

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**RFA No. 07 of 2025**  
**Reserved on: 23.03.2026**  
**Decided on: 06.05.2026**

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Col. Vikram Singh (deceased) through LRs  
.....Appellants  
Versus  
Shrikant Krishan & Ors. ...Respondents

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*Coram*

**The Hon'ble Mr. Justice Sushil Kukreja, Judge.**

Whether approved for reporting?<sup>1</sup> **Yes.**

For the appellants : Mr. Ajay Kumar, Senior  
Advocate with Mr. Rohit,  
Advocate.

For the respondents : Mr. R.K. Gautam, Senior  
Advocate with Mr. Sahil Dixit,  
Advocate, for respondent No. 1.  
Mr. Bhupinder Gupta, Senior  
Advocate with Mr. Pranjal  
Munjhal, Advocate, for  
respondents No. 2(a) to 2(d), 3  
& 4.

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**Sushil Kukreja, Judge**

The instant appeal has been preferred by the appellants, who were defendants No. 4(a) to 4(c) before the learned Court below against judgment and decree dated 17.12.2024, passed by learned Additional District Judge-1,

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1 *Whether reporters of Local Papers may be allowed to see the judgment?*

Kangra at Dharamshala, District Kangra, H.P., in Civil Suit No. 2/D/1/2023/2007, whereby suit filed by plaintiff (respondent No. 1 herein) was decreed with costs.

2. The brief facts of the case are that the plaintiff filed a suit for specific performance with consequential relief of permanent prohibitory injunction directing the defendants to perform their part of contract vide agreement to sell dated 21.05.2007 and to execute a legal, valid and proper sale deed in favour of plaintiff and to get the same registered before Sub-Registrar Dharamshala in respect of land measuring 0-03-78 hectares i.e. land measuring 0-02-40 hectares, which is 240/1008 share of land comprised in Khata No. 198, Khatauni No. 385, Khasra No. 64, measuring 0-10-08 hectares and Khasra No. 68, measuring 0-01-38 hectares and land comprised in Khata No.200 min, Khatauni No.387 min, Khasra Nos.69 and 71, plots 2, measuring 0-62-89 hectares and land comprised in Khata No. 201, Khatauni No.388, Khasra No.1055/1047, measuring 0-03-88 hectares, in total 12 Kanals, situated in Mahal Khanyara Khas, Mauza Khanyara, Tehsil Dharamshala, District Kangra, H.P. (For

short “the suit land”). Further, prayer for setting aside sale deeds No. 685/2007, 684/2007 and 683/2007 executed by defendants No. 1 to 3 in favour of defendant No. 4 with consequential relief of permanent prohibitory injunction restraining defendant No. 4 from further alienating or creating any charge or changing the nature of suit land in any manner.

3. According to the plaintiff, defendants No. 1 to 3 are the owners of suit land, who were keen to sell the same and the plaintiff was interested to purchase it. Plaintiff was introduced to defendants No.1 to 3 by broker Shri Puroshotam Ram. Negotiations were held between the parties and they settled the price of land at the rate of Rs. 4,00,000/- per Kanal and total sale consideration of 12 Kanals of land worked out to Rs. 48,00,000/- Earnest money of Rs.3,00,000/- was paid by the plaintiff to defendants No.1 to 3 vide cheques No.133675, 133678 and 133679, respectively. The parties mutually agreed to execute and register sale deed within three months from the date of execution of agreements to sell. Defendants No.1 to 3 also

sworn in a joint affidavit on 21.05.2007, wherein defendants No.1 to 3 have collectively agreed to sell about 12 Kanals of land to plaintiff forming part of a single transaction and in which they deliberately mentioned the rate of land at the rate of Rs.1,00,000/- per Kanal. Defendants No.1 to 3 served plaintiff with three separate notices dated 15.06.2007 averring therein that the amount received by them as earnest money has not been credited to their accounts. However, prior to issuance of notices dated 15.06.2007, defendants No. 1 to 3 have not made any complaint to the plaintiff that the earnest money has not been credited to their respective saving bank accounts. The amount was credited to defendants through Punjab National Bank, Delhi by bank transfer from CITI Bank Gurgaon on 26.05.2007, which means that the amount has come into the hands of an agent, which itself amounts to compliance of his part of contract by the plaintiff. Defendants No.1 to 3 returned the earnest money of Rs. 3,00,000/- vide three demand drafts No. 828205, 828206 and 828207 dated 26.06.2007 to plaintiff. Defendants No.1 to 3 were trying to back out of the

agreement and might enter into some agreement to sell the suit land to some other party. The plaintiff issued notice dated 19.06.2007 to the defendants No.1 to 3 on 20.06.2007 asking them to refrain from selling the suit land to other person, which was replied by the defendants. However, the defendants sold the suit land to defendant No. 4 on 22.06.2007 vide three different sale deeds for a total sale consideration of Rs 20,00,000/-. Plaintiff was always ready and willing to perform his part of contract. The sale deeds executed by defendants No 1 to 3 in favour of defendant No 4 were sham transactions just to defeat the rights of plaintiff under the agreement to sell dated 21.05.2007. Therefore, the defendants be directed to perform their part of contract and to get the sale deed of suit property registered in favour of plaintiff in terms of agreements to sell dated 21.05.2007. Plaintiff had to incur huge expenses on travelling to Khanyara for negotiations and then to Dharamshala, where the agreements to sell were finally executed and attested on 21.05.2007. The cause of action accrued to the plaintiff on 21.05.2007 when the agreement was entered between the

parties and vide notice dated 15.06.2007, when the defendants flatly refused to honor their commitment under the agreement, on 19.06.2007 when the plaintiff issued notice to defendants asking them to refrain from alienating the suit land to some other party and finally on 22.06.2007 when defendants No.1 to 3 sold the suit land to defendant No. 4.

4. The defendants resisted and contested the suit of the plaintiff by filing separate written statements. In the written statement filed on behalf of defendants No. 1 to 3 preliminary objections qua maintainability, cause of action, limitation, jurisdiction, valuation and estoppel were taken. On merits, it has been alleged that defendant No. 3 never agreed or entered into agreement for his share of land. Defendants No.1 and 2 agreed to sell the land as they were in dire need of money. The plaintiff when not having honored his word in making payment within particular time and time being essence of contract/agreement, constrained by circumstances, defendants No.1 and 2 got issued letter and cancelled agreement and thereafter sold land to defendant

No. 4. Plaintiff at no point of time, after entering into agreement was ready and willing to pay earnest money as per agreement. Defendants agreed initially to sell the land to the extent of 12 Kanals to plaintiff, but he having got much more land scribed in the agreements and even promise of paying earnest money having not been honored, purpose for which defendants No. 1 and 2 agreed to sell land was being frustrated, as such, agreement with plaintiff was cancelled by issuing notice. It has been denied that amount was credited in the accounts of defendants on 26.05.2007. There is no relationship of agent with Punjab National Bank Delhi of defendants No.1 and 2. It has been alleged that by the time plaintiff got deposited the amount of earnest money in the accounts of defendants, already agreements with plaintiff stood cancelled by issuing notice and land stood sold. It has been further stated that when plaintiff credited amount in the accounts of defendants, the same was sent back vide bank draft to plaintiff. Plaintiff was never ready and willing to perform his part of contract. Even earnest money was not paid for which defendants were in dire need. It has been

denied that sale deeds between defendants No.1 to 3 in favour of defendant No. 4 are sham transactions. With these averments it has been prayed that the suit be dismissed.

5. In written statement filed on behalf of defendant No. 4, preliminary objections qua maintainability and valuation were taken. On merits, it has been alleged that defendant No. 4 was not aware of any deal having taken place between plaintiff and defendants No. 1 to 3. It has further been alleged that defendant was not aware of any prior agreement to sell between plaintiff and defendants No.1 to 3 and defendant No. 4 is a bonafide purchaser. It has been denied that sale deeds executed by defendants No.1 to 3 in favour of defendant No. 4 are sham transactions. It has been alleged that entire sale consideration had been paid by him to defendants No.1 to 3 and this fact finds mentioned in sale deed executed between him and defendants No.1 to 3. It has been also alleged that suit land has been sold as per market value of said land.

6. By filing replications, averments made in the plaint have been reasserted and contents of the written statements are denied.

7. On the pleadings of the parties, following issues were framed on 10.07.2009:-

*“(1) Whether the plaintiff is entitled to a decree for specific performance of the agreements dated 21.05.2007? OPP*

*(2) Whether the plaintiff paid an amount of Rs. 3 lacs @ Rs. 1 lac each to defendants No. 1 to 3 vide cheques No. 133675 dated 21.05.2007, 133678 dated 21.05.2007, 133679 dated 21.05.2007, drawn on Citi Bank N.K. Gurgaon towards earnest money being part payment of sale consideration? OPP*

*(3) Whether sale of the suit land dated 21.05.2007 in favour of defendant No. 4 is a sham transaction just to defeat the rights of the plaintiff under agreements to sell dated 21.05.2007? OPP*

*(4) Whether in addition to the relief of specific performance of contract, the plaintiff is also entitled for the relief of damages quantified to the tune of Rs. 10 lacs on account of harassment and mental agony? OPP*

*(5) Whether the plaintiff has no legally enforceable cause of action, as alleged? OPD*

*(6) Whether the suit in the present form is not maintainable, as alleged? OPD*

*(7) Whether the suit has been filed beyond the period of limitation, as alleged? OPD*

*(8) Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD*

*(9) Whether the plaintiff is estopped from filing the present suit on account of his own acts, deeds and conduct, as alleged? OPD*

*(10) Whether defendant No. 4 is a bonafide purchaser for consideration, as alleged? OPD*

*(11) Whether the suit is bad for mis-joinder of necessary parties?OPD*

*(12) Whether in view of notice,agreements in question are rescinded? OPD*

*(13) Relief'*

8. After the parties led evidence and after hearing the learned Counsel for the parties, the suit was decreed with costs in favour of the plaintiff. Feeling aggrieved and dissatisfied, the appellants preferred the instant appeal against the impugned Judgment dated 17.12.2024 for setting aside the same.

9. I have heard learned Senior Counsel for the appellants, learned Senior Counsel for respondent No. 1, learned Senior Counsel for respondents No.2(a) to 2(d), 3 and 4 and also gone through the material available on record.

10. Learned Senior Counsel for the appellants contended that the plaintiff was never ready and willing to perform his part of agreement to sell, therefore, the learned trial Court had erred in decreeing the suit of the plaintiff for specific performance of the agreement. He further contended that as he was a bona fide purchaser for value, hence relief

of specific performance could not have been granted. He also contended that defendant No.3 had never entered into any agreement.

11. On the other hand, learned Senior Counsel for respondent No. 1 has contended that the learned Court below has rightly decreed the suit and the present appeal deserves to be dismissed.

12. The perusal of the record reveals that defendant No. 1 was recorded as owner in possession of the land comprised in Khata No. 198, Khatauni No. 385, Khasra No. 64, to the extent of 0-02-40 hectares and Khasra No. 68 to the extent of 0-01-38 hectares of Mohal Khanyara Khas, as per Jamabandi for the year 2000-01. Defendant No.1 executed an agreement to sell dated 21-05-2007 for sale of the aforesaid land measuring 0-03-78 hectares to the plaintiff at Rs. 4,00,000/- per kanal, which agreement to sell was duly notarized and the same is Ext. PW-1/B. Defendant No. 1 had received earnest money of Rs. 1,00,000/- vide cheque No. 133675, dated 21-05-2007, drawn on Citibank, Gurgaon. Defendant No. 2 was recorded as owner in possession of the

land entered in Khata No. 200 min, Khatauni No. 387 min, Khasra No. 69 and 71, measuring 0-62-89 hectares of Mohal Khanyara 2000-01, as per Jamabandi for the year 2000-01.

13. Defendant No. 2 executed an agreement to sell dated 21.05.2007 for sale of the aforesaid land to the plaintiff at Rs. 4,00,000/- per Kanal, which was duly notarized and the same is Ext. PW-1/C. Defendant No. 2 had received earnest money of Rs. 1,00,000/- vide cheque No. 133678, dated 21.05.2007 drawn at Citibank, Gurgaon during the subsistence of the agreement to sell. The agreement to sell executed between the plaintiff and defendant No. 3 is Ext. PW-1/D. The affidavit duly notarized/executed by defendants No. 1 to 3 is Ext. PW-1/E.

14. The first question which arises for consideration before this court is as to whether the plaintiff has always been ready and willing to perform his part of the Agreement to Sell. Onus of this issue will be on the plaintiff on account of the provision of Section 16(c) of the Specific Relief Act, 1963. At this stage it would be relevant to refer to Section 16(c) of the Specific Relief Act, 1963, which reads as under:

**“16. Personal bars to relief.--** *Specific performance of a contract under Section 20; or*

(a) xxx

(b) xxx

(c) *who fails to aver and 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.”*

15. This provision requires that a proposed purchaser has always to be and continues to be ready and willing to perform his/her part of the agreement to sell. In the case of ***N.P. Thirugnanam (dead) By LRS v. Dr. R. Jagan Mohan Rao and Others (1995) 5 SCC 115*** where it was held that the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. The relevant portion of the aforesaid judgement is extracted as follows:

*“5. It is settled law that remedy for specific performance is an equitable remedy and is in the discretion of the court, which discretion requires to be exercised according to*

*settled principles of law and not arbitrarily as adumbrated under s.20 of the [Specific Relief Act 1963](#) (for short, 'the Act'). Under s.20, the court is not bound to grant the relief just because there was valid agreement of sale. Section 16(c) of the Act envisages that plaintiff must plead and prove that he had 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 those terms the performance of which has been prevented or waived by the defendant. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was always ready and willing to perform his part of the contract."*

16. Similarly, reference may be had to the judgment of the Supreme Court in the case of **J.P. Builders and Another Vs. A. Ramadas Rao and Another (2011) 1 SCC 429** wherein the Hon'ble Supreme Court interpreted the term/words "Ready and willing". The Court has held as under:

*" 22. The words "Ready" and "Willing" imply that the person was prepared to carry out the terms of the contract. The distinction between "Readiness" and "Willingness" is that the former refers to financial capacity and the latter to the conduct of the plaintiff wanting performance. Generally, readiness is backed by willingness.*

17. Thus, Section 16(c) of the Specific Relief Act requires not one but two aspects to be proved by the plaintiff i.e. both readiness and willingness. Readiness pertains to the financial capacity of a proposed purchaser to make payment of the balance consideration under the agreement to sell at all points of time after the agreement to sell was entered into till date of the decree. The aspect of a plaintiff/proposed purchaser always being ready to perform his part of the contract i.e having the necessary capacity to pay the sale consideration is because specific performance is a discretionary relief and an alternative to the relief of grant of damages. "Willingness" refers to the conduct of the plaintiff wanting performance.

18. Therefore, it has to be examined as to whether the plaintiff was always ready and willing to enter into the sale deed. From the evidence on record, it stands established that the plaintiff has entered into an agreement

to sell with defendants and the defendants not only received the earnest money, but also acknowledged the execution of agreement by executing joint affidavit. In the affidavit jointly executed by the defendants, they have affirmed the execution of agreement to sell with plaintiff for about 12 Kanals of land, which has also been admitted by DW-1. The payment towards earnest money received by defendants No. 1 to 3 has also duly been proved on record. In response to legal notice dated 19.06.2007 given by plaintiff, defendants No. 1 to 3 filed reply dated 06.07.2007, wherein it has been stated that total 12 Kanals of land was agreed to be sold (10 Kanals from Saroj, 378 Sq. Mtrs. From Jagdish and 388 Sq. Mtrs. From Suresh), as such, receipt of amount is acknowledged by the defendants. The plaintiff had acted bonafidely pursuant to the agreement to sell dated 21-05-2007 and had even paid earnest money of Rs. 1,00,000/- each to defendants No. 1 to 3. The said payment has been duly proved on record by PW-5, who had produced the bank statement, Ex. PW-5/B, showing the due encashment of cheques issued to defendants No. 1 to 3 pursuant to the

agreement to sell. Defendants No. 1 to 3 have contentiously claimed that no payment was ever received, but, these payments of earnest money stand duly proved on record. Since these cheques were encashed, the defendants have thereby admitted to the agreements to sell, Ext. PW-1/B, PW-1/C & PW-1/D.

19. PW-2, Surinder Kumar, who had attested the agreements to sell supra, was not cross-examined despite opportunity granted. The agreements which were executed, also stand proved with the statement of PW-3 Sh. Randhir Singh Rana, Advocate, who proved the fact regarding sending of legal notice on behalf of plaintiff alongwith postal receipts. PW-4, Sukhdev, Registration Clerk, Sub-Registrar Office, Dharamshala, had brought sale deeds Ext. PW-1/M, Ext. PW-1/N and Ext. PW-1/O. During the course of arguments, learned counsel for the defendants claimed that plaintiff was not ready and willing to pay the amount. It has also been argued that the plaintiff had not paid the amount timely and for that reason defendants No. 1 to 3 were forced to sell the land to defendant No. 4.

20. From the perusal of the record, It appears that plaintiff maintained readiness and willingness throughout for the specific performance of the agreements. The plaintiff has also proved on record financial capacity to execute agreements, by way of bank statements. Further, the plaintiff has also succeeded to prove that the he was ready and willing to perform his part towards agreements to sell with the defendants as and when the demand of money was made. It has also been argued on behalf of plaintiff that the defendants have demanded more money pursuant to agreement to sell and this fact has been proved on record by the statement of PW-6 R.K. Singh, Deputy Manager, State Bank of Bikaner and Jaipur, who was examined in order to prove that five demand drafts of Rupees One lac each were issued in favour of defendant No. 2 Saroj Devi payable at SBI, Dharamshala, which were collectively exhibited as Ext. PW-6/C and application form is PW-6/A.

21. The aforesaid witness has been examined to prove the continuous readiness and willingness of the plaintiff and steps taken by the plaintiff for the sale. Ext. PW-

5/B and PW-6/F are the banks statements of account of the plaintiff in order to prove the financial capacity. This witness has not been cross- examined despite opportunity.

22. After considering the statement of plaintiff Shrikant Krishan, which is duly supported by statement of PW-2, Surinder Kumar, who has attested the agreements to sell and considering the legal notice issued by PW-3 Shri Randhir Singh, it stands established that agreement to sell was executed between the parties. The statement of PW-5, who produced the bank record, shows that the amount stands paid to the defendant. Statement of PW-6 Bhol Nath Singh, Deputy Manager further proves the readiness and willingness on the part of plaintiff to perform his part of contract. Agreements Ext. PW-1/B, Ext. PW1/C and Ext. PW-1/D are ratified with the affidavit executed by defendants Ext. PW-1/E. Statements relied upon by the defendants Ext. D-1, Ext. D-2 and Ext. D-3 that no amount was received in their bank account are of no help. These are pertaining to previous entries prior to the execution of agreements. Sale deeds produced on record by PW-4 Sukhdev are of no help

and makes the case of plaintiff probable that it was sham transaction because there is no reference regarding the mode of payment as to how defendant No. 4 had made the payment to defendants No. 1 to 3. Consideration amount although is not a criteria, but the same certainly cannot be ignored because the amount transferred by defendant No. 4 in favour of defendants No. 1 to 3 is much less as compared to amount agreed to be paid by plaintiff to defendants No.1 to 3. It is not understandable as to why defendants No. 1 to 3 would receive less amount than the one agreed with the plaintiff. The bank statements relied upon by the plaintiff show that the cheques were duly honoured. Demand drafts relied upon by the plaintiff show his readiness and willingness and the bank's statements of account relied upon by the plaintiff also shows that there was sufficient amount in the account of plaintiff and thus proves the financial capacity to execute the document. Thus, it has duly been proved on record that the plaintiff was ready and willing to perform his part of the agreement to sell.

23. The learned Senior counsel for the defendant No. 4 has next contended that the defendant No. 4 is a bonafide purchaser having purchased the land in good faith for lawful and valuable consideration and without knowledge. On the other hand, the learned Senior counsel for the plaintiff claims that sale of suit land dated 21.05.2007 in favour of defendant No. 4 was a sham transaction just to defeat the rights of plaintiff.

24. Now the next question which arises for consideration is as to whether the defendant No. 4 is a bonafide purchaser having purchased the land in good faith for lawful and valuable consideration and without knowledge. However, he had failed to prove the same on record by leading any cogent and satisfactory evidence. He had failed to prove on record the mode of payment, the execution of the sale deeds in accordance with law, and that it was without notice. The perusal of the record reveals that the defendant No. 4 had failed to prove any payment or mode thereof to the defendants No. 1 to 3 pursuant to the alleged sale deeds in his favour.

25. The case of the plaintiff is that sale deeds in favour of defendant No. 4 by defendants No.1 to 3 are sham transactions and not operative on the rights of plaintiff. The perusal of the record reveals that defendant No. 1 had executed sale deed, Ex. PW-1/M, dated 22-06-2007 in favour of the defendant No. 4. In the said sale deed, land measuring 0-01-38 hectares was sold with some structure and the cost of the land was Rs. 41,000/- only, which was far less than the rate agreed with the plaintiff. According to the rate agreed with the plaintiff, the amount would have been more than Rs. 1,43,750/-. However, neither any mode of payment has been reflected in the said sale deed nor the same has been proved on record.

26. Defendant No. 2 had also executed sale deed, Ext. PW-1/N, dated 22-06-2007 in favour of the defendant No. 4, for an alleged sale consideration of Rs. 19,14,000/- and the land sold was 0-44-63 hectares, which was far less than the rate agreed with the plaintiff. As per the rate agreed with the plaintiff, the amount would have been more than Rs. 46,00,000/-. However, neither any mode of payment has

been reflected in the said sale deed, nor the same has been proved on record. Defendant No. 3 had also executed sale deed, Ext. PW-1/O, dated 22-06-2007 in favour of the defendant No. 4, for an alleged sale consideration of Rs. 30,000/- and the land sold was 0-03-88 hectares. which was far less than the rate agreed with the plaintiff. As per the rate agreed with the plaintiff, the amount would have been more than Rs. 4,04,000/-. However, neither any mode of payment has been reflected in the said sale deed, nor the same has been proved on record. Moreover, consideration amount is inadequate as compared to the previous transactions between the parties in the agreement. Thus, in view of the aforesaid evidence, the learned trial court had rightly arrived at the conclusion that the sale of suit land in favour of defendant No.4 is a sham transaction and is null and void.

27. Learned Senior counsel for the appellants next contended that the plaintiff took undue advantage of the financial position and illiteracy of defendants No. 1 & 2 and their ill health and manipulated affairs in the agreement in question inasmuch as instead of total 12 kanals of land got

fraudulently entered much more land to be sold by them. To substantiate his contention, learned Senior counsel for the appellants has placed strong reliance upon the decisions of Hon'ble Supreme Court in ***A.C. Arulappan Vs. Ahalya Naik (SMT), (2001) 6 SCC 600 and Ramjas Foundation and Another Vs. Union of India and Others, (2010) 14 SCC 38.***

28. In ***A.C. Arulappan Vs. Ahalya Naik (SMT), (2001) 6 SCC 600***, it has been held that if under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion to grant the order for specific relief; in favour of the plaintiff. The relevant portion of the aforesaid judgment reads as under:-

*"7. The jurisdiction to decree specific relief is discretionary and the court can consider various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the court need not grant the order for specific relief; but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in Section 20(2) of the Specific Relief Act, 1963 as to under what circumstances the court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is*

*inequitable to grant specific relief, then also the court would desist from granting a decree to the plaintiff.”*

29. In ***Ramjas Foundation and Another Vs. Union of India and Others, (2010) 14 SCC 38***, it has been held that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance. The relevant portion of the aforesaid judgment reads as under:-

*“21. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under [Articles 32, 226](#) and [136](#) of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.*

30. There is no quarrel about the proposition that if the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in his favour and also if the person does not come to the Court with clean hands, he is not entitled to be heard on merits of his grievance. However, in the instant case neither defendant No. 1 nor

defendant No. 2 had appeared in the witness box to prove that due to their ill health, financial position and illiteracy, the plaintiff took undue advantage and instead of 12 kanals of land got fraudulently entered, much more land to be sold by them. Defendant No. 3, Suresh Kumar, while appearing in the witness box as DW-1 has also failed to depose about this fact. Therefore, in the absence of any evidence on record, this contention of learned Senior counsel for the appellants cannot be accepted.

31. The learned Senior Counsel for the appellants has lastly contended that defendant No.3 has not entered into any agreement and he did not know how his signatures were there as agreement was executed by his father. However this contention of the learned senior counsel for the defendant No. 4 deserves to be rejected. The perusal of the record shows that earnest money paid to the defendant no. 3 in pursuance to the agreement to sell was got encashed by him as is evident from Ex. PW5/B. He also had sent notice of cancellation of the agreement to sell. Thus, defendant No.3 cannot be allowed to wriggle out of the agreement to sell on

the ground of signatures of his father. In Ex. PWI/J, the defendant No. 3 had admitted the execution of the agreement to sell with the plaintiff and regarding receipt of cheque pursuant to the agreement to sell. The plea of defendant that he is not party to the agreement is also of no help as Ex. PW-1/J and Ex. PW-1/E bear same signatures of defendant No. 3. Therefore, in view of the overwhelming evidence on record, defendant no. 3 cannot be allowed to retract to say that he was not a party to the agreement to sell in question.

32. No other point was urged before me.

33. In view of what has been discussed hereinabove, the impugned judgment and decree, passed by learned Court below, requires no interference and the instant appeal, which is devoid of merits is accordingly dismissed. Pending application(s), if any, shall also stand(s) disposed of.

**May 06, 2026**  
(raman)

**( Sushil Kukreja )**  
**Judge**