



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

113/1

**RSA-3237-2013 (O&M)
Date of decision : 03.03.2025**

Surjit Singh

..... Appellant

versus

Sukhwinder Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. M.S. Jandiala, Advocate
for the appellant.

Mr. Sherry K. Singla, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Plaintiff-vender is in second appeal aggrieved of the judgment and decree passed by the Court of the first instance affirmed by the Lower Appellate Court dismissing the suit filed by the plaintiff seeking decree of permanent injunction against the defendant and decreeing the counter claim filed by defendant-vendee granting him decree of specific performance with respect to a suit property which is a shop measuring 40 sq.ft as detailed out in the head note of the plaint.
2. Plaintiff filed suit for permanent injunction claiming that defendant wants to take forcible possession of the suit property on the strength of agreement dated 11.11.2002, which stands cancelled as defendant has failed to perform his part of the contract within the stipulated time as agreed and even by the extended time upto 22.02.2003. Plaintiff claimed that he remained present in the office of Sub-Registrar on the agreed date i.e. 24.02.2003 as 22.02.2003 and



23.02.2003 were declared to be holidays. However, defendant failed to come present to perform his part. In terms of the agreement, the same stands revoked and cancelled automatically and the earnest money paid by the defendant stands forfeited. Despite the aforesaid fact, the defendant tried to forcibly dispossess the plaintiff.

3. Suit was contested by the defendant by filing written statement accusing plaintiff for concealment of material facts. It was further claimed that it is the plaintiff who was in breach of performance of his part of the contract. Agreement to sell dated 11.11.2002 was entered into between the parties regarding suit property. Plaintiff agreed to sell the suit property for a valuable consideration of Rs.9,50,000/-. Rs.1,75,000/- was paid as earnest money at the time of execution of the agreement. Further amount of Rs.50,000/- was received by defendant on 12.11.2002 towards sale consideration with an endorsement on back side of the agreement. Plaintiff undertook to supply TS-1 form, previous sale deed and copy of the latest jamabandi relating to the suit property to the defendant within one month from the date of execution of the said agreement. Parties agreed to get the sale deed executed on or before 15.12.2002. Plaintiff always remained evasive with respect to documents and could not supply the same. Accordingly, date was extended from 15.12.2002 to 12.02.2003 and thereafter from 12.02.2003 to 22.02.2003. Separate endorsements to the said effect were made on the back side of the agreement. All this shows that defendant always remained ready and willing to perform his part, whereas plaintiff remained inert in performing his act. A telephonic notice was served on 22.02.2003 calling upon the plaintiff to perform his part by 24.02.2003.



Despite assurances, plaintiff failed to perform his part. The defendant also filed counter claim seeking decree of specific performance of the aforesaid agreement to sell. The pleadings raised in the counter claimant were on the lines of those in the written statement as stated hereinabove.

4. On the basis of pleadings, the suit as well as the counter claim were put to trial framing following issues:-

- “(1) Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP
- (2) Whether the present suit is not maintainable? OPD
- (3) Whether the plaintiff has not come to the court with clean hands? OPD
- (4) Whether the suit is not property valued ? OPD
- (5) Whether the plaintiff is estopped from his own act and conduct from filing the present suit ? OPD
- (6) Whether the plaintiff has no cause of action to file the present suit? OPD
- (6)(a) Whether the counter claimant is entitled for decree of possession by way of specific performance as prayed in the counter claim? OPC/OPD
- (6)(b) Whether the counter claim is not maintainable in the present form? OPR/OPP”

5. Since both the parties approached Court pleading the same agreement to sell, the execution thereof was never in dispute. The issue was only with respect to readiness and willingness. Court of the first instance while recording evidence on issue No.6(a) held that the defendant-vendee proved his readiness and willingness and was thus, entitled for decree of specific performance. The aforesaid findings stands affirmed by the Lower Appellate Court.

6. Mr. Jandiala while assailing the impugned judgment has raised two fold submissions. He submits that the defendant-vendee



never appeared in the witness box. His attorney namely, Shashi Kanta his wife appeared. He relies upon ratio of law laid down in ***Man Kaur (Dead) By Lrs vs. Hartar Singh Sangha 2010(4) Civil Court Cases 792 (SC)*** to submit that as per requirement of law, when a party is required to establish, or prove, something with reference to his 'state of mind' or 'conduct', it is the party only who can depose and not attorney holder. He submits that readiness and willingness being related to state of mind of the party, it was incumbent upon the defendant-counter claimant to appear in the witness box. Mere deposition of power of attorney holder that too when she had no personal knowledge of the transaction, will not satisfy the requirement of law. Counsel further submits that even if the testimony of attorney holder is to be considered, she unambiguously testified that she wanted to take back the earnest money with costs. In these circumstances, the main relief of specific performance ought not have been granted. Rather she should have been granted at the most alternate relief i.e. recovery with respect to earnest money.

7. *Per contra*, Mr. Singla submits that whole of the evidence has been discussed threadbare by the Courts below. Pure finding of fact has been recorded. The precise issue related to the testimony of Shashi Kanta-the attorney holder has been considered in detail and thus, this Court should not interfere in the second appeal.

8. I have heard counsel for the parties and have carefully gone through the records of the case.

9. So far as the first plea raised by Mr. Jandiala regarding competence of power of attorney holder is concerned, the same in the facts and circumstances of the present case is misplaced and deserves to



be rejected.

10. Supreme Court in the case of *Man Kaur (supra)* while dealing with the precise issue observed as under:-

“11. To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross examination on that issue. A plaintiff cannot obviously examine in his place, his attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore a third party who has no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney holder of the person concerned.

12. We may now summarise for convenience, the position 11as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.



(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his `state of mind' or `conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his `bona fide' need and a purchaser seeking specific performance who has to show his `readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or `readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."



11. Admittedly, attorney of the defendant-counter claimant is none-else, but his wife. In her testimony by way of affidavit, she stated as under:-

“1. That the deponent is wife of the counter claimant/defendant. The deponent is General Power of Attorney of counter claimant/defendant. The deponent is well conversant with the fact of the present case being wife and general attorney of counter claimant. The certified copy of General Power of Attorney in Ex.D-2. As per General Power of Attorney Ex.D-2, the deponent is competent to be deposed on behalf of counter claimant/defendant. (The original Power of Attorney seen and return).”

12. The cross examination of the attorney reads as under:-

“Shashi Kala w/o Sukhwinder Kumar recalled for further cross examination, ON SA

xxxxxxx By Sh. Gurnam Singh Grewal, Advocate, counsel for the plaintiff.

Sukhwinder Kumar went abroad near about 3 ½ years back. Since then he never came to India. Sukhwinder Kumar executed General Power of attorney in my favour on 29.3.2003. I want to take back earnest money with cost. The final date for execution and registration of the sale deed of the suit property on the basis of agreement in question was extended four times but sale deed could not be executed and got registered because insufficient papers with Surjit Singh. I do not know whether papers has been completed or not by Sujit Singh. It is wrong to suggest that sale deed for the property in question could not be executed and got registered because of inability of funds. It is wrong to suggest that Surjit Singh filed the suit for permanent injunction because of try by Sukhwinder Sharma and other persons to take the possession of the suit property forcibly and illegally. It is wrong to suggest that I have deposed falsely.”

13. Bare perusal of the cross examination would reveal that there was no question or query put to the attorney holder with respect to lack of personal knowledge with respect to transaction. Even, no



suggestion was put to the effect that she was not in the knowledge of the transaction.

14. In view thereof, this Court finds that the case of the counter claimant falls within the exception as culled out by Supreme Court in the case of *Man Kaur (supra)*.

15. Coming on the second submission raised by Mr. Jandiala, in the considered opinion of this Court, the testimony of counter claimant needs to be read as a whole. Hair-splitting is not permissible. A single line in isolation cannot be read to hold that the case of plaintiff was admitted. Even if she admitted that she wants to take back earnest money, it does not mean that she does not want main relief of specific performance, when party is already before Court seeking relief of specific performance and has affixed ad valorem Court fee.

16. Section 22 of the Specific Reliefs Act, provides and entitles parties seeking specific performance to sue for alternate relief as well. Onus is thereafter upon the Court to see whether the claimant is entitled for main relief or alternate relief testing the case on the touchstone of established parameters of law.

17. In the facts and circumstances of the present case, both the Courts below have concurrently held counter claimant entitled for the main relief, this Court does not find any reason to find exception to the discretion to exercise by the Courts below.

18. Finding no merit in the present appeal, the same is ordered to be dismissed.

19. At this stage, Mr. Vaibhav submits that he has instructions not to press the application i.e. CM-1543-C-2021. Consequently, the



application is dismissed as not pressed.

20. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

03.03.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No