

NON-REPORTABLEIN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**CIVIL APPEAL NO. 9124 OF 2018**

JAGJIT SINGH (D) THR. LRS.

...APPELLANT(S)

Versus

AMARJIT SINGH (D) Through his LRs

...RESPONDENT(S)

J U D G M E N T**Deepak Gupta, J.**

1. Amarjit Singh (since deceased, the respondent herein) hereinafter referred to as “the plaintiff”, filed a suit for specific performance of contract. He alleged that he had entered into an agreement dated 17.10.2000 with Jagjit Singh (since deceased, the appellant herein) hereinafter referred to as “the defendant”, for purchase of half share in the shop in dispute for a total sale consideration of Rs. 1,50,000/-. According to the plaintiff, Rs. 1,30,000/- was paid in cash at the time of execution of the

agreement to sell. The balance amount was to be paid on or before 30.03.2003, by which date the sale deed was to be executed and registered. It was further alleged that the date for execution and registration of the sale deed was extended by mutual consent of the parties till 09.10.2003. The defendant denied the execution of the sale deed itself. According to him, he had not been paid any money.

2. The trial court on consideration of the entire evidence came to the conclusion that no agreement to sell had been executed between the parties and accordingly dismissed the suit. Aggrieved, the plaintiff filed an appeal. The first appellate court set aside the finding of the trial court that the agreement to sell had not been executed. However, the first appellate court came to the conclusion that the so called agreement was, in fact, not an agreement to sell. It further held, that assuming that the said agreement was an agreement to sell, the plaintiff had failed to prove that he was ready and willing to perform his part of the agreement. It held that the plaintiff had failed to show what steps he had taken to perform his part of the contract from 17.10.2000 to 09.10.2003. The first appellate court, on perusal

of the pleadings and the evidence, came to a finding of fact that it had nowhere been averred and proved that the plaintiff had ever showed his readiness or willingness to perform his part of the contract. The appeal was consequently dismissed.

3. The second appeal filed by the plaintiff has been allowed by the High Court without framing any question of law much less a substantial question of law. The High Court, without discussing the evidence, held that in its view the finding of the lower appellate court is “not only erroneous, but fallacious and perverse”. The only ground for coming to this decision is that the suit had been filed on 09.01.2004 whereas the extended date for execution and registration of the sale deed was 09.10.2003 and thereafter, the plaintiff had sent a legal notice on 13.10.2003. We fail to understand as to how the issuance of notice on 13.10.2003 or the filing of the suit on 09.01.2004 can lead to the conclusion that the plaintiff was always ready and willing to perform his part of the contract from the date of agreement to sell till date of filing of suit. Moreover, this is a pure finding of fact which should not have been disturbed in a second appeal that too without giving any cogent reasons.

4. It is settled law that a plaintiff who seeks specific performance of contract is required to plead and prove that he was always ready and willing to perform his part of the contract¹. Section 16(c) of the Specific Relief Act mandates that the plaintiff should plead and prove his readiness and willingness as a condition precedent for obtaining relief of grant of specific performance. As far back as in 1967, this Court in **Gomathinayagam Pillai and Ors. v. Pallaniswami Nadar**² held that in a suit for specific performance the plaintiff must plead and prove that he was ready and willing to perform his part of the contract right from the date of the contract up to the date of the filing of the suit. This law continues to hold the field and has been reiterated in the case of **J.P. Builders and Anr. v. A. Ramadas Rao and Anr.**³ and **P. Meenakshisundaram v. P. Vijayakumar & Ors.**⁴. It is the duty of the plaintiff to plead and then lead evidence to show that the plaintiff from the date he

1 **16. Personal bars to relief** .- Specific performance of a contract cannot be enforced in favour of a person - (a).....

(b).....

(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.

2 (1967) 1 SCR 227

3 (2011) 1 SCC 429

4 Civil Appeal No.3353-3354 of 2018 decided on 28.03.2018, 2018(5) SCALE 229

entered into an agreement till the stage of filing of the suit always had the capacity and willingness to perform the contract.

5. As far as the present appeal is concerned, the finding of the first appellate court that the plaintiff had failed to plead or prove his willingness to perform his part of the contract from the date of agreement till filing of the suit is a pure finding of fact based on evidence and law. The High Court has while upsetting the judgment of the District Judge lost sight of the provisions of the Specific Relief Act and the law in this regard. Hence the appeal is allowed, the judgment of the High Court is set aside and that of the lower appellate court dated 02.03.2007 is restored. Pending application(s), if any, shall stand disposed of.

.....**J.**
(MADAN B. LOKUR)

.....**J.**
(DEEPAK GUPTA)

New Delhi
September 13, 2018