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will made in his favour by the mother of the Appellant. In that suit an interim order was passed preventing alienation of the land by the Appellant. However, that suit was ultimately dismissed on 7th October, 1982. In the meantime the 1st Respondent sent a notice dated 22nd June, 1981 to the Appellant calling upon her to execute the Sale Deed as per the terms of the Agreement and informing her to remain present in the Office of the Sub-Registrar on 30th June, 1981. On 30th June, 1981 the 1st Respondent remained present before the Registrar. He gave an Application to the Registrar which, interalia, reads as follows:

"2. That agreement deed aforesaid was for the sale of aforesaid land. In favour of Naurata Singh son of S. Sham Singh resident of village Nasrali, Sub Tehsil Amloh District Patiala. That a sum of Rs. 20,000/- in cash was paid to Surjit Kaur with the condition that before the execution and registration of sale deed before 30.6.1981 the possession of the land mentioned in the agreement deed will be delivered to the applicant (Naurata Singh). Today is 29th June, 1981, but uptill now Smt. Surjit Kaur has not taken action for giving possession of the land in question.

It is therefore, requested that my presence may kindly be marked in your office, to enable the undersigned to go to the civil court to get the conditions of the agreement deed implemented therein."

The Appellant also remained present before the Sub-Registrar. She also gave an Application stating that she was not in a position to deliver possession as a suit has been filed by the 2nd Respondent. She stated that she was willing to execute the Sale Deed and have the same registered but that the 1st Respondent was not willing to get the same executed.

On the Application of the 1st Respondent the Registrar passed the following Order:

" The applicant has presented this application. Surjit Kaur d/o Kalu was called. Surjit Kaur stated that she was ready to execute the sale deed but Norata Singh stated that as per written agreement there is a condition precedent and therefore he was ready to get sale deed executed after deliver of possession of land.

In these circumstances no action can be taken on this application. Applicant is directed to seek his remedy in Civil Court. Application is filed 30.6.81."

On the Application of the Appellant the Registrar passed the following Order:

"Today application was presented by Surjit Kaur. Norata Singh is also present. Norata Singh stated that he was ready to get the execution of sale deed but possession of the land has to be delivered before execution as per terms of agreement. Surjit Kaur stated that she could not deliver possession but was ready to execute the sale deed. In these circumstances no action is necessary. Application is filed parties are directed to go to the Civil Court."

Thus, it is to be seen that both the parties understood that 30th June, 1981 was of the essence of the Contract. The Appellant was ready and willing to execute the Sale Deed but the 1st Respondent was not willing to have the Sale Deed executed unless and until all conditions of the Agreement to Sell, viz. transfer of mutation in favour of the Appellant and delivery of possession also took place. In other words, the 1st Respondent elected not to accept part performance of the Agreement to Sell. It is obvious that the 1st Respondent elected not to execute Sale Deed as he would have to pay the consideration for the whole of the Contract without any abatement and he was not willing to do so. The 1st Respondent filed the present suit for specific performance of the Agreement to Sell. In the alternative, he also claimed refund of the money paid with compensation. In this suit the 2nd Respondent was also made a party Defendant. The trial Court framed various Issues, including an Issue as to readiness and willingness on the part of the 1st Respondent. The trial Court also framed an Issue as to whether the Agreement to Sell dated 10th September, 1980 could be specifically performed. The trial Court held that the 1st Respondent was ready and willing to perform the Agreement as per its terms, but that as delivery of possession could not take place there could be no specific performance of the Agreement. Thus the trial Court decreed the suit by directing refund of Rs.20,000/- and payment of Rs.8800/- as compensation. At this stage to be noted that the refund of money and compensation was directed as even at this stage 1st Respondent was insisting on full compliance with the terms of the Agreement, including being put in possession. This in spite of the fact that the 1st Respondent knew that all the terms of the Agreement were not capable of being implemented as Appellant was not in a position to deliver possession. The 1st Respondent then filed Civil Appeal No. 242/79 of 1985. At the time of hearing of this Appeal counsel for the 1st Respondent made a statement that the 1st Respondent was now ready and willing to accept the offer of the Appellant and would not object to Sale Deed being executed and registered, even if possession was not given by the Appellant. The first Appellate Court held that before the Registrar the Appellant had stated that she was willing to get the Sale Deed executed and registered without delivery of possession. It was held that as the 1st Respondent was ready and willing to accept this offer and the clause regarding delivery of possession was for the benefit of the 1st Respondent he could always waive it. On this basis, the first Appellate Court allowed the Appeal and set aside the Judgment of the trial Court and decreed the suit for specific performance. The first Appellate Court made it clear that the Sale Deed would be executed without delivery of possession. The Appellant then filed Second Appeal No. 2500 of 1992. By the impugned Judgment dated 15th December, 1992, the Second Appeal has been dismissed in limine. We have seen the impugned Judgment. No reasons are given. The impugned Judgment merely sets out the Order of the first Appellate Court. However, there appears to be some mistake in the final copy. The final copy provides that the remaining sum was to be paid only after getting possession. Parties are agreed that this is a mistake and that it has been agreed even before the High Court that the Sale Deed would be executed without delivery of possession. The question which arises, in this case, is whether the 1st Respondent is entitled to the benefit of Section 12(3) of the Specific Relief Act. Section 12 of the Specific Relief Act reads as follows:

"12. Specific performance of part of contract.- (1) Except as otherwise hereinafter provided in this section the court shall not direct the specific performance of a part of a contract.

(a) forms a considerable part of the whole, though admitting of compensation in money; or

(i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), [pays or had paid] the consideration for the whole of the contract without any abatement; and (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

(4) When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part."

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the amount. Trial Court has held that the 1st Respondent was ready and willing to perform the whole of the Agreement. Trial Court has noted that the Appellant could not perform the Agreement in its entirety in as much as she could not deliver possession. As 1st Respondent had elected not to accept performance in part the trial Court held that the Agreement could not be specifically enforced. However in such an event trial Court should have directed payment of Rs. 40000/- as provided in the Agreement. We accordingly vary the decree granted by the trial Court to the extent that the Appellant shall repay Rs. 20000/- with interest thereon at 12% p.a. from 30th June 1981 till payment and also pay another sum of Rs. 20000/- with interest thereon at 12% p.a. from date of decree till payment. The Appeal stands disposed off accordingly. In the circumstances of this case, there will be no order as to costs.