

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****113****RSA-2201-2018 (O&M)****Date of decision: 15.01.2025****Vijay Singh & Another****...Appellant(s)****Vs.****Manik Ram & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr.Ajay Ghangas, Advocate
for the appellants.

NIDHI GUPTA, J.

The defendant is in second appeal before this Court challenging the concurrent findings returned by the Courts below whereby the suit filed by the respondent/plaintiff for possession by way of specific performance of Agreement to Sell dated 10.06.2010, along with consequential relief of permanent injunction, has been decreed by both the learned Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court.

3. Brief facts as averred by the respondents-plaintiffs in the plaint are that appellants-defendants Vijay Singh and Sudesh resident of village Rewali have represented themselves that they are owners in possession of land situated in the area of Village Patti Kalyana, District Panipat and agreed to sell 04 Kanal of land being 2/5 share out of 09K-19 M of land situated in the Revenue Area of Village Patti Kalyana Tehsil and District Panipat comprised in Khewat No.1104/1069, Khatoni no.1155, Rect.



No.39, Killa No.2/2/1(3-19), Khewat No.2117/2048, Khatoni No.2205, Rect. No.32, Killa No. 21/2(0-10), 22/2/2(2-9), Rect. No.39, Killa No.2/1. (3-1), Kittas 3 against total sale consideration of Rs.40,50,000/-. Vijay Singh and Sudesh had entered into an agreement to sell with the plaintiffs vide agreement dated 10.06.2010. At that time a sum of Rs.8,00,000/- was paid to them as earnest money out of the total sale consideration of Rs.40,50,000/-. A separate receipt has also been executed along with agreement and the same was signed by both of them as well as Jai Karan son of Shri Mahabir and Manoj son of Mahinder as Witnesses. As per terms and conditions of this agreement to sell sale deed was to be executed on 09.12.2010 on receipt of balance sale consideration. It was also mutually agreed that in the event of refusal on the part of the defendants, the plaintiffs shall have a right to get this agreement specifically enforced through the court of Law and in the event of failure on the part of the plaintiffs, the earnest money of Rs.8,00,000/ - given at the time of execution of the agreement would stand forfeited. It was further mutually agreed that successor in interest/ legal heirs of both the parties shall remain bound by the terms and conditions of this agreement and the owner shall not create any sort of encumbrances over the suit lands till execution and registration of the sale deed. The sale deed was to be executed on payment of expenses of stamp duty and registration charges by the plaintiffs. The plaintiffs have been willing and ready to perform their part of contract and has been tendering balance sale consideration to the



defendants, but for the reasons best known to them defendants no.1 and 2 did not come forward to perform their part of agreement to sell dated 10.06.2010. The plaintiffs were present with remaining balance amount along with the expenses of execution and registration of the sale deed on 09.12.2010. The plaintiffs kept on waiting for the defendants to come in the office of Sub Registrar, Samalkha on 09.12.2010 but they did not turn up and plaintiffs got an affidavit attested to this effect from the Executive Magistrate Samalkha on 09.12.2010. The plaintiffs received a legal notice on behalf of the defendants through advocate regarding the execution and registration of sale deed within a period of 15 days from the receipt of this notice and reply of the same has been sent to their advocate through Registered AD on 05.01.2011 and it was requested that the plaintiffs are still ready and willing to perform their part of agreement to sell dated 10.06.2010. The plaintiffs again served a legal notice to the defendants on 22.04.2012 with the request to get the sale deed executed and registered in favour of the plaintiffs within a period of 30 days from the receipt of this notice with intimation to the plaintiffs. Reply to said notice was given by the defendants on 31.05.2011 through their advocate in which they had clearly mentioned that necessary permission to sell the share of the minors has been obtained vide order dated 15.04.2008 and requested to come present in the office of Sub-Registrar, Samalkha on 01.07.2011 to perform their part of agreement for execution and registration of the sale deed after paying the balance sale consideration. It has been further averred that on



01.07.2011, the plaintiffs remained present in the office of Sub-Registrar, Samalkha alongwith necessary expenses for execution and registration of the sale deed and balance sale consideration. The plaintiffs have withdrawn necessary stamp papers of Rs.1,12,500/- on the same date. The plaintiffs again served a legal notice to the defendants on 28.03.2012 with a request to get the sale deed executed and registered in favour of the plaintiffs within a period of 30 days from the receipt of this notice and further requested to intimate the plaintiffs regarding the execution and registration of the sale deed as per the convenience of the defendants. But the defendants failed to perform their part of agreement to sell dated 10.06.2010 intentionally and knowingly. It has been further averred that the plaintiffs again sent a reminder to the defendants dated 07.05.2012 with the request to come present on 25.05.2012 for execution and registration of the sale deed after receiving balance sale consideration. But the defendants did not appear, and the plaintiffs got an affidavit attested to this effect from the Executive Magistrate, Samalkha on 25.05.2012. Hence, the present suit.

4. Upon notice, the appellants/defendants appeared and filed written statement contesting the suit on various grounds. On the basis of the pleadings of the parties, following issues were framed: -

“(i) Whether the plaintiff is ready and willing to perform his part of the agreement to sell dated 10.06.2017? OPP

(ii) If the issue no.1 is proved, whether the plaintiff is entitled to specific performance of the agreement to sell dated 10.06.2010



and consequential relief of permanent injunction, as prayed for? OPP

(iii) Whether the suit is not maintainable in the present form?

OPD

(iv) Whether plaintiff has no cause of action to file the present suit? OPD

(v) Relief.”

5. On the basis of oral and documentary evidence adduced by the parties, the learned Civil Judge, Junior Division, Panipat decreed the suit of the plaintiff vide judgment dated 29.11.2014.

6. The appellants filed Civil Appeal No.136 of 2014 before the learned Additional District Judge, Panipat; wherein vide judgment and decree dated 23.08.2017, the judgment of the learned trial Court was affirmed.

7. Learned counsel for the appellants-defendants vehemently submits that from the record of the case, it is patent that the appellants were ready and willing to execute the Sale Deed. It is submitted that the learned Courts below have incorrectly concluded that the defendants did not come forward to perform their part of the Agreement to Sell dated 10.06.2010. It is submitted that it is proven on record that the defendants had come present in the office of Sub-Registrar, Samalkha on 01.07.2011 for execution of the Sale Deed. This is evident from the fact that the defendants had admittedly purchased stamp paper for an amount of Rs.10/- which is proven from the testimony of DW3/Stamp



Vendor, who was examined by the defendants. It is also admitted fact on record that the defendants had gone to the Tehsil on 01.07.2011 and executed the Affidavit. In fact, it is the plaintiffs who did not turn up to perform their part of the contract along with balance sale consideration. Moreover, the Courts below have failed to consider that the plaintiffs had totally failed to prove the Agreement to Sell dated 10.06.2010 as no independent witness has been examined to prove the Agreement. It is contended that the findings of both the Courts below on various issues are against the facts and law and based on assumptions, presumptions and non-application of judicious mind and are not based on cogent and reliable evidence and thus, findings of both the Courts below are not sustainable in the eyes of law and liable to be set aside.

8. No other argument is raised on behalf of the appellants.

9. I have heard learned counsel for the appellants and perused the case file in great detail.

10. At the very outset, it may be pointed out that the present appeal pertains to the year 2018. However, notice of motion has not yet been issued as the matter has been adjourned due to non-appearance of learned counsel for the appellants on 17.12.2019 and 05.03.2020. Thereafter, the appeal was dismissed for non-prosecution on 21.04.2023. Even after restoration of the matter on 31.08.2023, it was



adjourned at request of learned counsel for the appellants on 11.09.2023, and 20.03.2024 and due to non-appearance on 26.09.2024.

11. On merits, the Agreement in question/Ex. P-1 is admitted. It is the case of the appellants/defendants that they were always ready and willing to perform their part of the contract. It has been submitted that it is for this reason that the the defendant was present in the office of Sub-Registrar on the mutually agreed upon date of 01.07.2011 to perform their part for execution of Sale Deed. In support, learned counsel has referred to the testimony of DW3/Stamp Vendor who had issued stamp paper for Rs.10/- on which the defendants had tendered Affidavit Ex.DW3/A.

12. A perusal of the entire record reveals that it is only on the basis of this Affidavit Ex.DW3/A that the defendants are asserting that they were present in the Tehsil on 1.7.2011, indicating their readiness and willingness to perform the agreement in question. However, the same is not convincing as admittedly, the said Affidavit was not attested. Moreover, it was executed on stamp paper of only ₹10; and it has also been admitted by learned Counsel for the defendants before this Court that even presence of the defendants was not marked in the Tehsil on 1.7.2011.

13. On the other hand, the plaintiffs have proved their presence in the Tehsil on 1.7.2011 on the basis of cogent evidence in the



form of the stamp papers purchased by them for an amount of Rs. 1,12,500/-, which are on record as Ex. PW/1/2/8.

14. In fact, the record is replete with evidence indicating that at no stage did the defendants exhibit their readiness and willingness to execute the Sale Deed or perform the contract. In this regard, the findings of the learned trial Court as recorded in Para 13 of the judgment dated 29.11.2014 are imperative, and which reads as under: -

“13. Perusal of the file shows that it is admitted fact that agreement to sell dated 10.06.2010 was entered between parties for the total sale consideration of Rs.40,50,000/- out of which the sum of Rs.8 lacs was paid to defendant no.1 Vijay Singh and defendants no.2 Sudesh as earnest money. In this regard plaintiff has tendered the Ex. P1 which is alleged agreement to sell. On the said agreement the signatures of Vijay Singh, Sudesh Devi, Manik Ram and Rohit were present. Signatures of two witnesses Jai Karan and Manoj were also there. The receipt regarding earnest money of Rs.8 lacs was written on the same date which is Ex.P2. As per the said agreement the date for execution of sale deed was fixed on 09.12.2010. But on that date only the affidavit of the plaintiffs Manik Ram and Rohit which his Ex.P3 is placed on file which is the affidavit of attendance in the office of Sub Registrar, Samalkha which is attested by Executive Magistrate, Samalkha. In this regard defendants have taken the plea that on 09.12.2010 plaintiffs are not ready for registration and execution of the sale deed due to lack of remaining sale consideration and this fact was also informed by the plaintiffs to the defendants. Further in his cross-examination defendant no.1 has stated that they went to the



Tehsil on 09.12.2010 for execution of sale deed but when this fact was told by plaintiffs to them then the plaintiffs sought the time of one week and the defendants came back without marking their presence in the Tehsil. Thereafter, the defendants again sent the legal notice to the plaintiffs dated 20.12.2010 for execution and registration of the agreement dated 10.06.2010 but in that notice which is Ex. P4 no such version is written by the defendants. It is the duty of the defendants that if they went to Tehsil on 09.12.2010 then they got their presence marked before the Sub Registrar, Samalkha and mere oral version that they were also present on that day does not hold any value. Meaning thereby that on the fixed date i.e. 09.12.2010 plaintiffs are ready and willing to execute and register the sale deed but the defendants have failed to prove to show that they are also ready and willing on that day. Further, in the reply dated 05.01.2011 to the legal notice of the defendants dated 20.12.2010 plaintiffs have mentioned that it has been orally settled between the parties that before execution and registration of the sale deed defendants were obtained necessary permission from the competent court to alienate the share of the minors. In this regard defendants while giving the reply to the legal notice of the plaintiffs dated 22.04.2011 in Ex.P11 have stated that they have already obtained the permission to sell the share of the minors from the court of Sh. Jagjit Singh, the then Civil Judge (Sr. Division), Panipat vide order dated 15.04.2008 Meaning thereby that at the time of the entering the agreement to sell defendants have not disclosed this fact to the plaintiffs neither they have mentioned this fact in the agreement dated 10.06.2010. Since, it is admitted fact on the part of the defendants that



they have obtained the permission from the Court for selling the share of the minors therefore the plea of the learned counsel for the defendants that the interest of the minors is attached to the agreement to sell and the same cannot be enforced does not hold any value. Further, after giving legal notice and reply to each other, 01.07.2011 was fixed by the defendants to get execute and registered the sale deed after paying the balance sale consideration. On that date also plaintiffs went to the Tehsil and purchased the stamp papers of Rs. 1,12,500/-, which are Ex. PW/1/2/8 and on the said date defendants have also got their presence marked in the Tehsil and in this regard they have tendered affidavit Ex.DW3/A. If both the parties were present in the Tehsil Complex on 01.07.2011 then no reason is given that why they have not met with each other or why the sale deed was not executed on the said date. When the agreement to sell is admitted on the part of the both the parties then the aspect whether the parties are ready and willing to perform their part of agreement is to be seen. Further, it is also not necessary that the buyer are present with money and this aspect is to be proved by party who wants to enforce the specific perform of the contract. Further, it is not essential for the plaintiffs to tender the defendants or to deposit to court any money except when they are directed by the Court in contract which involves the payment of money. Keeping in view this fact plaintiffs have showed his readiness and willingness to perform their part of agreement by getting marked their presence in the Tehsil on 09.12.2010 i.e date fixed for executing and registering the sale deed.”



15. From the above facts, it is clear that initially the target date set by the parties and agreed upon between the parties for execution of Sale Deed was 09.12.2010. Plaintiffs had duly placed on their record Affidavit (Ex.P3) to prove their attendance in the office of Sub-Registrar, Samalkha which was also attested by Executing Magistrate, Samalkha. On the other hand, it has been admitted by the defendant No.1 in his cross-examination that presence of the defendants was not marked in the Tehsil.

16. It further remains undisputed on record that the permission to alienate shares of the defendants who were minors, was granted as far back as in 2008. However, there was no writing in the Sale Deed dated 10.06.2010 to this effect; and on the contrary it has been found that the defendants had prevaricated and delayed the execution of the Sale Deed on the ground that permission had yet to be obtained to sell the share of the minors.

17. It has further been found that on 01.07.2011 also the plaintiffs had purchased stamp papers of Rs.1,12,500/- (Ex.PW/1/2/8); whereas although the defendants have marked their presence in the Tehsil on 01.07.2011 vide their Affidavit (Ex.DW3/A), however, admittedly said Affidavit was not attested. Moreover, there is no explanation given as to why, when both the parties were present in the Tehsil on the said date, why was the Sale Deed not executed. Accordingly, even in appeal as the defendants were unable to give satisfactory evidence proving their



readiness and willingness, the learned First Appellate Court has observed as under: -

“23. So far as the readiness and willingness of the parties to the suit to perform their part of the agreement is concerned, as reflected in agreement to sell Ex.P1, sale deed was agreed to be executed and registered on 09.12.2010. Respondents no.1 and 2-plaintiffs have placed on file affidavit Ex.P3 duly attested by Executive Magistrate Samalkha 09.12.2010 wherein they have deposed that on 09.12.2010, they remained present in the Office of Sub Registrar, Samalkha to get the sale deed registered in their favour but the defendants/vendors did not turn up. Affidavit Ex.P3 has been duly proved by PW3 Rameshwar, Reader to Tehsildar Samalkha who has identified the signatures of the then Executive Magistrate, Samalkha on affidavit Ex.P3. But there is no evidence on file on behalf of the appellants-defendants no.1 and 2 to prove that they were present in the office of Sub Registrar, Samalkha on 09.12.2010 to perform their part of the agreement. It is an admitted fact that appellants-defendants. and performa respondent no.3-defendant no.4 served legal notice Ex.P4/Ex.D3 upon respondents no.1 and 2-plaintiffs alleging that they remained present in the Office of Sub Registrar, Samalkha on 09.12.2010 but the respondents no.1 and 2-plaintiffs did not turn up to perform their part of the agreement. Vide said notice, respondents no.1 and 2-plaintiffs were called upon to get the sale deed executed and registered in their favour within 15 days of the receipt of notice. Said notice was replied by Shri R.S.Jaglan, Advocate on behalf of the respondents no.1 and 2-plaintiffs vide reply dated 05.01.2011 Ex.P5. Appellants-defendants no.1 and 2 in



their reply dated 31.05.2011 Ex.P11 to the notice dated 22.04.2011 of the respondents no.1 and 2-plaintiffs called upon them to come present in the Office of Sub Registrar, Samalkha on 01.07.2011 to perform their part of the agreement after payment of the balance sale consideration. Appellants-defendants no.1 and 2 have placed on file affidavit Ex.DW3/A showing their presence in the Office of Sub Registrar, Samalkha on 01.07.2011 but the said Badle affidavit is neither attested by the Executive Magistrate, Samalkha nor by any Notary or Oath Commissioner. Therefore, such self-serving document can not be taken into consideration whereas on the other side, respondents. no.1 and 2-plaintiffs have placed on file stamp papers Ex. PW2/1 to Ex.PW2/8 worth Rs.1,12,500/- purchased on 01.07.2011. Thus, the purchase of the said stamp papers further goes to prove that on 01.07.2011, respondents no.1 and 2-plaintiffs were ready and willing to get the sale deed executed and registered in their favour. Admittedly, stamp papers were purchased by one Sachin but it does not make any difference as to who has purchased the stamp papers. The stamp papers have been purchased in the name of Manik Ram (respondent-plaintiff no.1). It is also correct that the stamp papers were purchased for the registration of the sale deed for an amount of Rs.22,50,000/- whereas the sale consideration of the suit land was Rs.40,50,000/- as reflected in agreement Ex.P1. It is a matter of common knowledge that the sale deeds are registered as per the circle rate of the district whereas the sale consideration mentioned in the agreement to sell used to be the agreed sale price of the land between the parties. No evidence has been brought on file by the appellants-defendants no.1 and 2 to prove that the stamp papers



Ex.PW2/1 to Ex. PW2/8 were meant for some other transaction. Thus, the purchase of the said stamp papers on 01.07.2011 further makes it clear that the respondents no.1 and 2-plaintiffs were ready and willing to perform their part of the agreement.”

18. Learned counsel for the appellants is unable to dispute or controvert the above said evidence, or give any satisfactory explanation for the same.

19. In view of the above, present appeal is **dismissed**.

20. Pending application(s) if any also stand(s) disposed of.

15.01.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No