



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

**CM No.12568-C of 2014, CM No.10815-C of 2011,  
CM No.10814-C of 2011, CM No.3447-C of 2008 &  
CM No.3446-C of 2008 in RSA No.1165 of 2008**

**Date of decision: 07.05.2025**

Kaur Singh

....Appellant

Versus

Charanjit Kaur and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Aakash Singla, Advocate and  
Mr. Ankush Singla, Advocate for  
Mr. Ashok Singla, Advocate  
for the applicants/respondents.

Mr. M.S. Khaira, Senior Advocate (through V.C.) with  
Mr. Jaswinder Singh, Advocate  
for the non-applicant/appellant.

**PANKAJ JAIN, J. (ORAL)**

**CM No.10815-C of 2011**

This is an application filed under Order XLI Rule 21 read with Order IX Rule 13 CPC for re-hearing of appeal decided *ex parte* vide judgment dated 03.03.2010.

2. The main appeal has arisen out of suit for specific performance. Both the Court concurrently found plaintiff not entitled to the decree of specific performance, but to an alternative relief of recovery of ₹3,00,000



along with interest @ 6% per annum from the date of agreement till realization of decretal amount.

3. The appeal came up for preliminary hearing before this Court on 8<sup>th</sup> of April, 2008. While issuing notice of motion, following order as passed:

“Notice of motion returnable on 9.9.2008.

In the meantime, respondents shall not alienate or transfer the suit property in any manner.”

4. On 9<sup>th</sup> of September, 2008, following order was passed:

“Service is complete.

To come up for arguments on 26.11.2008.

Interim order to continue.”

5. The matter was finally taken up on 3<sup>rd</sup> of March, 2010. The appeal was allowed. Judgment & decree passed by both the Courts below were ordered to be set aside. Plaintiff was held entitled to decree of possession by way of specific performance.

6. The instant application was filed on 9<sup>th</sup> of September, 2011 seeking re-hearing of the appeal.

7. It has been pleaded that respondents No.7 and 10 were minor on the day the regular second appeal was filed. Neither they were impleaded as minors nor were impleaded through their guardian. No permission was sought for appointment of any guardian as required under Order XXXII Rule 3 CPC. Amandeep Kaur, respondent No.11 was impleaded through her



guardian Kuldip Kaur. It was further claimed that respondents No.1, 2, 3, 4 and 6 namely, Charanjit Kaur, Karamjit Kaur, Rajwinder Kaur, Jagjit Kaur and Kiranjit Kaur were married at the time of filing of regular second appeal. At the time of service of summons, they were not residing at village Ghanauri Kalan. In the absence of there being valid service upon them, they ought not have been proceeded against *ex parte*.

8. In reply to the application, non-applicant has claimed that the respondents were duly served as is evident from order dated 9<sup>th</sup> of September, 2008. They opted not to appear and thus no fault can be found with the procedure adopted by this Court hearing the appeal on merits after respondents opted not to appear.

9. I have carefully gone through records of this case.

10. Service report reads that respondents no.1, 2, 3, 4, 5, 6 and 7 have been served through their mother. *Qua* respondents No.8 and 11, service has been reported to be complete. Regarding respondents No.9 and 10, it has been reported that they stand served through their mother. The report made by process server behind the summon served on respondent No.1, reads as under:

“When I inquired about Charanjit Kaur, daughter of Mohinder Singh after reaching village Ghanauri Kalan, her mother present on the spot, orally told that she has been married abroad, you give this summon to me and I take responsibility of presenting her before the Court. Hence, copy of the summon accompanied by copy of the



grounds of appeal, was handed-over to her and her thumb-  
impressions were taken.”

11. Same is the report regarding Karamjit Kaur, Rajwinder Kaur,  
and Jagjit Kaur. All the summons were served upon Kuldip Kaur wife of  
Mohinder Singh.

12. The issue is:

*“Whether service on the mother of married daughters,  
amounts to valid service in the eyes of law?”*

13. Order V, Rule 15 CPC, reads as under:

**“[15. Where service may be on an adult member of  
defendant's family.—** Where in any suit the defendant is absent  
from his residence at the time when the service of summons is  
sought to be effected on his at his residence and there is no  
likelihood of his being found at the residence within a reasonable  
time and he has no agent empowered to accept service of the  
summons on his behalf, service may be made on any adult member  
of the family, whether male or female, who is residing with him.

*Explanation.* —A servant is not a member of the family  
within the meaning of this rule.]”

14. In order to attract provisions of Order V Rule 15 CPC, it must  
be shown that the service was effected at the residence of the defendant.  
Ordinarily, service on mother of defendant being adult member, amounts to  
a valid service in terms of Order V Rule 15 CPC. However, the same cannot



be said to be true in case of a married daughter, who is not residing at her parental place but resides at the place of her in-laws.

15. In view of above, instant application filed on behalf of respondents No.1 to 7, 10 and 11, is allowed as the service on the applicants is found to be not in terms of the procedure prescribed under law.

**RSA No.1165 of 2008 (O&M)**

With the consent of the counsels representing the parties, the main appeal is taken on Board for hearing.

2. For convenience, the parties hereinafter are referred to by their original position before the Court of the First Instance, i.e. the appellant as ‘plaintiff’ and the respondents as ‘defendants’.

3. Plaintiff filed suit for specific performance of agreement to sell dated 5<sup>th</sup> of July, 1999 executed by defendant Mohinder Singh (deceased) in his favour *qua* suit land as detailed out in the plaint. As per plaintiff, defendant agreed to sell suit land in his favour for a consideration of ₹16,15,000/- and received an amount of ₹3,00,000/- as earnest money on the date of execution of the agreement i.e. 5<sup>th</sup> of July, 1999. As per plaintiff, the sale deed was to be executed on or before 31<sup>st</sup> of December, 1999. Plaintiff claims that he was delivered possession of the disputed land at the time of execution of agreement to sell, by the defendant. Defendant appeared before the office of Sub Registrar on 3<sup>rd</sup> of January, 2000 as 31<sup>st</sup> of December, 1999 was holiday. On 1<sup>st</sup> of January, 2000 and 2<sup>nd</sup> of January, 2000, also the office



of the Sub Registrar, was closed on account of holiday. The plaintiff remained present in the office of Sub Registrar with balance sale consideration and expenses to be incurred on registration of sale deed on the next day i.e. 3<sup>rd</sup> of January, 2000 and got his presence marked on affidavit. Plaintiff claims that he always remained ready and willing to perform his part of agreement. Defendant remained evasive and thus plaintiff is entitled to get decree of specific performance.

4. Execution of agreement to sell was admitted by the defendant. It was claimed that the land was under mortgage with one Lal Singh son of Raghbir Singh. Thus, the question of handing over of possession of the suit property to the plaintiff, does not arise. Defendant denied that on 31<sup>st</sup> of December, 1999, 1<sup>st</sup> of January, 2000 and 2<sup>nd</sup> of January, 2000 office of Sub Registrar, was closed on account of holiday. Defendant specifically claimed that 31<sup>st</sup> of December, 1999 was a working day. Defendant remained present in the office of Sub Registrar, Dhuri for execution of the sale deed on the said date and got his presence marked by submitting affidavit/application. Thus, defendant claimed that plaintiff himself not being ready and willing to perform his part, is not entitled for the decree of specific performance.

5. Both the Courts below found that averment made by the plaintiff regarding 31<sup>st</sup> of December, 1999 being holiday, is false averment. Defendant appeared before the office of Sub Registrar on the appointed date whereas the plaintiff failed to show his readiness and willingness on the



appointed date. Even in reply to the legal notice served upon defendant by the plaintiff which has been proved by plaintiff himself as Exhibit P-6, defendant specifically claimed that he remained present in the office of Sub Registrar on 31<sup>st</sup> of December, 1999. Thus, finding that the plaintiff raised false pleas w.r.t. his readiness and willingness on the appointed date and regarding the possession over the suit property, he is not entitled for discretionary relief of specific performance.

6. The aforesaid findings stand affirmed by the Lower Appellate Court.

7. Ld. Senior Counsel representing the appellant has assailed the findings recorded by the Courts below. It has been contended that both plaintiff and defendant failed to appear before the Sub Registrar's office to execute the sale deed on the stipulated date i.e. 31<sup>st</sup> of December, 1999. On the next day i.e. 3<sup>rd</sup> of January, 2000, plaintiff exhibited his willingness by appearing before the Sub Registrar and the same stands proved by way of application, Exhibit P-7. On the very next day, i.e. 4<sup>th</sup> of January, 2000, legal notice (Exhibit P-3) was served upon the defendant, calling him to execute sale deed. Defendant sent reply, Exhibit P-6, declining to execute the sale deed. Present suit was filed seeking relief of specific performance promptly. The conduct of the plaintiff is evident and the same exhibits his readiness and willingness to perform his part. Yet the Courts below have non-suited the plaintiff and held him not entitled to decree of specific performance.



8. Per contra, counsel for the respondents submits that the Courts below having rightly exercised their discretion and concurrently found that the plaintiff falsely claimed that the office of Sub Registrar was closed on 31<sup>st</sup> of December, 1999 on account of holiday, the present appeal deserves to be dismissed.

9. I have heard counsel for the parties and have carefully gone through records of the case with their able assistance.

10. The execution of agreement to sell, is not in dispute. It is also not in dispute that as per terms thereof, the sale deed was to be executed on 31<sup>st</sup> of December, 1999. The issue is regarding readiness and willingness of the plaintiff and the effect of falsity of the case made out from plaint on his entitlement to the discretionary relief of specific performance.

12. Chapter II of the Specific Relief Act, 1963 deals with 'Specific Performance of Contracts'. Section 16 deals with 'personal bars to relief of the specific performance and reads as under:

**“16. Personal bars to relief.**—Specific performance of a contract cannot be enforced in favour of a person—

2 [(a) who has obtained substituted performance of contract under section 20; or]

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) 3 [who fails to prove] that he has 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 terms the performance of which has been prevented or waived by the defendant.

*Explanation.*—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff 4 [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.”

13. Section 20 of the Unamended Act, deals with discretion as to decreeing specific performance reads as under:

**“20. Discretion as to decreeing specific performance.—**

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

(2) The following are cases in which the Court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or



- (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

*Explanation 1.*—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

*Explanation 2.*—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3) The Court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4) The Court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.”

14. As per the mandate of Section 16(c), plaintiff was under bounded duty to prove continuous readiness and willingness in order to claim decree of specific performance. He was required to exhibit continuous readiness and willingness from the date agreed for execution of sale deed i.e. 31<sup>st</sup> of December, 1999. Admittedly, he did not appear before the Sub Registrar on 31<sup>st</sup> of December, 1999. No evidence was brought on record to



show that plaintiff was in possession of requisite funds on the said date. Rather, he raised a false plea in his plaint claiming that he could not appear before the Sub Registrar on 31<sup>st</sup> of December, 1999 as the same was a holiday.

15. Ld. Senior Counsel representing the appellant does not dispute that plea is false. 31<sup>st</sup> of December, 1999 was in fact not a holiday.

16. Trite it is that exercise of discretion depends upon several factors and the ‘conduct of the plaintiff’ is the primary. Relief of specific performance is not a common law remedy, but has its genesis in equity. In the present case, the false plea raised by the plaintiff, hits at the root of the ingredient essential for grant of specific performance and thus, the same cannot be ignored as a mere attempt to gild the lily.

17. Supreme Court in the case of ‘**Lourdu Mari David vs. Louis Chinnaya Arogiaswamy**’, (1996) 5 SCC 589 observed that a party who seeks to avail equitable jurisdiction of the Court, must come to the Court with clean hands. Reference can be made to the following observations:

“2. It is settled law that the party who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands; In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief.”

18. Supreme Court in the case of ‘**Darshan Singh vs. Brij Bhushan Chaudhary**’, (2024) 3 SCC 489, non-suited plaintiff seeking



relief of specific performance for having raised false pleas, observing as under:

“12. Under Section 20 of the 1963 Act, the grant of a decree for specific performance is always discretionary. The exercise of discretion depends on several factors. One of the factors is the conduct of the plaintiff. The reason is that relief of a decree of specific performance is an equitable relief. A person who seeks equity must do equity.

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18. As observed earlier, the relief of specific performance is discretionary and equitable. Considering the plaintiffs' conduct of making false and/or incorrect statements in the plaint, which were very material, we hold that the plaintiffs are disentitled to relief of specific performance. It is pertinent to note that plaintiff No. 1 admitted in the examination-in-chief that the suit property was HUF property. Even after that, the plaintiffs continued to prosecute the suit by seeking a decree in respect of the entire suit property. The plaintiffs did not give up their case concerning the shares of other co-sharers who were not parties to the suit. Therefore, the Trial Court, Appellate Court and High Court were justified in denying discretionary relief of specific performance to the plaintiffs.

19. In view thereof, this Court does not find any reason to interfere in the discretion exercised by both the Courts below which is based upon sound principles of equity recognized by law.

20. Finding no merits in the present appeal, the same is ordered to be dismissed.



21. Pending application(s), if any, shall also stand disposed off.

**May 07, 2025**

**(Pankaj Jain)**

**Dpr**

**Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No