

## **Pushparani S. Sundaram And Ors. vs Pauline Manomani James (Deceased) And ... on 4 May, 2000**

**Equivalent citations: JT2000(8)SC95, (2002)9SCC582, 2001 AIR SCW 2347, 2002 (9) SCC 582, (2001) 1 LANDLR 199, (2000) 40 ALL LR 564, (2000) 4 CURCC 83, (2000) 7 SUPREME 218, (2000) 8 JT 95 (SC)**

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**Bench: N. Santosh Hegde, A.P. Misra**

ORDER

A.P. Misra, J.

1. Heard learned Counsel for the parties.

2. The present appeal is directed against the judgment and order dated 18th August, 1992 passed by the High Court confirming the dismissal of the suit for specific performance.

3. The appellants-plaintiffs filed a suit for specific performance of a contract dated 10th August, 1980 for the sale of an immovable property in accordance with the terms of that contract. The defendants- respondents' had agreed to sell to the appellant (first plaintiff) about 38 grounds of land mentioned in 'A' Schedule to the plaint to develop the area into a housing colony. As per the agreement, the plaintiff agreed to purchase the property from the defendant at a consolidated price to be calculated at the rate of Rs. 8,500/-per ground for the bare land and an additional price to be fixed of the superstructure after getting its valuation from the competent engineer or architect as per the agreement. This agreement was, of course, subject to the permission to be granted to the defendant under Urban Land Ceiling and Regulation Act (Act 24 of 1978). An obligation was cast under the agreement on the plaintiff to obtain such permission. On the date of the aforesaid agreement Rs. 5,000/- was paid by the first plaintiff to the defendant. The defendant's application initially to the authorities for the declaration of the exemption from the operation of the aforesaid Act was rejected. However, later the plaintiff was informed by the defendant that a communication dated 31st March, 1982 has been received by the defendant that exemption for the part of the land has been granted under the said Act. Thereafter, the present suit was filed by the appellant for the specific performance of the said contract for executing a sale deed. This suit was contested as defendant denied that the plaintiff was ready and willing to perform his part of the contract. On the contrary he did not perform his part of the obligation under the said contract. The trial court dismissed the suit of the appellants, which is confirmed by the High Court. Aggrieved by that the present appeal has been preferred.

4. The only question raised before the High Court which it considered, to which we are called upon for consideration is, whether the appellants were always ready and willing to perform their part under the contract. The High Court came to the conclusion that willingness and readiness is no doubt pleaded but they led no evidence to prove it. Thus held, that the plaintiff is not entitled for the decree of specific performance. The submission by the learned Counsel for the appellants is that the plaintiff was always willing and ready to perform his part under the contract but mere non-leading of any evidence is not sufficient to reject it. Inference of readiness and willingness could be drawn by the conduct of the plaintiff and the circumstances, in a particular case in other words to be gathered from the totality of circumstances.

5. For this, the appellants rely on two circumstances, one that immediately after the exemption was given by the Ceiling Authorities on the 31st March, 1982, the present suit was filed in April, 1982 and the other the tendering of further sum of Rs. 5,000/- to the defendant after execution of the agreement of sale. He also reiterates with reference to Para 11 of the plaint which pleads that the appellant was and is ready and willing to perform his part of the contract. So far these are being a plea that they were ready and willing to perform their part of the contract is there in the pleading. We have no hesitation to conclude, that this by itself is not sufficient to hold that the appellants were ready and willing in terms of Section 16(c) of the Specific Relief Act. This requires not only such plea but also proof of the same. Now examining first of the two circumstances, how could mere filing of this suit, after exemption was granted could be a circumstance about willingness or readiness of the plaintiff. This at the most could be the desire of the plaintiff to have this property. It may be for such a desire this suit was filed raising such a plea. But Section 16(c) of the said Act makes it clear that mere plea is not sufficient, it has to be proved.

6. Next and the only other circumstance relied is about the tendering of Rs. 5,000/, which was made on the 2nd March, 1982 which was even prior to the grant of the exemption. Such small feeder to the vendor is quite often made to keep a vendor in good spirit. In this case only other payment made by the plaintiff was Rs. 5,000/- at the time of execution of the agreement of sale. Thus, total amount paid was insignificantly short of the balance amount for the execution of the sale deed. Thus, in our considered opinion the said two circumstances taken together, is too weak a filament to stand even to build an image of readiness and willingness. Section 16(c) of the Specific Relief Act, requires that not only there be a plea of readiness and willingness but has to be proved so. It is not in dispute except for a plea there is no other evidence on record to prove the same except the two circumstances. It is true that mere absence of plaintiff coming in the witness box that by itself may not be a factor to conclude that he was not ready and willing in a given a case as erroneously concluded by the High Court. But in the present case, not only the plaintiff has not come in the witness box, but not even sent any communication or notice to the defendant about his willingness, to perform his part of the contract. In fact no evidence is led to prove the same.

7. On the contrary, learned Counsel for the appellants submits that plaintiff has not performed his obligation under the contract. He was obliged to obtain permission for the defendant from the Ceiling Authorities. Plaintiff could not show from the record that he obtained the permission from the Ceiling Authorities. In fact, finding is recorded that he has not obtained. There was another obligation cast on him, before sale deed is to be executed, valuation of the superstructure is to be

ascertained. For this vendor and purchaser was to nominate an engineer or architect and in the case of their difference each has to appoint as such and if, there be any difference between them, then the matter was to be referred to an Umpire. No such thing was done in the present case. How could there be decree for specific performance when not even valuation has been worked out by the plaintiff under the contract to fix the amount for sale.

8. Thus, for the aforesaid reasons, we do not find the present case to be a fit case to interfere with the findings recorded by both the courts below that plaintiff was not willing and ready. Accordingly, the appeal has no merit and is accordingly dismissed. Costs on the parties.