



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

130

RSA-3768-2023 (O&M)
Date of Decision:-12.05.2026

Karambir Singh

... Appellant

Versus

Gian Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Sanjiv Gupta, Senior Advocate with
Mr. Lavish, Advocate for the appellant.

PANKAJ JAIN, J. (Oral)

1. The appellant/plaintiff has filed the Regular Second Appeal assailing judgment dated 3.11.2023 passed by learned Additional District Judge, Panipat, whereby an appeal filed by the appellant/plaintiff against judgment and decree dated 17.1.2023 passed by learned Civil Judge, Junior Division, Samalkha, has been dismissed.
2. The appellant/plaintiff filed a suit seeking decree of specific performance of agreement to sell dated 15.7.2014 alongwith relief of permanent injunction. As per the plaintiff, defendant No.1 – Gian Singh son of Mam Chand agreed to sell suit property, i.e. land measuring 52.25 square yards, 1 Marla 6 Sarsai being 5/582 share of land measuring 9 Kanals 14 Marlas, comprised in khewat No.1056, in his favour vide written agreement to sell dated 15.7.2014 for a total sale consideration of Rs.4,95,000/-. The earnest money of Rs.3,50,000/- was paid on the day of execution of agreement to sell. The



parties had agreed to get the sale deed executed on or before 15.7.2015. The plaintiff further states that on 14.7.2015, the date of execution of sale deed was further extended to 15.7.2016. On 15.7.2016, while the plaintiff remained present before the office of Sub Registrar to get the sale deed executed, defendant No.1 failed to come present on the said day. The plaintiff thereafter served a legal notice dated 28.7.2016 upon defendant No.1 calling upon him to come present before the office of Sub Registrar on 3.8.2016 so as to honour his part. On the said date, plaintiff again remained present before the office of Sub Registrar and got his presence marked by way of an affidavit. However, defendant failed to perform his part. The plaintiff filed the suit on 24.8.2016 seeking possession by way of specific performance before the Court of learned Civil Judge (Junior Division), Samalkha.

3. Defendant No.1 was proceeded against *ex parte*. Defendant No.2 contested the suit and claimed that the property now stands transferred in his name pursuant to execution of the decree dated 15.1.2019 passed by learned Additional Civil Judge (Senior Division), Samalkha in Civil Suit No.51 of 2017 titled as “*Surender Singh Versus Gian Singh*”.
4. The suit filed by the plaintiff was put to trial by the Court of learned Civil Judge (Junior Division) at Panipat on the following issues:
 - “1. *Whether plaintiffs is entitled to decree for possession as prayed for? OPP*
 2. *Whether the suit is not maintainable in the present form? OPD*
 3. *Whether plaintiff has no locus standi and cause of action to file the suit? OPD*
 4. *Whether the suit is bad for mis-joinder and non-joinder of the necessary parties? OPD*



5. *Whether the plaintiff is estopped from filing the present suit by his own acts and conduct? OPD*

6. *Relief.”*

5. Learned Courts below held that the plaintiff successfully proved agreement to sell in his favour, but granted decree of alternate relief of recovery of earnest money of Rs.3,50,000/- alongwith interest @ 8% p.a. holding that the plaintiff failed to prove his “readiness and willingness”.
6. Learned Senior counsel for the appellant has assailed the judgments passed by learned Courts below. He submits that once defendant No.1, i.e. the vendor opted not to contest the suit, the plea of absence of ‘readiness’ and ‘willingness’ on the part of the appellant/plaintiff is not available to defendant No.2.
7. Mr. Sanjiv Gupta, Senior Advocate for the appellant further submits that the fact that the appellant/plaintiff remained present before the office of Sub Registrar on 15.7.2016 stands demonstrated by affidavit dated 15.07.2016. The substantial amount of Rs.3.50 lakhs out of the total sale consideration of Rs.4.95 lakhs already stood paid. Thus the Courts below erred in non-suiting the plaintiff on the ground of ‘readiness and willingness’. Learned counsel places reliance upon judgment passed by Hon’ble Apex Court rendered in “Azhar Sultana Versus B. Rajamani & Ors., 2009 (17) SCC 27” to contend that once the plaintiff was present before the office of Sub Registrar on the appointed date and a substantial amount was paid, the ‘readiness’ of the appellant/plaintiff stood proved. He further submits that as per the settled preposition of law there can not be any strict formula so as to ascertain the



“readiness and willingness”. The same has to be gauged from the conduct of the parties.

8. In the present case, the appellant/plaintiff proved execution of agreement to sell and payment of earnest money. He proved his presence before the office of Sub Registrar on the appointed date. The suit was promptly filed after defendant No.1 failed to perform his part. This shows that the appellant/plaintiff continuously remained ready and willing to perform his part.
9. I have heard learned Senior counsel for the appellant and have also carefully gone through the record of the case.
10. The only issue that falls for consideration of this Court in the present appeal is “readiness and willingness” of the appellant/plaintiff. This Court finds no merit in the plea raised by Mr. Gupta, learned counsel for the appellant that defendant No.2 had no right to dispute readiness and willingness of the appellant/plaintiff. Section 16(c) of the Specific Relief Act, 1963 prescribes a specific bar for the plaintiff. To claim decree of specific performance, plaintiff has to clear the statutory bar *dehors* the plea raised by the defendant. Had defendant No.1 been proceeded against *ex parte*, the statutory obligation was still to be discharged by the plaintiff. Mr. Gupta, learned Senior counsel for the appellant is right in contending that the plaintiff always remained willing to perform his part as his presence before the office of Sub Registrar on the appointed date stands proved vide affidavit dated 3.8.2016 (Ex.P-4). However, the plaintiff falls short of showing his readiness. There is no evidence to show that the appellant/plaintiff had financial capacity to perform his part on the appointed date.



11. That apart, the conduct of the parties is also unnatural. Having parted with a considerable amount of Rs.3.50 lakhs out of the total sale consideration of Rs.4.95 lakhs on 15.7.2014, a man of ordinary prudence would not have extended the date of getting the sale deed executed for 2 years.
12. In view of aforesaid circumstances, this Court finds no reason to interfere in the discretion exercised by the Courts below in denying the main relief of specific performance to the plaintiff and granting him alternate relief of recovery of earnest money of Rs.3,50,000/- alongwith interest @ 8% p.a.
13. Finding no merit in the present Regular Second Appeal, the same is ordered to be ***dismissed***.

12.05.2026

Pankaj

**(PANKAJ JAIN)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No