



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 12th OF JANUARY, 2026

FIRST APPEAL No. 398 of 2016

MUDDASSAR KHAN

Versus

SMT. GEETA BAI

Appearance:

Shri Ankit Saxena - Advocate for the appellant.

ORDER

Despite of service on sole respondent, as per office note dated 02.06.2018, nobody has marked presence for the respondent, therefore, the matter is heard finally.

2. The appellant has filed the present appeal under Section 96 of the Code of Civil Procedure being aggrieved by the judgment and decree dated 04.11.2015 passed by the V Additional District Judge, Bhopal in Civil Suit No.435-A/2011, dismissing the suit.

3. In short, the facts of the case are that the appellant has filed a suit for specific performance of agreement dated 02.01.2009 (Ex.P/1) claiming therein that he is owner and in possession of the suit property i.e. House No.39, Pant Nagar, Hinotiya Kachiyana, which is a part of Kh. No. 39/3 and 90/3, PC No. 21 situated Tahsil Huzur, District Bhopal. Total area of the suit house is 15x30=450 sq.f.t.

4. As per the plaint averments, the said suit house has been mortgaged



by the respondent/defendant with the UCO Bank for obtaining the loan. Since the respondent/defendant was unable to repay the loan amount, she executed an agreement to sale with the appellant on 02.01.2009 for sale of the suit house. As per the terms and conditions of the agreement, the total sale consideration of Rs.7 lakh was agreed to be paid to the respondent/defendant.

5 . As per the plaint averments, Rs. 5 lakh was paid by the the appellant/plaintiff to the respondent/defendant on the date of execution of the agreement/contract itself as an advance out of the total sale consideration. The remaining amount of sale consideration i.e. Rs.2,00,000/- was agreed to be paid by the respondent/defendant within 20 days thereafter. In acknowledgment of the receipt of the said amount, the respondent/defendant signed the agreement document.

6 . As per the agreement, it was also agreed that the respondent/defendant would repay the amount of loan and after receiving the original documents and the NOC from the Bank in respect of the suit house, she would execute the sale deed in favour of the appellant/plaintiff. In addition, it was also agreed that if the respondent/defendant is unable to execute the sale deed within 20 days, the period of agreement shall be deemed to be extended. Thereafter, the respondent/defendant, citing his financial difficulties, requested for remaining amount of Rs.2,00,000/-, which was also paid by the appellant/plaintiff to the respondent/defendant.

7 . As per the plaint averments, when after repeated request the respondent/defendant did not execute the sale deed, the appellant sent a legal



notice to the respondent/defendant on 15.03.2011, which was replied by the respondent/defendant denying the allegation and stating that her signatures were obtained fraudulently by the appellant/plaintiff on blank paper and consequently she refused to execute the sale deed in favour of the appellant/plaintiff. Hence, the appellant/plaintiff has filed the suit for specific performance of contract/agreement and injunction.

8. The respondent/defendant has filed written statement denying all the plaint averments. The respondent/defendant has taken a specific stand in the written statement that the signatures, which are shown to be of the respondent/defendant, are in fact not of the respondent/defendant and the documents have been forged and prepared by the appellant/plaintiff with the intention of misusing them. The respondent/defendant has denied that because she was unable to repay the loan amount, she expressed her wish to appellant to sale the suit house. She has also denied that the appellant had given his consent for purchase of suit house and accordingly, an agreement in that respect was executed on 02.01.2009 and she complied its terms and conditions.

9. The respondent/defendant has denied that as per the terms of the agreement, the total consideration of sale of the suit shop was agreed to be Rs.7 lakh. It is also denied that on the date of execution of the agreement/contract itself, as an advance, out of the total sale consideration, Rs. 5 lakh was paid by the the appellant/plaintiff to the respondent/defendant and the remaining amount of sale consideration i.e. Rs.2,00,000/- was agreed to be paid by the respondent/defendant within 20 days thereafter. It is also



denied that in acknowledgment of the receipt of the said amount, the respondent/defendant signed the agreement document.

10. The respondent/defendant has denied that after repaying the amount of loan and after receiving the original documents and the NOC from the Bank in respect of the suit house, she would execute the sale deed in favour of the appellant/plaintiff. It is also denied that it was also agreed that if the respondent/defendant is unable to execute the sale deed within 20 days, the period of agreement shall be deemed to be extended. The respondent has denied that on account of financial difficulties, she requested the appellant for payment of remaining amount of Rs. 2 lakh, which was paid by the appellant.

11. The respondent/defendant has denied the fact that after passing several months when the sale deed was not executed, the appellant contacted the respondent and requested for executing the sale deed and respondent promised to execute the sale deed after some days. Although the respondent has admitted the fact of receiving notice, but submitted that the said notice was on the false grounds.

12. The respondent/defendant has denied the allegations of the notice sent by the appellant stating that she is illiterate and the appellant/plaintiff fraudulently obtained her signatures on blank stamp papers. The respondent has further stated that she had not entered into any contract nor had she executed any agreement for sale of the house with the appellant. The respondent/defendant has stated that she does not even know the appellant/plaintiff. She has stated that she used to have interaction with the



appellant/plaintiff's mother, and they knew each other well. The respondent/defendant has further stated that she had borrowed only Rs.50,000/- from the plaintiff's mother and at the time of giving Rs.50,000/-, the mother of the appellant/plaintiff obtained the signature of the respondent/defendant on blank stamp papers. The respondent/defendant has submitted that when there was no agreement to sale of the suit house then there was no question to execute a sale deed. The only intention of the appellant/plaintiff was to grab the property of the respondent. Thus, prayed for rejection of the suit.

13. On the basis of the rival pleadings of the parties, the learned court below has framed as many as five issues.

14. In support of the pleadings, the appellant/plaintiff has examined himself and one Gani Khan as PW-2. The defendant has examined herself to rebut the pleading and the evidence of the plaintiff.

15. The learned court below, on the basis of the rival pleadings and evaluation of the evidence, tendered by the parties, has dismissed the suit of the appellant holding that the execution of agreement and its terms and conditions have not been proved and the plaintiff was not found to be ready and willing to perform the terms of the agreement.

16. Being aggrieved by the judgment and decree, the appellant has preferred the present appeal, inter-alia contending that the agreement to sale (Ex. P/1) dated 02.01.2009 has been executed between the appellant and respondent for sale of the suit house mentioned in the agreement Ex.P/1 for a sale consideration of Rs.7 lakh of which Rs.5 lakh was paid as an advance in



presence of the witnesses on 02.01.2009 (on the date of execution of agreement to sale) and Rs.2 lakhs of remaining consideration was agreed to be paid within 20 days at the time of execution of sale deed.

17. It has further been submitted that the learned Civil Court though found that the signatures over the disputed agreement have been made by the respondent, but the contents of the agreement have not been found to be proved and the appellant/plaintiff has been non-suited. It is further submitted that once the signatures over the documents are proved and admitted by the respondent/defendant then as per the principles of Evidence Act, the contents of the documents are deemed to be proved and accordingly once the agreement is proved, the learned court below ought to have decreed the suit by granting relief of specific performance or refund of money. It is further submitted that the learned court below on the conjecture and surmises has found that the appellant was not having financial source and capability to make payment of the consideration, which is mentioned in the agreement, and therefore, on the basis found that the agreement has not been executed between the parties.

18. It is submitted that the respondent in the evidence though stated that the blank documents have been asked to be signed in lieu of Rs.50,000/-, but the sale agreement has never been executed. The learned court below believing the statement of the respondent and on the basis of evaluation of the evidence has found that the agreement has not been found to be proved, which may lead to decree in respect of specific performance of the agreement (Ex.P/1). It is prayed that the learned court below has grossly



erred in law and fact in not appreciating the evidence in its true perspective and sense. Thus, prayed for setting aside the judgment dated 04.11.2015 with a further relief of decree of specific performance or refund of entire amount of consideration i.e. Rs.7 lakh, as the remaining amount of Rs.2 lakh has been stated to be given to the respondent in the statement.

19. Heard.

20. From the perusal of the finding recorded by the learned court below in respect of Issue No.1, it is found that the court below, on the basis of the evidence and the admission of the plaintiff himself, has found that the plaintiff could not prove the payment of advance consideration of Rs.5 lakh and also Rs.2 lakh within 20 days from the date of execution of the agreement. The evidence of the defendant is found too obvious and natural in context that she has admitted the signature over the agreement, but, has pleaded that the same has been obtained on the blank papers, but, in the light of the principle that once the signature on a document is admitted then it is presumed that the signatures have been done after reading the document, unless contrary is proved, question has been found to be proved.

21. In Kamal Kumar vs. Premlata Joshi and Others reported in (2019) 3 SCC 704, the Hon'ble Apex Court has held as under:-

7. 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:

7.2. 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.

7.3. 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;



7.1. First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.

7.4. 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;

7.5. 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.

8. In our opinion, the aforementioned questions are part of the statutory requirements [See Sections 16(c), 20, 21, 22, 23 of the Specific Relief Act, 1963 and Forms 47/48 of Appendices A to C of the Code of Civil Procedure]. These requirements have to be properly pleaded by the parties in their respective pleadings and proved with the aid of evidence in accordance with law. It is only then the Court is entitled to exercise its discretion and accordingly grant or refuse the relief of specific performance depending upon the case made out by the parties on facts.

22. The defendant naturally has stated that she has obtained the loan over the suit house and obtained NOC of Ex. P/7 and Ex.P/8, which she has given to the mother of the plaintiff Ajija. It is stated that she has delivered the documents for receiving the loan from the mother of the plaintiff. However, that has not been found proved by the learned court below on the factual analysis that the NOC was obtained on 06.01.2009 after execution of the agreement dated 02.01.2009 and on the basis of the aforesaid evidence, the court has found that the defendant could not prove that the agreement is false and fabricated. However, in a suit of specific performance of agreement only proving execution of agreement is not sufficient, other parameters of transfer of consideration, readiness and willingness are other factors are very important for decreeing such suit.

23. When the evidence on the point of sale consideration has been evaluated, it is found that the plaintiff has blatantly submitted false oral evidence in regard to payment of Rs.2 lakh within 20 days from the date of



execution of agreement, however, from a bare perusal of the notice dated 15.03.2011 (Ex.P/2), it is found that the plaintiff himself admitted that such amount was not paid and he was ready to pay such amount, which clearly goes to show the conduct of the plaintiff. The learned court below finding it very unreasonable and untrustworthy held that the whole transaction of the consideration is unbelievable. It is also found by this Court that the payment of Rs.5 lakh has been said to be made in cash at the time of execution of agreement, however the plaintiff in its cross-examination has admitted that he has not submitted any income tax return. The plaintiff's witness Gani Khan has admitted that there is no source of income of the plaintiff. It is also stated that the loan amount used to be given and taken by the mother of the plaintiff. He is not aware of the fact that from where the plaintiff has got Rs.5 lakh. It is also stated that the mother of the plaintiff has given loan of Rs.50,000/- to defendant. When the evidence of both the plaintiff's witnesses are marshalled then this Court is of the opinion that the transaction of the amount under agreement is doubtful and could not be proved by the oral evidence of the plaintiff. As held by the Court, the evidence of the defendant is found to be more natural in respect of the admission in regard to obtaining loan from the mother of the plaintiff and in response, certain documents have been signed, which were blank. Though the plaintiff has admitted the signatures over the agreement, but mere acceptance of the fact of signature over the agreement would not be sufficient to prove the case of specific performance, unless other parameters are found to be proved, as stated hereinabove.



24. As from the perusal of the above, it is found that the amount under sale could not be found proved to be transferred to the defendant, the plaintiff has not made out any case of specific performance, which has rightly been rejected by the court below while dealing with the Issue No.1.

25. While dealing with the issue No.2, the learned court below has not found the plaintiff to be ready and willing to perform the obligations of the agreement. When the findings of the court below have been tested with the evidence available on record, it is found that as per the recital of the agreement, the remaining consideration of Rs.2 lakh was required to be paid by the plaintiff within 20 days, for which the plaintiff has stated in the court that it has been deposited, but, when such evidence has been tested with the material record of evidence, it is found that in the notice itself the plaintiff has stated that he is ready to pay such balance amount, which was issued much later on 15.03.2011, which means that for remaining two years the plaintiff has not paid the amount of Rs. 2 lakh. The plaintiff has never served a notice that he is willing to make the payment and got the receipt of the Registrar of document of a particular date when he would be available with the remaining consideration and sufficient stamp papers to register the deed. In absence of any proof in regard to such readiness and willingness coupled with the fact that Rs.2 lakh has not been paid for two years and plaintiff has submitted false oral evidence in regard to payment of remaining amount of Rs.2 lakh within 20 days, this Court finds that the plaintiff could not perform his obligation in terms of the agreement within stipulated time and was not found to be ready and willing to execute the agreement.



26. In the context, in the case of **Surinder Kaur (Dead) through Legal Representatives Jasinderjit Singh (Dead) through Legal Representatives vs. Bahadur Singh (Dead) Through Legal Representatives** reported in (2019) 8 SCC 575, the Hon'ble Apex Court has held as under:-

"5. The suit has been decreed by all the courts below. There is no dispute with regard to the factual aspects. The only issue is whether the vendee Bahadur Singh who admittedly did not pay the rent is entitled to a decree of specific performance of the agreement dated 13-5-1964. The courts below have held that the agreement contained several promises which may be reciprocal, contingent or separate. Section 51 ["**51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.**"—When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise."] of the Contract Act, 1872 provides that when a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

6. The aforesaid provisions have to be read along with Section 16(c) ["**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 purposes 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."] of the Specific Relief Act, 1963 which clearly lays down that the specific performance of a contract cannot be enforced in favour of a person who fails to prove that he has performed or was always ready and willing to perform the essential terms of the contract which were to be performed by him.

7. We shall also have to take into consideration that the specific performance of contract of an immovable property is a discretionary relief in terms of Section 20 ["**20. Discretion as to decreeing specific performance.**"—(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal. (2) The following are cases in which the court may properly exercise discretion not to decree specific performance—



(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance. *Explanation 1.*—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b). *Explanation 2.*—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract. (3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance. (4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.”] of the Specific Relief Act as it stood at the time of filing of the suit.

8. Section 20 of the Specific Relief Act lays down that the jurisdiction to decree a suit for specific performance is a discretionary jurisdiction and the court is not bound to grant such relief merely because it is lawful.

9. The first issue is whether the promises were reciprocal promises or promises independent of each other. There can be no hard-and-fast rule and the issue whether promises are reciprocal or not has to be determined in the peculiar facts of each case. As far as the present case is concerned, the vendor, who was a lady received less than 20% of the sale consideration but handed over the possession to the defendant, probably with the hope that the dispute would be decided soon, or at least within a year. Therefore, Clause 3 provided that if the case is not decided within one year, then the second party shall pay to the first party the customary rent for the land. It has been urged by the respondents that the High Court rightly held that this was not a reciprocal promise and had nothing to do with the sale of the land. One cannot lose sight of the fact that the land had been handed over to Bahadur Singh and he had agreed that he would pay rent at the customary rate. Therefore, the possession of the land was given to him only on this clear-cut understanding. This was, therefore, a reciprocal promise and was an essential part of the agreement to sell.

10. Admittedly, Bahadur Singh did not even pay a penny as rent



till the date of filing of the suit. After such objection was raised in the written statement, in replication filed by him, he instead of offering to pay the rent, denied his liability to pay the same. Even if we were to hold that this promise was not a reciprocal promise, as far as the agreement to sell is concerned, it would definitely mean that Bahadur Singh had failed to perform his part of the contract. There can be no manner of doubt that the payment of rent was an essential term of the contract. Explanation (ii) to Section 16(c) clearly lays down that the plaintiff must prove performance or readiness or willingness to perform the contract according to its true construction. The only construction which can be given to the contract in hand is that Bahadur Singh was required to pay customary rent.

11. It has been urged that no date was fixed for payment of rent. Tenancy can be monthly or yearly. At least after expiry of one year, Bahadur Singh should have offered to pay the customary rent to the vendor which could have been monthly or yearly. But he could definitely not claim that he is not liable to pay rent for 13 long years.

12. The learned counsel for the respondents urged that in case of non-payment of rent the plaintiff was at liberty to file suit for recovery of rent. We are not impressed with this argument. A party cannot claim that though he may not perform his part of the contract he is entitled to specific performance of the same.

13. Explanation (ii) to Section 16(c) of the Specific Relief Act lays down that it is incumbent on the party, who wants to enforce the specific performance of a contract, to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract. This the plaintiff miserably failed to do insofar as payment of rent is concerned.

14. A perusal of Section 20 of the Specific Relief Act clearly indicates that the relief of specific performance is discretionary. Merely because the plaintiff is legally right, the court is not bound to grant him the relief. True it is, that the court while exercising its discretionary power is bound to exercise the same on established judicial principles and in a reasonable manner. Obviously, the discretion cannot be exercised in an arbitrary or whimsical manner. Sub-clause (c) of sub-section (2) of Section 20 provides that even if the contract is otherwise not voidable but the circumstances make it inequitable to enforce specific performance, the court can refuse to grant such discretionary relief. Explanation (2) to the section provides that the hardship has to be considered at the time of the contract, unless the hardship is brought in by the action of the plaintiff.

15. In this case, Bahadur Singh having got possession of the land in the year 1964 did not pay the rent for 13 long years and even when he filed the replication in the year 1978, he denied any liability to pay the customary rent. Therefore, in our opinion, he did not act in a proper manner. Equity is totally against him. In our considered view, he was not entitled to claim the discretionary relief of specific performance of the agreement having not



performed his part of the contract even if that part is held to be a distinct part of the agreement to sell. The vendee Bahadur Singh by not paying the rent for 13 long years to the vendor Mohinder Kaur, even when he had been put in possession of the land on payment of less than 18% of the market value, caused undue hardship to her. The land was agricultural land. Bahadur Singh was cultivating the same. He must have been earning a fairly large amount from this land which measured about 9½ acres. He by not paying the rent did not act fairly and, in our opinion, forfeited his right to get the discretionary relief of specific performance.

16. In view of the above, we allow the appeals, set aside the judgment and decree of all the courts below and dismiss the suit for specific performance. As far as the alternative plea of refund is concerned, we are clearly of the view that since the respondents enjoyed the land for 55 long years without payment of any rent they are not entitled to any relief. No order as to costs."

27. Further in the case of **U.N. Krishnamurthy (Since Deceased)**

Through Legal Representatives vs. A.M. Krishnamurthy reported in (2023)

11 SCC 775, the Hon'ble Apex Court has held as under:-

"45. It is settled law that for relief of specific performance, the plaintiff has to prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract. It is the bounden duty of the plaintiff to prove his readiness and willingness by adducing evidence. This crucial facet has to be determined by considering all circumstances including availability of funds and mere statement or averment in plaint of readiness and willingness, would not suffice."

28. On the basis of the aforesaid findings of fact and in view of the law laid down by the Hon'ble Apex Court on the issue in the cases cited hereinabove, this Court is of the considered opinion that the findings arrived at by the learned court below are absolutely based on facts, evidence and law, which do not call for any interference in the present appeal.

29. Thus, the first appeal fails and is hereby dismissed.

(DEEPAK KHOT)
JUDGE

