and not in dispute that the defendant is the owner of the disputed land and the agreement of sale was executed between the parties for the suit land and Rs.60,000/- was paid to the defendant as advance against the same. It is also not in dispute that on the agreement for sale dated 18.09.2001 and 25.01.2002 the defendant had made endorsement and signature. The defendant admitted that he had taken Rs.60,000/- from plaintiff as advance amount on 18.09.2001 and executed agreement of sale on that day and in his evidence he has denied that he had taken advance money on 25.01.2002 and executed agreement of sale on that days. On considering the evidence on record, the learned trial Court has given finding that the agreement for sale dated 25.01.2002 (Exhibit 2) on which the plaintiff's case is based is not a valid and enforceable document and the original agreement



for sale dated 18.09.2001 (Exhibit E) is a valid document executed in favour of plaintiff in which consideration amount is Rs.2,70,000/- i.e. at the rate of Rs.1,35,000/- per kattha for two katthas wherein Rs.60,000/- was taken by the defendant as advance.

20. On perusal of the evidence of the plaintiff (PW-3), it appears that in his cross-examination in para 20 he has clearly admitted that on the agreement for sale dated 18.09.2001 the signature was done in his presence and he identified the signature of Ram Bilash Prasad which is exhibited as Exhibit 'A', which proves the case of defendant that the agreement of sale was executed on 18.09.2001 which is a valid document. The plaintiff in his cross-examination in paragraph no.25 has admitted that there are signature of Santosh Kumar and Chandeshwar Rai on the original agreement for sale dated 25.01.2002 but in its photo copy (Mark 'X' for identification) there is no signature of both of them which creates doubt with respect to genuineness of the said document. The plaintiff (P.W.-3) in paragraph no.24 of his cross-examination admitted that he had given cash amount for agreement of sale and for the same he had withdrawn some amount from the account, but he failed to produce the said passbook of bank account without any



explanation to prove that he had withdrawn some amount from the bank to make payment of Rs.60,000/- at the time of agreement. It also appears from the evidence of the plaintiff that with respect to rate of sale consideration per kattha, the plaintiff in paragraph no.19 of his cross-examination stated that the defendant was demanding Rs.1,50,000/- per kattha but he had stated Rs.90,000/-, and Radhe Shyam (P.W.-4) was present during the said talk. Rs.1,35,000/- per kattha is nearer amount to Rs.1,50,000/-.

21. The learned trial Court observed that it is possible that for extension of 6 months time period in agreement for sale, the said advance of Rs.60,000/- deducted from consideration amount i.e. Rs.2,70,000/- – Rs.60,000/- comes to Rs.2,10,000/- at the rate of Rs.1,05,000/- per kattha, the signature and endorsement had been taken deceitfully on the alleged agreement for sale dated 25.01.2002. It is also observed that Radhe Shyam, who was mediator in the deal, was not made witness on agreement for sale but Santosh Kumar, Chandeshwar Rai and Samrendra were made witnesses. On both agreement of sale, Samrendra was a witness.

22. The learned trial Court held that the plaintiff failed to prove his case and is not entitled to decree for specific



performance of contract and dismissed the suit.

23. The law is now well settled that even where the agreement of sale is not registered, the document can be received as evidence for considering the relief of specific performance and the inadmissibility will confine only to the protection sought under Section 53-A of the Transfer of Property Act. The Hon'ble Supreme Court in **R. Hemlata Vs. Kashturi** reported in **2023 SCC OnLine 381** observed that unregistered agreement to sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49. In **K.B. Saha and Sons Pvt. Limited Vs. Development Consultant Limited** reported in **(2008) 8 SCC 564**, the Hon'ble Supreme Court held that a document is required to be registered, but if unregistered can still be admitted in evidence of a contract in a suit for specific performance.

24. I do not find any force in the submission of learned counsel for defendant that agreement of sale/*Bai Beyana* receipt cannot be looked into as it is an unregistered document being not registered under Section 17 of the Registration Act. Non-registered agreement of sale of immovable property can validly form the basis for specific performance of agreement of sale even though not registered, by virtue of explanation to



Section 17(2) and proviso to Section 49 of the Registration Act.

25. Where the excutant clearly says that he signed the document is not the document which he contemplated, the statement is a denial and not an admission of execution. There is hardly any doubt that mere affixing a signature or thumb impression to a document does not amount to execution of a document.

26. In a suit for specific performance, a proposed purchaser must necessarily prove his financial capacity i.e. he was always ready and willing to perform his part of contract to pay the balance sale consideration. The Hon'ble Supreme Court in **N.P. Thirugnanam (D) by LRs Vs. Dr. R. Jagan Mohan Rao & Ors.** reported in (1995) 5 SCC 115 observed as under:-

“The financial capacity must be proved right from the date of entering into agreement to sell till the disposal of the suit. In a suit for specific performance, a proposed purchaser must necessarily prove his financial capacity, and which is a sine qua non as per Section 16(c) of Specific Relief Act, 1963. Section 16(c) of Specific Relief Act requires that a proposed purchaser must always be and continue to be ready and willing to perform his part of contract. Readiness has been interpreted to mean financial capacity. Financial capacity must exist to pay the balance sale consideration right from the time of entering into the agreement to sell till the disposal of the suit.”

As was further observed as under:-

“it is settled law that remedy for specific



performance is an equitable remedy and is in the discretion of the Court, which discretion requires to be exercised according to settled principles of law and not arbitrarily as adumbrated under Section 20 of the Specific Relief Act, 1963. Under Section 20 of the Specific Relief Act, the Court is not bound to grant the relief just because there was valid agreement of sale. Section 16 (c) of the Act envisages that 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. The amount of consideration which he has to pay to the defendant must necessarily be proved to be available. Right from the date of execution till date of decree, he must prove that he is ready and has always been willing to perform his part of contract.”

27. The Hon’ble Supreme Court in recent judgment dated 15.07.2024 in **P. Ravindranath & Anr. Vs. Sasikala & Ors.** reported in **2024 SCC OnLine SC 1749** observed as under:

“Relief of specific performance of contract is a discretionary relief. As such, the courts while exercising power to grant specific performance of contract, need to be extra careful and cautious in dealing with the pleadings and the evidence in particular led by the plaintiffs. The plaintiffs have to stand on their own legs to establish that they have made out case for grant of relief of specific performance of contract. The Act, 1963 provides certain checks and balance which must be fulfilled and established by the plaintiffs before they can become entitled for such a relief. The pleadings in a suit for specific performance have



to be very direct, specific and accurate. A suit for specific performance based on bald and vague pleadings must necessarily be rejected. Section 16(c) of the 1963 Act requires readiness and willingness to be pleaded and proved by the plaintiff in a suit for specific performance of contract. The said provision has been widely interpreted and held to be mandatory.”

28. The law is well settled that relief of specific performance, the plaintiff has to prove that he was ready and willing to perform the part of contract. In case of **U.N. Krishnamurthy (since deceased) thr. LRs. Vs. A.M. Krishnamurthy (2022) SCC OnLine SC 840** it was observed in paragraph 46 as under:

“46. It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform the part of contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice.”

29. Section 16(c) of the Act mandates “readiness and willingness” on part of the plaintiff and it is a condition precedent for obtaining relief of grant of specific performance. The Courts will apply greater scrutiny and strictness when considering whether the purchaser was ready and willing to perform his part of contract.



30. The Hon'ble Supreme Court in His Holiness Acharya Swami Ganesh Dassji Vs. Sita Ram Thapar reported in **(1996) 4 SCC 526** made a distinction between 'readiness' and 'willingness' and the manner in which the said parameters are to be scrutinized in deciding a suit for specific performance. It is observed therein that by readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price for determining his willingness to perform his part of the contract, the conduct has been properly scrutinized. The factum of readiness and willingness to perform plaintiff's part of contract is to be adjudged with respect to the conduct of the party and the attending circumstances. The Court may infer from the facts and circumstances where the plaintiff was ready and was always ready and willing to perform his part of the contract. Both readiness as well as willingness have to be established by the plaintiff on whom the burden is cast in a suit for specific performance of an agreement. Therefore, the question would arise as to "whether the plaintiff discharged such burden in the instant case". The plaintiff has failed to discharge his burden to prove that he was ready and willing to perform his part of contract. The plaintiff never agreed to pay the remaining



consideration amount i.e. Rs.2,10,000/- as per the agreement of sale dated 18.09.2001.

31. The observation by the Hon'ble Supreme Court in **K.S. Vidyanadam & Ors. Vs. Vairavan** reported in (1997) **3 SCC 1** that every suit for specific performance need not be decreed because it is filed within the period of limitation by ignoring the time limits stipulated in the agreement. The Court will also "frown" upon suits which are not filed immediately after the breach/refusal. The fact that limitation is three years does not mean that a purchaser can wait 1 or 2 years to file a suit and obtain specific performance. The three-year period is intended to assist the purchasers in special cases as for example, where the major part of the consideration has been paid to the vendor and possession has been delivered in part performance, where equity shifts in favour of the purchaser. These observations were reiterated in **Saradamani Kandappan Vs. S. Rajalakshmi and Ors.** reported in (2011) **12 SCC 18**. In the present case, the suit has been filed on 04.02.2004, without any explanation as to why such steps were not taken soon after the expiry of six month period stipulated in the agreement of sale and reply of legal notice. In the light of said observation regarding the onus on the party claiming specific performance to



imitate action immediately after the breach or refusal by the other party to the contract, is also relevant.

32. In my view, the conduct of plaintiff was not reflective of his readiness as well as willingness on his part to pursue the agreement of sale of the suit land, in terms of Section 16(c) of the Act.

33. The Hon'ble Supreme Court in the case of **Basavaraj Vs. Padmavathi & Anr.** reported in (2023) 4 SCC 239 referred the judgment in the case of **Ramrati Kuer Vs. Dwarika Prasad Singh** reported in AIR 1967 SC 1134 : 1967 (1) SCR 153 (para-9), **Indira Kaur & Ors. Vs. Sheo Lal Kapoor** reported in (1988) 2 SCC 488 (para- 8, 9 & 10) and subsequent decision in the case of **Beemaneni Mahalakshmi Vs. Gangumalla Appa Rao (since dead) by LRs.** reported in (2019) 6 SCC 233 (para-14) on the aspect of readiness and willingness on the part of buyer. It was observed and held that unless the plaintiff was called upon to produce the passbook, accounts or documentary evidence either by the defendant or the Court orders him to do so, no adverse inference can be drawn against the plaintiff as to whether he had the means to pay the balance consideration.

34. The contention on behalf of defendant that an



agreement of sale signed only by vendor is not enforceable as the same is not a valid contract, is not acceptable in the facts and circumstances of the case. The Hon'ble Supreme Court considered such argument in **Aloka Bose Vs. Parmatma Devi & Ors.** reported in **AIR 2009 SC 1527** wherein it was noted that all agreements of sale are bilateral contracts as promises are made by both. The vendor agreeing to sell and purchaser agreeing to purchase. It cannot be said that unless agreement is signed both by vendor and purchaser, it is not a valid contract. Even an oral agreement of sale is valid. If so, a written agreement signed by one of the parties, if its evidences such as oral agreement will also be valid. Moreover, in India, an agreement of sale signed by vendor alone and delivered to the purchaser and accepted by the purchaser has always been considered to be a valid contract and in the event of breach by the vendor, it can be specifically enforced by the purchaser.

35. The legal position is that, one who comes to Court must come with clean hands. A man, who suppresses the material facts or withhold such information, that will amount to a fraud. It is well settled law that fraud is anathema to all equitable principles. As per defendant, he had reposed faith on plaintiff who takes unfair advantage of situation and get the



signature on the agreement of sale document in his favour, is a clear case of fraud.

36. It is clear that the plaintiff has concealed the fact regarding the previous agreement to sell, thus the plaintiff has not approached the Court with clean hands.

37. In view of the aforesaid decision, it is rightly held by the learned trial Court that the agreement of sale (*Bai Beyana*) with respect to suit land was executed by defendant in favour of plaintiff on 18.09.2001 in which consideration amount with respect to suit land was Rs.1,35,000/- per kattha. The plaintiff is not entitled to get the decree of specific performance on the basis of alleged agreement of sale dated 25.01.2002 and accordingly, the suit was liable to be dismissed. All the points for determination are decided against the plaintiff/appellant and in favour of the defendants.

38. The equity demands that the said admitted amount of Rs.60,000/- should be returned by defendant to the plaintiff. However, in the present case, even the relief cannot be granted in favour of the plaintiff as he has not made prayer for the same.

39. The learned trial Court has at length considered the evidence and on appreciation has found that the plaintiff has



not proved his case and accordingly, dismissed the suit with observation that the plaintiff has liberty to recover the advance money of Rs.60,000/- from defendant in accordance with law. Under these circumstances, I do not find any justification to interfere with the Judgment and decree of the learned trial Court. The impugned judgment and decree passed by the learned trial Court is confirmed. This appeal is **dismissed**.

40. Parties are directed to bear their respective costs.

41. Pending application(s), if any, is/are disposed of.

(Sunil Dutta Mishra, J)

Ritik/-

AFR/NAFR	AFR
CAV DATE	04.07.2024
Uploading Date	21.10.2024
Transmission Date	NA

