



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 06th February, 2026
Pronounced on: 09th July, 2026

+ RSA 271/2017, CM APPL. 53087/2023 and
CM APPL 68162/2025

RATTAN SINGH

S/o Shri Har Lal,
R/o House No. 6, Jogabai,
P.O. Jamia Nagar,
New Delhi-110025.

.....Appellant

Through: Mr. Kshitiz Mahipal and Ms. Khairun
Nisa, Advocates.

versus

AKHTAR ISLAM

S/o Late Sh. Mahmood Khan,
R/o House No. 7/1, Jogabai,
P.O. Jamia Nagar,
New Delhi

.....Respondent

Through: Mr. Vaibhav Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. **Regular Second Appeal** under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed on behalf of the *Defendant/Appellant*, Mr. Rattan Singh, against the Judgment dated **28.08.2017**, whereby the learned *Additional District Judge* upheld the Judgment of learned Civil Judge, *decreeing the Suit for Specific*



Performance filed by the *Plaintiff/Respondent*, Mr. Akhtar Islam, in his favour.

2. ***The Plaintiff had filed a Suit bearing Civil Suit No. 317/1988 for Specific Performance against the Defendant.***

3. The ***brief facts*** as narrated in the ***Plaint*** are, that the Plaintiff and Defendant entered into an Agreement to Sell dated **13.07.1966**, for the sale of land admeasuring 680 sq. yards in Khasra No. 161, Abadi Deh, Jogabai, Jamia Nagar, New Delhi-110025 (*hereinafter referred to as 'Suit Property'*), for a total sale consideration of Rs.8,160/-. he Plaintiff paid a sum of Rs.1,700/- as part payment towards the sale consideration. The balance amount of Rs.6,460/-, was agreed to be paid within a period of one year from the execution of the aforesaid Agreement to Sell, whereafter, the Defendant would execute the Sale Deed, in favour of the Plaintiff.

4. It was claimed that the Sale Deed could not be executed in favour of the Plaintiff, within the stipulated period, on account of the pendency of Civil Suit No. 802/1965, between the Defendant and certain third parties. Consequently, the Defendant entered into a ***supplementary Agreement to Sell dated 08.06.1967***, whereunder, an additional sum of Rs.3,200/- was received by the Defendant, who required the money for the marriage of his younger sister. It was further agreed that, the balance amount of Rs.3,260/- shall be paid at the time of the registration of the Sale Deed, which was to be executed within three months of the final decision of the aforesaid litigation.

5. It was further agreed between the parties that, if for any reason either because of the litigation or otherwise, the Defendant was not able to execute the Sale Deed in favour of the Plaintiff, *the Defendant would be bound to*



sell House No. 6, Jogabai, Jamia Nagar, New Delhi-110025 for a sum of Rs.4,900/-, which had already been received by the Defendant as earnest money.

6. It was asserted that the Plaintiff, from time to time, enquired from the Defendant about the status of the aforesaid litigation. On each such occasion, the Defendant stated that the litigation was still pending and requested the Plaintiff to await its final adjudication. The Defendant further assured the Plaintiff that the Sale Deed in respect of the Suit Property would be executed immediately upon the conclusion of the said litigation.

7. It was further asserted that the Plaintiff subsequently came to know that the Defendant had been postponing the execution of the Sale Deed in favour of the Plaintiff, on false and frivolous pretexts. It was alleged that the Defendant was trying to sell the suit property in favour of third parties, who were willing to purchase the same, notwithstanding the pendency of the aforesaid litigation, as the value of the properties in the area had appreciated considerably over time. It was further alleged that *the Defendant was no longer ready and willing to sell the suit property to the Plaintiff.*

8. Consequently, the Plaintiff approached the Defendant to execute the Sale Deed in terms of the aforesaid Agreements to Sell. However, the Defendant told the Plaintiff that he would neither execute the Sale Deed nor dispose of his residential house. The Plaintiff claimed that *he was always ready and willing to perform his part of the contract*, whereas it was the Defendant who had consistently evaded the execution and registration of the Sale Deed.



9. Accordingly, the Plaintiff instituted the present *Suit seeking Specific Performance of the Agreements to Sell dated 13.07.1966 and 08.06.1967 or, in the alternative, appropriate relief in respect of House No. 6, Jogabai, P.O. Jamia Nagar, New Delhi-110025.*

10. The Suit was contested by the **Defendant** who in his **Written Statement**, took the *preliminary objection* that the Plaintiff had not *approached the Court with clean hands* as he never approached or served any notice upon the Defendant, to perform his part of the aforesaid Agreements to Sell.

11. It was claimed that, the *Plaintiff was never ready and willing to purchase the suit property* as he did not have sufficient funds or else he would have served the Notice well within time seeking Specific Performance of the Agreements to Sell dated 13.07.1966 and 08.06.1967.

12. It was further asserted that the Plaintiff *did not disclose any cause of action for filing the present Suit*, as the aforesaid Agreements to Sell became inoperative and unenforceable on the expiry of the limitation period of three years.

13. **On merits**, the Defendant denied the Site Plan and asserted that the same did not relate to the Suit Property which was in the possession of Defendant. It was further asserted that the Plaintiff had obtained an Agreement from the Defendant, *which was revoked immediately, as the same had been executed under the false pretext*. It was further contended that the sale consideration had, in fact, never been paid and consequently, the Plaintiff had never sought enforcement of the said Agreements to Sell dated 13.07.1966 and 08.06.1967.



14. The Defendant further asserted that *under duress and threat, some other Agreement got executed, which was also subsequently cancelled*, as the Defendant had threatened to initiate the criminal proceedings against the Plaintiff *on the ground of fraud played upon him by writing about some plot*, which was not in possession of the Defendant. However, the money was never received under the second Agreement to Sell dated 08.06.1967, as well. The contents of the Plaint, were denied completely by the Defendant.

15. The **Plaintiff** in his **Replication** reaffirmed the assertions made in the Plaint and denied the averments made in the Written Statement.

16. The learned Civil Judge framed the following issues on **16.01.1991**, which are as under:-

- 1) *Whether the suit is within period of limitation? OPP*
- 2) *Whether plaintiff was always ready and willing to perform his part of contract? OPP*
- 3) *Whether the alleged agreement was executed under duress and threat and without consideration as alleged? OPD*
- 4) *Relief.*

17. The *Plaintiff, Akhtar Islam* in support of his case, examined himself as **PW-1**. He proved the two Agreement to Sell dated 13.07.1967 as **Ex.P-1** and Agreement to Sell dated 08.06.1967 as **Ex. P-2**. He further deposed on similar lines as the averments made in the Plaint.

18. **PW-2, Mohd. Yasin Barni** was the scribe of the Agreement to Sell dated 08.06.1967 **Ex.P-2** and proved its authenticity.



19. **PW-3**, Mr. *Khurshid Alam* deposed about the execution of the Agreement to Sell dated 13.07.1966 **Ex.P-1**, in his presence.
20. The *Defendant*, Mr. *Rattan Singh* examined himself as **DW-1** and deposed on similar lines as the defence taken in the Written Statement.
21. **DW-2**, Mr. *Dinesh Sharma*, deposed that the Plaintiff had executed some documents of loan, whereas he had neither given the loan nor were the documents returned to him.
22. In the first round of litigation, the **learned Civil Judge** after appreciating the rival contentions of the parties *vide* Judgment dated **05.04.2003**, observed that, admittedly, it was due to Suit bearing No. 802/1965 and Suit No. 421/1974 pending in regard to the Suit Property that the Defendant avoided the execution of the Sale Deed.
23. It was further observed that the *Suit No. 471/1974 was pertaining to Partition* and there was no record to show that the litigation had got settled between the parties *qua* the suit property. *It was further observed that the claim for an alternate Property in terms of the Agreement to Sell dated 08.06.1967 Ex.P-2, would arise only in the event, the Defendant defaulted in executing the Sale Deed.*
24. It was further observed that the aforesaid Agreements to Sell were executed in 1966-1967 and it was incumbent upon the Plaintiff, to prove that he had made the request to the Defendant, for execution of the Sale Deed in his favour. However, it emerges from the pleadings that it was not until a week prior to filing of the present Suit, that the Plaintiff had made any request for execution of the Sale Deed, which reflects that *he was not ready and willing to perform his part of the Contract.*



25. The defence of the Defendant that he had been made to sign the aforesaid Agreements to Sell under duress and threat and without consideration was not proved. **The Suit of the Plaintiff, was thus, dismissed on the ground that the Suit was pre-mature in terms of the provision of Contract.**

26. Aggrieved, the Plaintiff preferred ***Appeal bearing RCA No. 24/2003*** before the learned Additional District Judge. The learned Additional District Judge *vide* Judgment dated 25.02.2004, observed that undisputably, the two Contracts were contingent Contracts, in view of on-going litigation between the Defendant and third parties. Admittedly, the Defendant was unable to execute the Sale Deed, in terms of the First Agreement dated 13.07.1966 **Ex. P-1** and therefore, another Agreement to Sell dated 08.07.1967, **Ex.P-2** was executed between the parties. It was further observed that under the second Agreement to Sell dated 08.06.1967 **Ex. P-2**, the Defendant had undertaken to sell his house to the Plaintiff, in case he was unable to execute the Sale Deed. *Consequently, the learned Additional District Judge **allowed the Appeal** filed by the Plaintiff and the present Suit was remanded back to the learned Civil Judge, to be decided afresh.*

27. Thereafter, in view of the Judgment dated 25.02.2004 passed the learned Additional District Judge, ***the Suit was decided afresh by the learned Civil Judge vide Judgment dated 25.05.2010.*** The learned Civil Judge observed that Suit No. 802/1965, which was the litigation between the Defendant and the third party, was decided *vide* Judgment dated 03.09.1976. The learned Civil Judge observed that since the Plaintiff was not a party to the said litigation, it was for the Defendant to have informed the Plaintiff



about it, which he failed to do. It was further observed that there was nothing on record to prove that the Plaintiff was not willing to perform his part of the Contract.

28. The learned Civil Judge further observed that the impediments claimed by the Defendant, were not duly proved by him and he was evasive about the Khasra Number of which the Suit Property was a part . The *Suit for Partition* was filed in the High Court of Delhi, however, the same was dismissed *vide* Order dated 14.07.1993. The plea of the Defendant that the dismissal of the Partition Suit made the Judgment dated 03.09.1976 ineffective, was not accepted.

29. The *learned Civil Judge* further observed that while the Defendant claimed that he had sold various portions of the suit property to the villagers, however, he avoided to state on what dates the land had been sold, despite the Judgment dated 03.09.1976, wherein the Defendant was restrained from selling the suit property, was still operative. *It was thus, held that the Defendant was not able to prove that the Sale Deed could not be executed.* During the pendency of proceedings, it had emerged that the suit property had been already been sold, however, his house was still available. In view of the aforesaid, ***the learned Civil Judge passed a Decree of Specific Performance in respect of House No. 6, Village Jogabai, P.O. Jammu Nagar, New Delhi and the Defendant was directed to execute the Sale Deed and hand over possession of the house to the Plaintiff, within 30 days of the decree.***

30. Aggrieved by the Judgment dated 25.05.2010, the Defendant filed an Appeal bearing **RCA DJ - 61148/2016** before the learned Additional



District Judge, who *vide* Judgement dated **28.08.2017**, ***dismissed the Appeal filed by the Defendant and upheld the Judgment dated 25.05.2010.***

31. *Aggrieved by the Judgment dated 28.08.2017 the Defendant has preferred the present Regular Second Appeal under Section 100 of the CPC.*

32. The **Grounds of Challenge** are that the learned Additional District Judge failed to appreciate that the Judgment and Decree dated 25.05.2010 of the learned Civil Judge, was based on conjectures and surmises, without appreciating the grounds of defence raised by the Defendant and learned Additional District Judge has wrongly confirmed the findings. It has not been appreciated that the Suit of the Plaintiff, *had not been filed within the period of limitation* and the findings that the Suit was not barred by limitation, is totally baseless.

33. Both the Courts failed to appreciate that the Plaintiff himself had admitted in his testimony that the proceedings in Suit No. 802/1965 was still pending. It was further admitted that it was due to pendency of the Suit No. 802/1965 in regard to the Suit Property, due to which, the Defendant was unable to execute the Sale Deed in favour of the Plaintiff. The Plaintiff in his cross-examination had admitted the Judgment dated 03.09.1976 passed in Suit No. 802/1965, which was exhibited as **Ex.PW-1/DX**. Therefore, it can be said that the Plaintiff was in the knowledge of the litigation, pending against the Defendant.

34. It has also not been appreciated that though the Plaintiff was claiming that *he was always ready and willing to execute his part of the Contract*, but he failed to disclose the date on which he ever approached the Defendant for



execution of the Sale Deed or the date on which the Defendant refused to execute the Sale Deed in his favour.

35. The allegations that the Defendant did not inform the Plaintiff about the litigation, which was claimed to be pending in respect of the Suit Property, *has not been proved in as much as no dates have been given when the Plaintiff sought the information qua the litigation and when was it refused by the Defendant.* It is only when **PW-4, Mr. S.M. Azeem**, who for the first time in his examination in chief had deposed that the Plaintiff had asked the Defendant to execute the Sale Deed in September, 1988.

36. Furthermore, both the Courts failed to appreciate that in the present case, the Agreements to Sell had been executed in 1966 and 1967 respectively, ***while the Suit was filed in 1988, i.e. after a period of 22 years,*** which is **blatantly beyond the period of limitation of three years.** The issue of limitation has not been dealt by both the Courts, in the light of the settled law. It was for the Plaintiff to explain the delay in institution of the Suit after 22 years or even after 12 years of passing of the Judgment and Decree dated 03.09.1976 in the Suit for Permanent Injunction, pending between the Defendant and the third party.

37. The Courts have simply believed the version of the Plaintiff that a week prior to filing of the present Suit, he had approached the Defendant for execution of the Sale Deed, in order to bring the Suit within the period of limitation. While the fact of the matter is that such kind of allegation, cannot be deemed to be sufficient to bring the Suit within the limitation.

38. Furthermore, the Suit pending between the Defendant and the third party, was decided on 03.09.1976 and the Plaintiff was well aware about the



said decision. It has also not been considered that no prior notice for performance of the Agreement to Sell, was ever given by the Plaintiff.

39. It was further asserted that the antecedents of the Plaintiff would show that he was in a habit of involving innocent people in false litigation by fabricating and forging documents in his favour, which has not been taken into consideration. The acts of the Plaintiff have been corroborated by his testimony in so much as during his cross-examination, he admitted “*it is correct that the Suit of similar nature is pending with respect to adjacent land. The Agreement of that land was executed in 1967.*”

40. It was further claimed that both the properties, which are the subject matter of the present case, are situated in Khasra No. 161, Village Jogabai and a Decree of Permanent Injunction was passed *vide* Judgment dated 03.09.1976 in respect of the suit properties forming part of the said Khasra, and therefore, none of the Properties can be sold or transferred by the Defendant; as such, *there is a continuous contingency attached to the Agreements, which prohibits the sale of property.*

41. Though this aspect was vehemently contended before the learned Appellate Court and the Lal Dora Certificate was also filed, but this aspect has been completely ignored. Furthermore, the *discretion to direct specific performance of an Agreement*, that too, after the elapse of more than 22 years, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles.

42. The *discretion vested by Section 20 of the Specific Relief Act, 1963*, cannot be entrapped within any precise expression of language and the contours thereof, always depends upon the facts and circumstances of each



case. *Before passing a Decree of Specific Performance*, it was obligatory for the Courts to consider whether by doing so, any unfair advantage would result for the Defendant over the Plaintiff; the extent of hardship that may be caused to the Defendant and if it would render such enforcement, inequitable. These aspects have not been considered by both the Courts.

43. Reliance has placed on Nirmala Anand vs. Advent Corporation (P) Ltd., AIR 2002 SC 2290 and Gobind Ram vs. Gian Chand, AIR, 2000 SC 3016, wherein, when a decree of Specific Performance of an Agreement to Sell of a Property was not executed for a long time, having regard to the escalation in price of the property, the Appellate Courts refused to affirm the decree of Specific Performance or directed the Plaintiff to pay higher sale consideration than what was agreed between the parties, while affirming the decree.

44. In the present case as well, the Agreements to Sell date back to 1966-1967 and the Suit had been filed after almost 22 years, in 1988 and the Judgment has been finally passed on 25.05.2010, which has been affirmed by the learned Additional District Judge on 28.08.2017, *after more than 50 years*, during which the prices of the property have increased manifold. The First Appellate Court should have thus, refused to affirm the decree or at least direct the Plaintiff, to pay higher sale consideration than what was agreed between the parties.

45. The equity should have been balanced between the parties. Moreover, it should be kept in mind whether a party is trying to take undue advantage over the other, as also the hardship that may be caused to the Defendant by directing the Specific Performance. *A prayer is, therefore, made that the*



impugned Judgment of the learned Additional District Judge dated 28.08.2017, be set-aside.

46. The **Defendant** has filed his **Written Submissions** on the similar lines as the grounds of Appeal.

47. The **Plaintiff** in his **Written Submissions** while detailing the entire litigation, has asserted that the Appeal has been filed on false, frivolous grounds and the *Appeal is liable to be dismissed.*

Submissions heard and the record perused.

48. The **substantial questions of law**, which arise in the present Appeal, are as under:-

- (i) *Whether the findings of the learned Civil Judge in Judgment dated 25.05.2010 as endorsed by the learned Additional District Judge in Judgment dated 28.08.2017, **are perverse and not based upon the evidence led by the parties?***
- (ii) *Whether the Plaintiff was **entitled to the equitable relief of Specific Performance of Contract**, after 50 years of the Agreement to Sell, initially executed on 13.07.1966 ?*

49. Before evaluating the facts of the present case, it would be appropriate to first examine the principles of seeking Specific Performance in terms of an Agreement to Sell. Section 16 of the Specific Relief Act, 1963 stipulates the circumstances when a relief for specific performance shall not be granted by a court. The relevant part of the provision of it reads as under:

*“Section 16 Personal Bars to Relief – Specific performance of a contract cannot be enforced in favour of a person–
(a)*



(b)

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

50. The principles relating to specific performance as contained in Sections 16(c), 20, 21, 22 and 23 of the Specific Relief Act, 1963 read with Forms 47/48 of Appendix A to C of the Code of Civil Procedure, 1908 were succinctly summarized by the Supreme Court in Kamal Kumar vs Premlata Joshi, 2019 SCC OnLine SC 12 as under:

*“10. It is a settled principle of law that the grant of relief of specific performance is a discretionary and equitable relief. The material questions which are required to be gone into for grant of the relief of specific performance, are First, whether **there exists a valid and concluded contract** between the parties for sale/purchase of the suit property; **Second**, whether the **plaintiff has been ready and willing to perform his part** of contract and whether he is still ready and willing to perform his part as mentioned in the contract; **Third**, whether **the plaintiff has, in fact, performed his part of the contract** and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract; **Fourth**, whether **it will be equitable to grant the relief of specific***



*performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff; and **lastly**, whether **the plaintiff is entitled for grant of any other alternative relief**, namely, refund of earnest money etc. and, if so, on what grounds.*

51. Thus, in order to be successful, in a case for Specific Performance the Plaintiff has to prove the following points:

1. *First, whether there exists a valid and concluded contract between the parties for sale/purchase of the Suit Property;*
2. *Second, whether the Plaintiff has been ready and willing to perform his part as mentioned in the contract;*
3. *Third, whether the Plaintiff has, in fact, performed his part of contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract.*
4. *Fourth, whether it will be equitable to grant the relief of specific performance to the Plaintiff against the Defendant in relation to the Suit Property or it will cause any kind of hardship to the Defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the Plaintiff;*
5. *Fifth, whether the Plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.*



52. In the present case, there is no denial that the two Agreements to Sell dated 13.07.1966 **Ex. P-1** and 08.06.1967 **Ex. P-2** were duly executed between the parties. The other components are considered hereunder.

I. Whether the Plaintiff has been able to prove the Cause of action under the Two Agreement to Sell:

53. The admitted facts are that the *Plaintiff*, *Mr. Akhtar Islam* had entered into an Agreement to Sell dated 13.07.1966 **Ex. P-1** with the *Defendant*, *Mr. Rattan Singh*, in regards to the suit property, **which is a plot of land admeasuring 680 sq. yards in Khasra No. 161, Abadi Deh, Jogabai, Jamia Nagar, New Delhi-110025.** As per this Agreement to Sell, the essential features were:

- (i) *The Sale Consideration of Rs.8,160/-, was agreed, out of which Rs.1,700/- were received at the time of entering into the aforesaid Agreement to Sell.*
- (ii) *The balance consideration of Rs.6,460/- was to be paid at the time of execution of the Sale Deed and its registration,*
- (iii) *The sale deed was to be executed within one year of the date of Agreement.*
- (iv) *If the Defendant did not execute the Sale Deed, within the time period, then the Plaintiff would have the right to get the Sale Deed registered, through the Court at the expense of the Defendant to which, he and his legal heirs, would have no objection.*



- (v) *If the transfer of suit property is proved illegal, then the Defendant would refund the advance with expenses and damages, to the Plaintiff.*

54. It is an admitted case of the parties that at the time of entering into the first Agreements to Sell, there was a third-party litigation by way of Civil Suit No. 802/1965 for Permanent Injunction, which was pending in respect of the suit property, due to which **Second Agreement to Sell dated 08.06.1967 Ex. P-2** was executed between the parties.

55. The salient covenants of this *Second Agreement to Sell*, were:

- (i) *It was noted that because of the pending litigation in Civil Suit No. 802/1965 (sic) titled as Sh. Sarupa and Sh. Shankar and others, resident of Saray Julina vs. Ram Singh and others resident of Joga Bai, the Defendant was not able to execute the registered Sale Deed dated 13.07.1966 in favour of the Plaintiff.*
- (ii) *It was further recorded that the Defendant was hopeful of the decision in the aforesaid case, and he undertook to execute the Sale Deed in regards to the Suit Property “within three months of completion of legal proceedings and legal obstructions”.*
- (iii) *That the Defendant had to get his younger sister married and was in dire need of funds. Consequently, the Defendant received a sum of Rs. 3,200/- from the Plaintiff, as part of the sale consideration for the suit property. Thus, a total sale consideration of Rs.4,900/-*



was received by the Defendant and he agreed to sell the suit property to the Plaintiff on payment of balance sale consideration of Rs.3,260/-.

- (iv)** *The Defendant undertook to get the registration of the Sale Deed done, within three months of the final outcome of Civil Suit No. 802/1965.*
- (v)** *That in case, the Sale Deed was not executed in favour of the Plaintiff within the time limit, the Plaintiff, would have a right to get the Sale Deed executed through the Court and the Defendant would be responsible for the expenses and damages.*
- (vi)** *That if there is any impediment to legal transfer of the suit property after the decision of the Court in Civil Suit No. 802/1965, then the **Defendant would sell his own house bearing House No. 6, Village Jogabai, P.O. Jammu Nagar, New Delhi-110025 to the Plaintiff for a total advance amount of Rs.4,900/-.***

56. The first aspect which emerges, is that in the First Agreement to Sell dated 13.07.1966 **Ex. P-1**, it was contemplated that in case the Defendant failed to execute the Sale Deed, within a period of one year, the Plaintiff had a right to seek the execution of the Sale Deed through the Court. It further emerges that on account of the pending Civil Suit No. 802/1965, the Defendant found it difficult to honour the said Agreement to Sell, *within the given timeline of one year resulting in the second Agreement to Sell dated 08.06.1967, Ex.P-2.*



57. The peculiar circumstance agreed between the parties in the Agreement to Sell dated 08.06.1967, **Ex.P-2** was that the Sale Deed was to be executed on conclusion of the Suit No. 802/1965. It is evident that the contract, therefore, was a ***contingent contract as defined in Section 31 of the Indian Contract Act, 1872.*** It reads as under:

“S.31. A “contingent contract” is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.”

58. Section 32 of the Indian Contract Act, 1872 provides that a Contingent Contract cannot be enforced unless and until such event had happened. *In case the event becomes impossible, such contracts become void.*

59. Thus, the Agreement to Sell dated 08.06.1967 **Ex.P-2**, was a Contingent Contract, the execution of which depended upon the conclusion of Civil Suit No. 802/1965 pending *inter se* the parties.

60. It emerges from the record that the ***Civil Suit No. 802/1965 for Permanent Injunction, pending in respect of the Suit Property, was decided by learned Sub-Judge vide Judgment dated 03.09.1976, Ex.PW-1/DX wherein the Defendant was restrained from transferring any part of the Suit Property till the partition of the property was effected.***

61. It is significant to observe that in the Agreement to Sell dated 08.06.1967, **Ex.P-2**, it had been specifically noted that the Sale Deed would be executed on conclusion of the litigation pending *vide* Civil Suit No. 802/1975. It is, therefore, evident that in view of the aforesaid decision, the



Defendant could not have sold the Suit Property because of such legal impediment, and thus the Agreement to sell Ex.P-2, became void.

62. In this context, it is relevant to mention that in the first round of litigation, the learned Civil Judge in the Judgement dated **05.04.2003**, had dismissed the Suit filed by the Plaintiff, by observing it to be pre-mature in terms of the Agreement to Sell dated 08.06.1967, **Ex.P-2**, however *Civil Appeal No. 24/2003* was preferred against the said Judgment and the learned Additional District Judge remanded back the matter for fresh adjudication, ***to decide whether the Plaintiff was entitled to get the Sale Deed in respect of the house of the Defendant, executed or not.***

63. This makes it evident that even though the Defendant was restrained from creating third party rights without partition, but in terms of second Agreement to Sell dated 08.06.1967 **Ex. P-2**, the plaintiff had every right to **seek execution of Sale deed in respect of the House, within three months of decision of this Suit for Permanent Injunction**, under the Agreement to Sell dated 08.06.1967 **Ex. P-2**.

64. Though as discussed above, in view of the Judgement passed in the Suit for Permanent Injunction, it may be considered if the property in question, was ever partitioned. The defendant and his brothers, had filed a *Civil Suit No. 471/1974 for Partition* before this Court; however, it was dismissed *vide* Judgment dated **14.07.1993**.

65. Even though the Suit for Partition, got dismissed *vide* Judgment dated 14.07.1993, it has emerged in the testimony of the Defendant that the Property in question was being sold by the villagers including the land



belonging to the Defendant, without there being any partition. However, the Defendant avoided to give the dates on which the Suit Property was sold.

66. In this context, it is significant to refer to the cross-examination of the Plaintiff, Akhtar Islam as **PW-1**, wherein he stated that in the year 1988, *the Defendant along with other co-sharers, mutually partitioned the land* and thereafter, started to dispose of the Suit Property.

67. He further clarified that the Defendant had sold part of the land to one Mohd. Azim Siddiqui s/o Abdul Hamid Siddiqui in the year 1988, though he could not tell the exact month and the date. However, he had seen the documents in regard to the sale of the Property by the Defendant to Mohd. Azim Siddiqui. Though, he subsequently stated again that the Defendant had not sold the Property to anybody. He explained that the land had been sold by proxy though, he was not able to tell the name of such proxy. He further deposed that the two Civil Suits i.e. 802/1965 and 471/1974 in regard to the Suit Property, were still pending, because of which the Defendant avoided the execution of the Sale Deed.

68. The Plaintiff was unable to bring any documents to show that the land had been sold by the Defendant to anybody, after passing of the Judgment in the Injunction Suit *vide* Judgment and Decree dated 03.09.1976, **Ex.PW-1/DX**. At the same time, he reiterated that since the Property had been mutually partitioned, however, he was unable to give the date, month or the year of the Partition as it was done secretly.

69. The Plaintiff in his cross-examination, asserted that pursuant to the Judgment dated 03.09.1976, the Property had been mutually partitioned by the Defendant and other co-owners. *However, this fact was denied by the*



Defendant who further denied that the Suit Property and other jointly owned land, was being sold by him separately.

70. The Plaintiff has not been able to prove that there was any partition by mutual consent effected between the parties. If so is the case, then the Plaintiff in any case, cannot seek the execution of the Agreement to Sell dated 08.06.1976 **Ex. P-2 in regard to the Suit Property**, on account of the impediment imposed by the Judgment dated 03.09.1976, **Ex.PW1/DX**. Moreover, the Suit for Partition filed by the Defendant, got dismissed *vide* Judgment dated 14.07.1993. ***In these circumstances, there is a legal impediment on the Defendant to effect the sale of the suit plot.***

71. The **next and most pertinent aspect** which has emerged is that the plaintiff had a right to get the Sale Deed executed ***in respect of the House No. 6, Village Jogabai, P.O. Jammu Nagar, New Delhi-110025***, in terms of second Agreement to Sell dated 08.06.1967 **Ex. P-2**, as has been permitted by the learned Civil Judge and upheld in first Appeal by the learned Additional District Judge.

72. The Plaintiff in his testimony, deposed that he had approached the Defendant for execution of the Sale Deed, a week prior to filing of the present Suit in 1988. There is no averment, no suggestion or no evidence, to show when the Plaintiff ever approached the Defendant, to either enquire about the fate of the pending litigation or request for sale of the alternate property as was indicated in the Agreement to Sell dated 08.06.1967, **Ex.P-2**. No dates have been mentioned, on which he approached the Defendant, prior to the refusal, as alleged by the Plaintiff in the Plaint, who according to the Plaintiff, tried to delay the execution of the Sale Deed. Furthermore,



there is nothing mentioned in the Complaint or in the evidence of the Plaintiff at all, that he ever sought the information about the pending trial.

73. The Plaintiff had examined **PW-2, Mohd. Yasin Burni**, who had written the Agreement to Sell dated 08.06.1967 **Ex. P-2**. He deposed that he did not make any statement in regard to the subsequent events. **PW-3, Sh. Khurshid Alam**, who was also witness to the execution of the said Agreement to Sell, stated in his examination-in-chief that the Plaintiff had asked the Defendant, to execute the Sale Deed in September, 1988, which was refused by the Defendant.

74. It was for the first time that the said witness had deposed that the Plaintiff had approached the Defendant in September, 1988 for execution of the Sale Deed. Pertinently, neither the Plaintiff nor any other witness had ever given the date on which, the Plaintiff had approached the Defendant. The Plaintiff has vaguely stated that he had approached the defendant, a week prior to the institution of the Suit. This is evidently stated merely to create a date for cause of action and to somehow meet the aspect of Limitation.

75. **PW-3 Sh. Khurshid Alam**, though has asserted that the Plaintiff had made a request in September, 1988 but there is no basis on which, this date has been given, especially when Plaintiff had not so stated in his Complaint of his evidence.

76. Despite the decision of the Suit, the Plaintiff had failed to take any steps to seek the Specific Performance of the aforesaid Agreement to Sell. It is claimed by the Plaintiff that it was the responsibility of the Defendant to have informed him about the conclusion of the trial and since the Defendant



failed to do so, the limitation did not commence till 1988 when he came to know that the Defendant was selling the land, which was the subject matter of the said Agreement to Sell.

77. While the Plaintiff may lay the blame at the door of the Defendant, but he having entered into Agreements to Sell dated 13.07.1966 **Ex. P-1** and 08.06.1967 **Ex. P-2**, the Plaintiff was also expected to be vigilant and to check with the Defendant in regard to the status of the pending case. *It has emerged in his evidence that he never contacted the Defendant during all this period and had only approached a week prior to institution of the Suit in September, 1988.*

78. The Plaintiff, however, failed to take any reasonable steps for the execution of the Sale Deed in respect of the house, in terms of the Second Agreement to Sell dated 08.06.1967 **Ex. P-2, which gave him a right to get the Sale deed executed in respect of the house.**

79. In this regard, it may also be noted that *the Defendant had claimed* that House No. 6, Jogabai, P.O. Jamia Nagar, New Delhi-110025, also fell in Khasra No. 161 and was, therefore, not amenable to say in view of the Judgment dated 03.09.1976, as well as the dismissal of the Suit for Partition by the High Court on 14.07.1993.

80. However again, the Defendant has not proved any document whatsoever to show that the house also formed part of the land in respect of which, the Restraint Order had been given by the learned Sub Judge *vide* Judgment dated 03.09.1976, **Ex.PW-1/DX.**

81. The learned Civil Judge in the impugned Judgment dated 25.05.2010 however, had concluded that the Defendant had already sold the Property in



question, even though there was no cogent evidence. and yet at the same time, decreed the Suit for Specific Performance in respect of House No. 6, Jogabai, P.O. Jamia Nagar, New Delhi-110025. *If so was the conclusion*, the Suit of the Plaintiff could not have been decreed by the Id. Civil Judge.

82. A person who has entered into an Agreement to Sell, would not sit quiet till 15.09.1988, i.e. for 22 years, to seek specific performance of two Agreement to Sell in dated 13.07.1966 and 08.06.1967. It is evident that after 1966, he never ever enquired about the status of the litigation, a conduct not of a person who is inclined to get the sale Deed executed.

83. Pertinently, there was no letter or legal notice issued to the defendant to seek the status of the litigation or to seek execution of sale deed in respect of the House. ***The conduct of the Plaintiff, reflects an absolute abandonment of the Agreement to Sell, Ex. P2, and he therefore could not have sought Specific performance of an abandoned Agreement.***

II. Whether the Plaintiff has proved his Readiness and Willingness to execute the Agreement to Sell:

84. Another important aspect for entitling a person to the relief of Specific Performance, is that he must establish his *readiness and willingness* to perform his part of the contract.

85. The Legislature has chosen to use two phrases, namely “***readiness***” and “***willingness***”. While the “***willingness***” indicates his state of mind which is determined through the conduct of the plaintiff, the “***readiness***” indicates the financial capacity of the plaintiff which is required to be proved through evidence that he had the financial capacity to perform the Agreement, as has



been explained in the case of K.V. Balan (Dead) Through Legal Representatives vs Bhavyanath, 2015 SCC OnLine Kel 298.

86. In Syed Dastagir v. T.R. Gopalakrishna Setty, (1999) 6 SCC 337, the Apex Court while construing the connotation of readiness and willingness, observed that the compliance of “*Readiness and willingness has to be in spirit and substance and not in letter and form. So to insist for mechanical production of the exact words of a statute is to insist for the form rather than essence. So absence of form cannot dissolve an essence if already pleaded.*”

It was also observed that the plea of readiness and willingness is not an expression of art and science, but an expression through words to place fact and law of one’s case for a relief. In order to gather true spirit behind a plea it should be read as a whole and to test whether the plaintiff has performed his obligations, one has to see the pith and substance of the plea. Unless statute “*specifically require a plea to be made in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea.*”

87. In H.P. Pyarejan v. Dasappa (Dead) By L.Rs. & Ors., (2006) 2 SCC 496, the Apex Court observed that the plaintiff is required to prove continuous readiness and willingness from the date of the contract to the time of the hearing, to perform the contract on his part. Failure to make good that averment brings with it and leads to the inevitable dismissal of the Suit. In Motilal Jain v. Ramdasi Devi, (2000) 6 SCC 420, the Apex Court had expounded the same principle that averments in the plaint must reflect the readiness and willingness on the part of the plaintiff.



88. To establish “**readiness**”, the Plaintiff is required to be proved through evidence that he had the financial capacity, as has been explained in the case of K.V. Balan (Dead) Through Legal Representatives v. Bhavyanath(supra).

89. The connotation of readiness in the context of Section 16 was explained in Raghunath Rai & Another v. Jageshwar Prashad Sharma, (1999) 50 DRJ 751 that the intending purchaser need not produce the money or to vouch a concluded scheme for financing the transaction; it is sufficient for the purchaser to establish that he has the capacity to pay.

90. The financial capacity has to be however, proved strictly and self-serving statements cannot discharge the burden of proving existence of financial capacity as noted by this Court in the case of Baldev. v. Bhule, (2012) 132 DRJ 247.

91. Similar view has been expressed in M/s Hotz Industries Pvt. Ltd. v. Dr. Ravi Singh, 2018 SCC OnLine Del7618 and Manhor Lal Khetrpal and Ors. v. Hari Chand and Ors., MANU/DE/2934/2018.

92. In Aniglase Yohannan v. Ramlatha and Others, (2005) 7 SCC 534, the Apex Court further observed that the court has to grant relief on the basis of the conduct of the persons seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint, he should not be denied the relief. The averments in the plaint as a whole must clearly indicate the readiness and the willingness. Section 16(c) of the Specific Relief Act, 1963 mandates the plaintiff not only to make averments in the plaint but also to establish fact by evidence *aliunde* about his readiness and willingness to perform the Contract.



93. The Supreme Court in Madhukar Nivrutti Jagtap v. Pramila Bai Chandulal Parandekar, 2019 SCC OnLine SC 1026 held that the requirement to prove readiness and willingness is not that the plaintiff should continuously approach the defendant with payment or make incessant requests for performance. The requirement of readiness and willingness of the plaintiff is not theoretical in nature but is essentially a question of fact which needs to be determined in reference to the pleadings and the evidence led by the parties.

94. In the present case, the Plaintiff in his Complaint, as well as, in his testimony has *only asserted that he was ready and willing to perform* his part of the Contract. However, the Plaintiff has failed to disclose his resources to pay the part sale consideration; merely stating that he was ready to perform his part of the Contract, is not sufficient to establish that he had any readiness or financial capacity to seek Specific Performance of the Agreement, especially when he has instituted the present Suit, after a period of 20 years.

95. Even it is assumed that the consideration of Rs.4,900/- for the execution of the sale deed for the house, already stood paid, the second aspect is the “**willingness**” to honour the Agreement.

96. The concept of "willingness" has been examined by the Supreme Court in Aniglase Yohannan v. Ramalatha & Ors., (2005) 7 SCC 534, wherein it was observed that the Court has to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to relief, he should not be denied the



same. The averments in the plaint, read as a whole, must clearly indicate not only readiness, but also willingness to perform the contract.

97. Thus, the willingness of the plaintiff is essentially reflected through his conduct. Mere assertions in the Plaint that he was always ready and willing to perform his part of the contract are not sufficient unless they are substantiated by his conduct showing his genuine intention to complete the transaction. Willingness is an essential component to entitle the Plaintiff, to seek Specific Performance of the said Agreement to Sell, which he has miserably failed to state in his pleadings or to prove in his evidence.

98. In the present case, as noted above the Plaintiff sat silent for more than 20 years and did not even once approach the Defendant for even enquiring about the status of litigation or in the alternative seek Specific Performance of the Agreement to Sell in respect of the house. Deep slumber of the Plaintiff for more than 20 years is only indicative of abandonment of the Agreement to Sell. It blatantly reflects his sheer disinterest, lack of willingness to seek execution of Specific Performance of Agreement to Sell.

99. It is, therefore, established from the evidence that the Plaintiff had failed to prove his readiness and willingness to perform his part of Agreement to Sell.

III. Whether the Suit is barred by Limitation:

100. The limitation for filing a Suit for Specific Performance of Contract, is three years from the date of execution of the Agreement or when the cause of action last accrued. Even it is accepted that the cause of action was continuing till the conclusion of the pending litigation, then too the Civil



Suit for Injunction bearing No. 802/1965, got decided *vide* Judgment dated 03.09.1976 and the cause of action would have arisen three months after the decision of the said Suit because admittedly, the litigation came to an end as no Appeal was preferred against the aforesaid Judgment.

101. The Plaintiff in his examination-in-chief, stated that he had asked the Defendant, to execute the Sale Deed in his favour, a week prior to filing of the Suit. The Plaintiff for the first time, gave the specified date when he approached the Defendant for execution of the Sale Deed i.e. one week prior to the institution of the Suit on 15.09.1988.

102. It was incumbent upon the Plaintiff, to have shown that his Suit filed on 15.09.1988, was within the limitation. However, the entire Plaint failed to disclose that there was a continuing cause of action and that the Suit was not barred by limitation. Even if, it is accepted that the cause of action continued till the decision of the Civil Suit No. 802/1965 but that Suit also got decided *vide* Judgment dated 03.09.1976. The cause of action would have continued for three months thereafter but i.e. till December, 1976. Even thereafter, the right accrued in favour of plaintiff to get the Sale deed executed in respect of the House, if not the plot of land. **Therefore, the present Suit filed in September, 1988, is blatantly barred by limitation.**

IV. Whether the Plaintiff is entitled to the Equitable Relief Of Specific performance of the Agreement to Sell:

103. It cannot be overlooked that under the First Agreement dated 13.07.1966 **Ex. P-1**, the sale consideration for the property was Rs.8,160/- out of which, a sum of Rs.1,700/- had been paid by the Plaintiff. The Suit



Property was a plot of land admeasuring 680 square yards, in Khasra No. 161, Village Jogabai, Jamia Nagar, New Delhi-110025.

104. In the second Agreement dated 08.06.1967 **Ex. P-2**, the total sale consideration continued to be the same though, the Plaintiff had paid an additional amount of Rs.3,200/-, which implied that Rs.4,900/- had been paid and the balance of Rs.3,260/- remained to be paid at the time of execution of the Sale Deed. It further contemplated sale of house of Defendant for the paid amount of Rs. 4,900/- in case the Sale of Plot of land did not materialize on account of the outcome of the pending litigation.

105. The present Suit had been filed in the year 1988 i.e. after more than 20 years of executing the aforesaid Agreements to Sell.

106. *The question, which thus arises, is irrespective of the period of limitation, can the equitable relief of Specific Performance be granted to the Plaintiff.*

107. The Three Judge Bench of the Supreme Court of India in Prakash Chandra vs. Angadlal, (1979) 4 SCC 393 held that ordinary rule is that specific performance should be granted. *It ought to be denied only when equitable considerations point to its refusal and the circumstances show that damages would constitute an adequate effect.*

108. The Supreme Court in N.P. Thirugnanam vs. R. Jagan Mohan Rao (Dr), (1995) SCC 115 reiterated that *the remedy of specific performance is equitable in nature and granting or refusing specific performance is within the discretion of the Court, which is required to be exercised according to the settled principles of law and not arbitrarily, as adumbrated in Section 20 of the Specific Relief Act, 1963.* Under this Section, the Court is not bound to



grant the relief just because there was a valid agreement of sale. Section 16 (C) of the Specific Relief Act, 1963 envisages that the 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 of performance of which, he has been prevented or are waived by the Defendant.

109. Likewise, in Nirmala Anand vs. Advent Corpn. (P) Ltd., (2002) 8 SCC 146, the Three Judge Bench of the Supreme Court, discussed what are the considerations that need to be kept in view while considering grant or refusal of a decree of Specific Performance. *It was observed that it is not always necessary to grant Specific Performance simply for the reason that it is legal to do so. The Court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing the decree of specific performance.* In Kamal Kumar vs. Premlata Joshi, (2019) 3 SCC 793, it was held that while considering the Suit for Specific Performance, it would be necessary to consider whether it is equitable to grant the relief to the Plaintiff in relation to the Suit Property or it will cause any kind of hardship to the Defendant and, if so, how and in what manner and the extent to which, the relief can be granted to the Plaintiff.

110. Similar observations were made in I.S. Sikandar vs. K. Subramani, (2013) 15 SCC 27.

111. In the case of Azhar Sultana vs B. Rajamani & Ors., (2009) 17 SCC 27, the Supreme Court, again reiterated that in view of the fact that the Court exercises a jurisdiction and a discretionary jurisdiction and would be



entitled to take into consideration as to whether the Suit has been filed within a reasonable time. How much would be a reasonable time would, however, depend upon the facts and circumstances of the case.

112. In Saradamani Kandappan vs. S. Rajalakshmi & Ors., (2011) 12 SCC 18, the Hon'ble Supreme Court of India again *reiterated that a decree of specific performance need not be granted merely because it is filed within a period of limitation, by ignoring time limits stipulated in the Agreement.* The Courts would also frown upon the Suits, which are not filed immediately after the breach/refusal. *The fact that limitation is three years, does not mean that the purchaser can wait for one or two years to file a Suit and obtain specific performance.*

113. In Atma Ram vs. Charanjit Singh, (2020) 3 SCC 311, the long delay of three years, in filing the Suit after issue of Legal Notice, was considered to be the conduct of the Plaintiff not entitling him to a decree of Specific Performance.

114. The aforesaid Judgments were endorsed with the approval by the Hon'ble Supreme Court of India in the Case of R. Kandasamy (since dead) & Ors. vs. T.R.K. Sarawathy & Anr., Civil Appeal No. 3015/2013, decided on 21.11.2024.

115. It therefore, well settled that ordinarily, the Plaintiff is not to be denied the relief of specific performance only on account of phenomenal increase of price during the pendency of litigation. However, this may be, in a given case, one of the considerations besides many others, to be taken into consideration for refusing the decree of specific performance.



116. While balancing the equities, one of the considerations to be borne in mind is whether a party is trying to take undue advantage over the other and also the hardship that may be caused to the Defendant by directing specific performance. The totality of circumstances is required to be seen and equities must be balanced, to ascertain if the discretionary relief of specific performance of an Agreement to Sell, may be granted.

117. Now advertent to the facts in hand, the Agreement to Sell dated 08.06.1967 **Ex. P-2** was somewhat tainted with uncertainty, as it provided that the Sale Deed shall be executed within three months of conclusion of the Suit No. 802/1965, pending in respect of the Property in question. Admittedly, the Suit got decided *vide* Judgment dated 03.09.1976.

118. It is quite evident that the *Plaintiff by his own conduct, had not been vigilant* in pushing the matter with the Defendant or failed to take any steps to ascertain the outcome of the litigation. The very fact that the Suit had been filed after 20 years of the initial Agreement to Sell, itself reveals inequitable circumstances disentitling the Plaintiff to any relief.

119. His own inaction disentitles him in equity to claim the relief of Specific Performance. Not only this, it cannot be ignored or overlooked that in the last 20 years from the date of entering into the Agreement to Sell till filing of the Suit, much water has flown and the surrounding circumstances have totally changed with passage of time and it would not be equitable for the Plaintiff, to claim any benefit of his own inaction. **The Plaintiff is not entitled to any relief of Specific Performance in equity, of an Agreement to Sell after 20 years.**

***Conclusion:***

120. In the light of aforesaid discussion, it is concluded that the Plaintiff was unable to satisfy the ingredients for seeking Relief of Specific performance, the suit was barred by limitation and the Plaintiff is not entitled to any relief in equity. The learned Civil judge as well as the Appellate Court fell in error in application of law and the findings on the facts, are perverse, for the reasons stated hereinabove.

121. In view of the aforesaid discussion the present Regular Second Appeal is **allowed**, and the **Suit filed by the Plaintiff is dismissed**.

122. Pending Application(s), if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 09, 2026/RS