



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

Reserved on: 28th July 2025

Date of decision: 18th September 2025

(I) RSA-5076-2018 (O&M)

KRISHANA DEVI

.....Appellant

versus

PUSHPA DEVI AND OTHERS

.....Respondents

(II) RSA-866-2019 (O&M)

OM PAL AND ANOTHER

.....Appellants

versus

PUSHPA DEVI AND OTHERS

.....Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Raman Chawla, Advocate
for the appellants in RSA-5076-2018 and
for respondent No.3 in RSA-866-2019.

Mr. Sushil Bhardwaj, Advocate with
Ms. Devanshi Sharma, Advocate and
Ms. Saksham Sharma, Advocate
for respondents No.1 and 2 (in both cases).

Ms. Meenakshi Sharma, Advocate for
Mr. Sushil K. Sharma, Advocate
for the appellant in RSA-866-2019 and
for respondents No.3 and 4 in RSA-5076-2018.

HARPREET KAUR JEEWAN, J.

1. Both the present Regular Second Appeals bearing Nos. RSA-5076-2018 and RSA-866-2019 are arising out of a common judgment and decree dated 12.12.2017, passed by the learned Additional District Judge, Charkhi Dadri, as such, they are being disposed of by this common judgment.



2. The suit for specific performance for Agreement to Sell dated 09.01.2007, filed by the plaintiffs namely Pushpa Devi and Bala Devi, was decreed vide judgment and decree dated 11.02.2014, whereby, the defendant No.1-Krishana Devi/appellant was directed to execute the sale deed in favour of the plaintiffs.

2.1. The First Appellate Court dismissed both the appeals filed by the appellant/defendant No.1-Krishana Devi (*hereinafter referred to as "prospective vendor"*) and defendant No.2-Om Pal and defendant No.3-Vimal Kumar (*hereinafter referred to as "subsequent purchasers"*) vide common judgment and decree dated 12.12.2017, which has been impugned before this Court by filing the present Regular Second Appeals.

2.2. The defendant No.1-Krishana Devi (prospective vendor) filed RSA-5076-2018, whereas, defendant No.2-Om Pal and defendant No.3-Vimal Kumar (subsequent purchasers) filed RSA-866-2019.

3. For the sake of brevity, the facts are being taken from RSA-5076-2018. On 09.06.2007, the respondents No.1 and 2 (*hereinafter referred to as "the plaintiffs"*) filed a suit against Krishana Devi (prospective vendor) for specific performance for Agreement to Sell dated 09.01.2007 for land measuring 06 Kanals and 18 Marlas for a total sale consideration of Rs.4,48,500/- @ Rs.5,20,000/- per acre. The parties agreed to execute the Sale Deed dated 14.05.2007. The plaintiffs alleged that they were always ready and willing to perform their part of the agreement. However, Krishana Devi (prospective vendor) did not fulfill the terms and conditions of the Agreement to Sell. She did not appear before the Sub-Registrar for the purpose of execution of the sale deed. However, on



14.05.2007, the plaintiffs remained present in the Office of Sub-Registrar to pay the balance sale consideration of RS.3,58,500/- along with the amount required for other expenses. On 15.05.2007, the plaintiff-respondent issued a Legal Notice(Ex.P-1) to Krishana Devi (prospective vendor) and she replied to the same vide letter dated 23.05.2007 that she was always ready and willing to perform her part of agreement. The plaintiff-respondent is alleged to have issued another Legal Notice dated 26.05.2007 (Ex.PW-6/C) calling upon the defendant to execute the Sale Deed on 04.06.2007 before the Sub-Registrar. Despite that, Krishana Devi (prospective vendor) did not appear on the said date. However, the plaintiffs remained present in the Office of the Sub-Registrar even on 04.06.2007 along with the balance sale consideration and other expenses. As such, the plaintiffs had filed a suit for specific performance.

4. The defendant (prospective vendor) filed a written statement and contested the suit taking a plea that the plaintiffs remained present in the office of the Sub-Registrar and got attested an affidavit (Ex.D-1) on 14.05.2007. It was further pleaded that the prospective vendor was in need of money and she executed Registered Sale Deed No.845 dated 30.07.2007, in favour of Ompal Singh and Vimal Kumar (subsequent purchasers).

4.1. Defendant No.2-Ompal Singh (subsequent purchaser) was initially proceeded against *ex parte* but the *ex parte* order was later on set aside. No written statement was filed on behalf of defendant No.2.

4.2. Defendant No.3-Vimal Kumar (subsequent purchaser) filed a separate statement and took a plea that he, along with Mr. Ompal, had purchased the property in question through Sale Deed dated 30.07.2007, for



consideration of ₹4,31,500/- and they are the *bona fide* purchasers for valuable consideration without notice of any agreement to sell in favour of the plaintiffs.

4.3. The plaintiff filed a replication to the written statement filed by respondent No.1. From the pleadings of the parties, the issues framed on 02.01.2009 and additional Issue No.5, framed on 11.02.2014, are as follows:-

- “1. Whether the plaintiffs were ready and willing to perform their part of the contract dated 09.01.2007?
2. Whether the plaintiffs are entitled to seek specific performance of contract dated 09.01.2007?
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is bad for want of proper court fees? OPD
5. Whether the defendant no.3 is bona fide purchaser of the suit property for valuable consideration? OPD no.3.
6. Relief.”

4.4. The parties led their respective evidence.

5. The trial Court decreed the suit for specific performance of Agreement to Sell and held that the subsequent purchasers are not the *bona fide* purchasers.

6. Defendant No.1-Krishana Devi and Om Pal filed the First Regular Appeal. The said appeal has also been dismissed by the learned Additional District Judge, Bhiwani, vide impugned judgment and decree dated 12.12.2017.

7. The First Appellate Court observed that the execution of the Agreement to Sell dated 09.01.2007 is not disputed *inter se* the plaintiffs and



the defendant-Krishana Devi (prospective vendor). The admission of the prospective vendor that the subsequent purchasers are the sons of her husband's brother, was also considered and the First Appellate Court observed that in view of the said relationship, the contentions raised on behalf of Krishana Devi (prospective vendor) that she was ready and willing to perform her part of the agreement pales into insignificance.

8. The concurrent findings of both the Courts below have been challenged by way of filing these Regular Second Appeals, filed by the prospective vendor and the subsequent purchasers.

9. Learned counsel for the appellant-Krishana Devi (prospective vendor) contends that the Courts below have failed to take into consideration the evidence on record i.e. the Affidavit dated 14.05.2007 (Ex.D-1), whereby, her presence was marked before the Executing Magistrate, Badhra. The said affidavit proves the readiness and willingness on the part of Krishana Devi (prospective vendor) to perform her part of the contract. It is further contended that the legal notice issued by the plaintiffs has been specifically denied by Krishana Devi (prospective vendor) in the written statement and even otherwise, the said legal notice has been proved on record. Such findings of the Court below on Issues No.1, 2 and 5 are erroneous. Krishana Devi (prospective vendor) was ready and willing to perform her part of the contract, but failure was on the part of the plaintiffs. As such, the suit of the plaintiffs is liable to be dismissed.

10. Learned counsel for the appellants-Ompal and Vimal (subsequent purchasers) submits that the appellants are the *bona fide* purchasers for valuable consideration. They were not having any notice



about the alleged agreement *inter se* the plaintiffs and appellant-defendant No.1. They have purchased the property on the basis of a Registered Sale Deed for consideration. As such, the findings of the trial Court are liable to be reversed.

11. *Per contra*, learned counsel for the respondents submits that there are concurrent findings by the trial Court as well as by the First Appellate Court, which are well-reasoned. It is contended that the trial Court has rightly placed reliance on various precedents to hold that where the vendor alienates the suit property to a third party, the vendee is not required to prove continuous readiness and willingness to perform his part of the contract. It is further contended that instead of performing her contractual obligation, defendant No.1-appellant executed the Sale Deed dated 30.07.2007 in favour of her nephews i.e. defendants No.2 and 3.

11.1. Learned counsel for the respondents further contends that during the cross-examination, defendant No.1-appellant appeared as DW-1 and admitted that she had informed the subsequent purchasers about the earlier Agreement to Sell as well as about its cancellation, but no notice of cancellation was ever issued raising the aforesaid submissions. It is further contended that the suit was rightly decreed by the trial Court and such findings have been rightly upheld by the First Appellate Court.

12. I have considered the aforesaid submissions and perused the paper book.

13. The trial Court had framed Issue No.1 specifically regarding the readiness and willingness of the plaintiffs to perform their part of the contract. The trial Court, while giving finding on the said issue, though has



considered the evidence led by the plaintiffs in Para No.12 of the judgment and made a reference about the presence of the plaintiffs marked before the Sub-Registrar, Badhra vide Exhibit P-1 dated 14.05.2007, Legal Notice dated 15.05.2007, another Legal Notice dated 26.05.2007 and an Affidavit regarding their presence before the Sub-Registrar on 04.06.2007 (Ex.P-2), however, it was ultimately held that the suit is liable to be decreed since Krishana Devi (prospective vendor) had transferred the property to the subsequent purchasers, who are her close relatives.

13.1. The First Appellate Court has not given any findings on the readiness and willingness of the plaintiffs before dismissing the appeal while affirming the findings of the trial Court.

14. The First Appellate Court had observed that the defendant-owner had subsequently sold the property to a third party, as such, the only issue that requires adjudication is as to whether the subsequent purchasers are the *bona fide* purchasers for value without notice or not?

15. In a recent decision in “*Kadupugotla Varalakshmi vs. Vudagiri Venkata Rao and Others*”; 2021 SCC (Online) SC 365, the Hon’ble Apex Court did not accept the observations of the High Court that it is not open to the subsequent purchaser to challenge the readiness and willingness on the part of the plaintiff. It was observed that the principles laid down in “*Jugraj Singh vs. Labh Singh*”; (1995) 2 SCC 31, were not accepted by a Larger Bench of the Hon’ble Apex Court in the case of “*Ram Awadh (Dead) by Lrs vs. Achhaibar Dubey*”; (2000) 2 SCC 428, wherein, it was held as under:-

“6. The obligation imposed by Section 16 is upon the court not to grant specific performance to a plaintiff who has not met the



requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of Section 16(c) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in Jugraj Singh case [(1995) 2 SCC 31] is erroneous."

16. It is not disputed that it is for the plaintiff, who claims a decree for specific performance, to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fail.

17. In view of the ratio of the decision of the Hon'ble Apex Court in *Kadupugotla Varalakshmi (supra)*, the plea that the plaintiff must always be ready and willing to perform his part of the contract, is available not only to the vendor or his legal representatives, but also to the subsequent purchaser.

18. The First Appellate Court has not recorded any findings on Issue No.1 as to whether the plaintiff was ready and willing to perform his part of the contract, as such, upholding the decree of specific performance merely on the ground of there being a subsequent purchaser, is erroneous, in view of the ratio of the decision of the Hon'ble Apex Court in *Kadupugotla Varalakshmi (supra)*. As such, the judgment and decree dated 12.12.2017, passed by the First Appellate Court, is liable to be set aside.



19. Consequently, both the Regular Second Appeals are allowed. The judgment and decree dated 12.12.2017, passed by the learned Additional District Judge, Charkhi Dadri, is set aside and the matter is remanded back to the First Appellate Court for re-hearing the parties and giving a fresh decision. The First Appellate Court shall also determine the issue of readiness and willingness of the plaintiffs to perform their part of the contract, on the basis of evidence of the parties already on record. Such exercise be concluded within a period of six months on receipt of a copy of this order.

20. Pending miscellaneous applications, if any, shall stand disposed of.

(HARPREET KAUR JEEWAN)
JUDGE

18th September 2025
simran

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*