

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****214****RSA-1206-2016 (O&M)****Date of decision: 26.09.2025****Ran Singh****...Appellant(s)****Vs.****Krishan Kumar****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. D.R.Bansal, Advocate with
Ms. Anjali Bansal, Advocate
for the appellants.

Mr. H.S.Aujla, Advocate for the respondent.

NIDHI GUPTA, J.

Defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby suit of the plaintiff-respondent for specific performance with possession and consequential relief of permanent injunction, has been decreed by both the Courts below.

2. Brief facts of the case are that the plaintiff had filed a Civil Suit seeking specific performance of Agreement to Sell dated 16.02.2005 executed by the appellant-defendant in favour of the respondent for sale of suit land measuring 1K 11M for total sale consideration of Rs.1,10,000/- of which earnest money of Rs.30,000/- was paid. Target date for execution and registration of Sale deed was set for 16.05.2005. It was pleaded in the plaint that on 16.05.2005, the plaintiff had duly gone to the office of Sub



Registrar for execution of Sale Deed alongwith balance sale consideration of Rs.80,000/- with expenses, but the defendant had not reached the office of Sub-Registrar, Sonipat. Plaintiff had then served legal notice dated 27.05.2005 upon the defendant regarding his non-presence on 16.05.2005. Plaintiff had also gone to the house of defendant on 10.08.2005 but the defendant had refused the request of the plaintiff on one pretext or the other. As such, suit for specific performance with possession and consequential relief of permanent injunction was instituted on 11.08.2005.

3. Vide impugned judgment and decree dated 15.03.2012, learned Additional Civil Judge (Senior Division), Sonipat had decreed the suit of the plaintiff while directing the defendant *“to execute the sale deed within two months and if the defendant fail, then the plaintiff will be at liberty to get the sale deed executed through process of this court.”*

4. The appeal filed by the defendant was dismissed by the learned District Judge, Sonipat vide judgment and decree dated 12.12.2015. Hence, present Second Appeal by the defendant.

5. It is *inter alia* submitted by learned counsel for the appellant that the learned Courts below were in patent error in decreeing the suit of the plaintiff as readiness and willingness of the plaintiff was not proved on record. It is submitted that neither in the Affidavit of Attendance dated 16.05.2005 Ex.P3 nor in the legal notice dated 27.05.2005 Ex.P5 had the plaintiff mentioned that he was in possession of the balance sale consideration and expenses amount. As such, in terms of judgment of



Hon'ble Supreme Court in **R.Shama Naik vs. G.Srinivasiah (SC): Law Finder Doc Id # 2670489**, readiness, and willingness of the plaintiff was not proved as there was nothing on record to indicate that the plaintiff had balance sale consideration of Rs.80,000/-. Mere presence of the plaintiff in the office of Sub Registrar would not establish his readiness and willingness. He, accordingly, prays for setting aside of the impugned judgments and decrees of the learned Courts below.

6. *Per contra*, learned counsel for the respondent vehemently opposes submissions made on behalf of the appellant/defendant and submits that the Agreement to Sell stood duly proven on record in accordance with law. Presence of the plaintiff in the Tehsil on 16.05.2005 is also established from his Affidavit of Attendance Ex.P3. Plaintiff has categorically stated in his legal notice dated 27.05.2005 Ex.P5 that he was in possession of balance sale consideration. Learned counsel submits that accordingly, readiness and willingness of the plaintiff was duly proved; and therefore, judgments of the learned Courts below suffer from no error, and the present Second Appeal deserves to be dismissed.

7. No other argument is raised on behalf of the parties. I have heard Id. Counsel and perused the case file in great detail.

8. I find no merit in the submissions made on behalf of the appellant. Both the Courts below have found that the Agreement to Sell dated 16.02.2005 Ex.P1 stood proven in accordance with law from the evidence of both the attesting witnesses. The plaintiff had examined PW2 Ashok Kumar attesting witness, who had testified that on 16.02.2005, the



Agreement in question was executed in his presence; that the plaintiff had paid earnest money of Rs.30,000/- to the defendant at the time of execution of Agreement in respect of which receipt was executed by the defendant in favour of the plaintiff in the presence of PW2. The Agreement was also proved from the evidence of second attesting witness Subhash PW3 who had also testified as above. The thumb impression of the defendant upon the Agreement in question was proved from the evidence of PW4 V.B. Kashyap Handwriting and Fingerprint Expert, who had tendered his report Ex.PW4/B and photographs Ex.PW4/C and Ex.PW4/M. Thus, the Agreement stood duly proven in accordance with law.

9. As regards the readiness and willingness of the plaintiff, it is my considered view that given the fact that the defendant has denied the very execution of the Agreement dated 16.02.2005, it is not open to the appellant to raise the objection of readiness and willingness on part of the plaintiff. A perusal of the record of the case shows that the appellant in his written statement has contested the suit by denying the Agreement in question. The appellant has stated that the plaintiff never paid Rs.30,000/- to the defendant as earnest money; no Agreement was executed between the parties and as such, no question of any earnest money arises. It was contended by the appellant in his written statement that the plaintiff had prepared concocted and false documents in support of unexisting Agreement and Receipt. Even notice served upon the defendant was denied by the defendant. It was also denied that the plaintiff had ever



visited the house of the defendant et cetera. It is my view that in these circumstances, since the appellant-defendant has categorically denied the very existence of the Agreement in question, he cannot simultaneously raise the defence of plaintiff's lack of readiness and willingness to perform the contract. I am supported in my view by judgment of this Court in **Sant Singh v. Amarjit Singh (Punjab and Haryana) : Law Finder Doc Id # 671030** where it is held that: *"Specific Performance of Agreement to Sell - Readiness and Willingness - Appellant-defendant in the written statement denied the execution of the agreement to sell - A person who denies the execution and registration of the sale deed, cannot be permitted to raise the plea of readiness and willingness."*

10. Notwithstanding the above undisputed position in law, even otherwise there is no merit to the objections raised by the appellant in view of the admitted fact that plaintiff had marked his presence before the Sub Registrar on target date of 16.05.2005 vide Affidavit of Attendance Ex.P3 (available at page 47 of the LCR). No doubt, a perusal of Ex.P3 reveals that it is not specifically mentioned therein that the plaintiff had balance sale consideration of Rs.80,000/- and other expenses with him; however it is not denied by the appellant that in the legal notice dated 27.05.2005 Ex.P5 (available at page 49-50 of the LCR), plaintiff has categorically mentioned that he has the balance sale consideration of Rs.80,000/-. In these circumstances, even in terms of the judgment of **R.Shama Naik (supra)**, relied upon by the appellant, readiness and



willingness of the plaintiff to perform the contract is established on record.

11. In view of the same, I find no infirmity in the concurrent judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

12. Pending applications, if any, stand disposed of.

26.09.2025

Divyanshi

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No

(NIDHI GUPTA)
JUDGE