

Sughar Singh vs Hari Singh (Dead) Through Lrs. on 26 October, 2021

Author: M.R. Shah

Bench: Aniruddha Bose, M.R. Shah

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5110 OF 2021

Sughar Singh

...Appellant(s)

Versus

Hari Singh (Dead) Through LRs. & Ors.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.09.2010 passed by the High Court of Judicature at Allahabad in Second Appeal No.836 of 2010 by which the High Court has allowed the said Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short “CPC”) and has quashed and set aside the judgment and decree for specific performance of the Agreement confirmed by the First Appellate Court, the original plaintiff has preferred the present Appeal.

2. The facts leading to the present appeal in nut-shell are as Reason:

under:

// 2 // 2.1 That, one Ram Singh executed the agreement to sell in favour of original plaintiff – Sughar Singh to sell the suit land for a total sale consideration of Rs.56,000/-. Rs.25,000/- was received by the executant as a part sale consideration at the time of the agreement. The said agreement to sell was executed on 10.10.1976.

At this stage it is required to be noted that at the relevant point of time agreement to sell was not required to be registered. As per the sale agreement the sale deed was to be executed within a period of 2 years. The time period of 2 years was extended at the instance of the vendor by the documents dated 30.09.1978 and 29.09.1981. That, thereafter a further sum of Rs.15,000/- was paid. The vendor agreed to receive the balance of Rs.16,000/- at the time of execution of the sale deed vide Annexure P3. Despite receiving Rs.40,000/- towards part sale consideration and despite execution of the agreement to sell, the original vendor executed the sale deed of the suit land on 23.06.1984 in favour of defendant Nos.2 to 5. That, thereafter, Sughar Singh – vendee filed the Civil Suit No.254 of 1984 in the Court of learned Civil Judge, Mathura City, Mathura (for short “learned Trial Court”) against the vendor Ram Singh and Others. The persons in whose favour subsequently the sale deed was executed on 23.06.1984 were impleaded as defendant Nos.2 to 5 also. In the plaint it was also the specific case on behalf of the plaintiff that the defendant Nos.2 to 5 are the real nephews of defendant No.1 and defendant Nos.2 to 5 and their father had managed to get defendant No.1 in their control and that defendant Nos.2 to 5 and their father have got one farzi // 3 // document in the shape of sale deed without consideration executed by defendant No.1 on 23.06.1984 and in their favour though they had full knowledge about the agreement to sell executed in favour of the plaintiff.

2.2 That, the suit was contested by the defendant No.1 by filing a written statement denying the very execution of the agreement to sell dated 10.10.1976 as well as two documents of alleged extension of time dated 30.09.1978 and 29.09.1981. He also denied having received a sum of Rs.25,000/- at the time of agreement and thereafter Rs.8000/- and Rs.7000/-

respectively at the time of alleged two extensions as part of the sale consideration.

2.3 That, defendant Nos.2 to 5 by a separate written statement contended that they are the bonafide purchasers in good faith of the aforesaid land for a value vide registered sale deed dated 23.06.1984 and that they had no knowledge about the Agreement dated 10.10.1976.

2.4 The learned Trial Court framed the following issues.

“(1) Whether the defendant No.1 had executed the agreement to sell (paper No.7-a) dated 10.10.1976 of the land in dispute for a sum of Rs.56,000/- after receiving advance of Rs.25,000/- ?

(2) Whether under the aforesaid agreement to sell the defendant No.1 has been paid a further amount of Rs.8000/- on 30.09.1978 (Paper No.8-a/1) and Rs.7000/- on // 4 // 29.09.1981 (Paper No.8-a/2)?

(3) Whether the plaintiff has always been ready and willing and is still ready and willing to get the sale deed executed in accordance with the terms of the agreement of the sale. If yes, its effect?

(4) Whether the defendant Nos.2 to 5 are the bona fide purchasers in good faith of the land in dispute for a valuable consideration without notice of the aforesaid agreement?

(5) What relief the plaintiff is entitled to?” 2.5 On the side of the plaintiff, 6 witnesses came to be examined.

Plaintiff also led the documentary evidences.

On the side of the defendants, 3 witnesses came to be examined and the documentary evidences were also brought on record.

2.6 On appreciation of evidence, the learned Trial Court held the issue Nos.1 and 2 in favour of the plaintiff and against the defendants. The learned Trial Court concluded that the defendant No.1 had executed an agreement to sell dated 10.10.1976 in favour of the plaintiff for the sale of his property at Rs.56,000/- and Rs.25,000/- as advance payment whose validity was extended as per the documents dated 30.09.1978 after receiving Rs.8000/- and on 29.09.1981 after receiving Rs.7000/-.

// 5 // 2.7 On appreciation of evidence, the learned Trial Court also held the issue No.4 in favour of the plaintiff and against the defendants. On appreciation of evidence the learned Trial Court specifically held that the defendant Nos.2 to 5 were aware of the execution of agreement to sell in favour of the plaintiff at the time of execution of sale deed in their favour. The learned Trial Court also doubted the payment of sale consideration paid to the defendant No.1.

2.8 On appreciation of evidence the learned Trial Court held issue No.3 in favour of the plaintiff and against the defendants by observing that the plaintiff was always ready and willing to get the sale deed executed as per the terms and conditions of the agreement and that the plaintiff also proved that the plaintiff has acted as per the conditions of the agreement.

Consequently and after holding all the issues in favour of the plaintiff and against the defendants, the learned Trial Court decreed the suit vide judgment and decree dated 07.02.1987 and directed the defendant No.1 to execute the sale deed after obtaining income tax certificate from the Income Tax Department within two months and on receipt of Rs.16,000/- (balance sale consideration). The learned Trial Court also passed an order directing the defendant Nos.2 to 5 also to be a party to the sale deed along with defendant No.1.

2.9 That, as the defendants neither preferred appeal nor acted as per the judgment and decree passed by the learned Trial Court, the plaintiff filed Execution Case No.11 of 1987 to // 6 // execute the judgment and decree dated 07.02.1987, on 29.08.1987. As directed by the learned Executing Court, the plaintiff deposited the balance amount of Rs.16,000/- on 20.09.1987. The original defendant No.1 – Ram Singh died intestate on 20.09.1989. That, after a period of almost 9 years from the date of passing of the judgment and decree by the learned Trial Court, the original defendant Nos.2 to 5 preferred appeal before the learned First Appellate Court. By judgment and order dated 24.08.1998, the learned First Appellate Court dismissed the said appeal and confirmed

the judgment and decree passed by the learned Trial Court.

2.10 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned First Appellate Court dismissing the appeal and confirming the judgment and decree passed by the learned Trial Court, the original defendant Nos.2 to 5 preferred Second Appeal No.1388/1998 before the High Court.

The High Court raised two points for determination viz. (1) non-compliance of the provisions of Section 16(c) of the Specific Relief Act, 1963 (for short “the Act”) to the effect that the plaintiff has failed to aver and prove that he was always ready and willing to perform his part of the contract; and (2) with regard to the effect of non-registration of the two extensions of time for executing the sale deed pursuant to the unregistered agreement to sell dated 10.10.1976 in view of the U.P. Act No. 57 of 1976 and to decide the same in accordance with law.

By judgment and order dated 26.10.2007, the High Court // 7 // set aside the judgment and order passed by the First Appellate Court and remanded the matter to the First Appellate Court for decision afresh on issue no.3 with regard to readiness and willingness of the plaintiff to get the sale deed executed and for framing an additional issue with regard to the effect of non- registration of the two documents granting extension of time to execute the sale deed in view of the amendment made in Section 54 of the Transfer of Property Act vide U.P. Act No. 57 of 1976 and to decide the same in accordance with law. Vide clarificatory order dated 12.11.2008, the High Court specifically observed and clarified that the matter has been remanded to the First Appellate Court for decision afresh on issue No.3 and on the aforesaid additional issue only and without disturbing or setting aside any other findings of the First Appellate Court.

2.11 That, thereafter, on remand the learned First Appellate Court reconsidered issue No.3 as directed by the High Court and held in favour of the plaintiff and against the defendants and the First Appellate Court specifically observed and held that there were necessary averments in the plaint as required under Section 16(c) of the Act. On the additional issue learned First Appellate Court held that considering the relevant provisions the registration was not must. Consequently, the learned First Appellate Court held the issue Nos.3 and 6 in favour of the plaintiff and against the defendants and consequently dismissed the appeal and again confirmed the judgment and decree passed by the learned Trial Court. // 8 //

2.12 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned First Appellate Court and the judgment and decree for specific performance passed by the learned Trial Court confirmed by the learned First Appellate Court, the original defendant Nos.2 to 5 preferred Second Appeal before the High Court and by impugned judgment and order the High Court has allowed the said appeal and has quashed and set aside the concurrent findings recorded by both the Courts below and has reversed the judgment and decree of specific performance solely on the ground that there are no specific averments in the plaint as required under Section 16(c) of the Act and that there are no specific averments in the plaint both with regard to readiness and willingness.

2.13 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original plaintiff has preferred the present Appeal.

3. Shri Col. Balasubramaniam, learned Senior Advocate appearing on behalf of the appellant – original plaintiff has vehemently submitted that in the facts and circumstances of the case the High Court has committed grave error in allowing the Second Appeal under Section 100 of the CPC and has erred in setting aside the concurrent findings recorded by both the Courts below insofar as the issue with respect to the readiness and willingness and non-compliance of section 16(c) of the Act is concerned.

3.1 It is vehemently submitted by the learned Senior Advocate // 9 // appearing on behalf of the original plaintiff that even the reasoning and conclusion recorded by the High Court that the suit has to fail for non-compliance of pleadings as per section 16(c) of the Act is contrary to the record and law laid down by this Court. It is submitted that as per the settled proposition of law laid down by this Court, for determining the readiness and willingness, the suit has to be read as a whole, the pith and substance being that 'readiness and willingness' has to be in spirit and not in the letter and form.

3.2 It is further submitted that in the present case the plaintiff specifically pleaded in paragraphs 1 to 4 of the plaint and in paragraph 11 that he was always ready and willing to get the sale deed executed and registered and perform his part of agreement, but the defendant No.1 refused and hence, he had to file the suit. It is submitted that therefore finding recorded by the High Court is contrary to the record and hence, perverse.

3.3 It is further submitted by learned Senior Advocate appearing for the appellant that High Court has not properly appreciated the fact that in fact out of total sale consideration of Rs.56,000/-, Rs.40,000/- was already paid and only a balance of Rs.16,000/- was left to be paid, which as such was to be paid at the time of execution of the sale deed, even as admitted by the vendor in the document at Annexure P3. It is submitted that therefore it cannot be said that the plaintiff was not ready and willing to perform his part of the contract.

3.4 It is further submitted that even assuming for the sake of // 10 // arguments that the pleadings are not as per prescribed form, the same does not render the suit not maintainable in view of the law laid down by this Court in the case of Syed Dastagir Vs. T.R. Gopalakrishna Setty reported in (1999) 6 SCC 337.

3.5 It is further submitted that as such the question of readiness was very much pleaded and demonstrated by the necessary averments in the plaint. It is submitted that the finding by the High Court that the plaintiff has only stated about his readiness and not expressed his willingness to perform his obligation is fatal and it overlooks the contents of document P3 wherein it was agreed by the vendor to receive balance of Rs.16,000/- at the time of executing sale deed and in the plaint itself there were specific averments that the plaintiff had gone to Sub- Registrar office and asked the vendor to execute the deed but he refused.

3.6 It is further submitted that the High Court has even erred in non-suiting the plaintiff on applicability of proviso to Section 20 of the Act. It is submitted that the High Court has erred in observing that it is not mandatory but discretionary to grant specific relief. It is submitted that the

reasoning given by the High Court that even if the agreement to sell is proved and even if the part or major portion of the sale consideration is paid and even if the readiness and willingness is also proved, grant of decree for specific performance is discretionary is unsustainable. It is submitted that if such an interpretation is accepted, in that case, in no case, the decree for specific performance would be passed. It is submitted that even the // 11 // discretion not to grant relief cannot be exercised de hors the conduct of the parties. It is submitted that every discretion has to be exercised soundly and reasonably.

3.7 It is further submitted that even otherwise looking to the conduct on the part of the defendants more particularly defendant Nos.2 to 5 to get the sale deed executed in their favour despite having knowledge of the agreement to sell executed by the defendant No.1 in favour of the plaintiff and even the payment of sale consideration by the defendant Nos.2 to 5 is doubtful and is not proved, section 20 of the Act shall not come in the way of the plaintiff in getting the relief of decree for specific performance.

It is submitted that as such in the facts and circumstances of the case, section 20 of the Act shall not be applicable and/or attracted at all.

3.8 It is further submitted that as such there were concurrent findings of fact recorded by both the Courts below on readiness and willingness which were on appreciation of evidence. The High Court ought not to have set aside the concurrent findings, in exercise of powers under Section 100 of the CPC.

3.9 It is further submitted that even no issue was framed either by the learned Trial Court or by the First Appellate Court on applicability of Section 20 of the Act and the High Court has dealt with and considered the same for the first time in a Second Appeal under Section 100 of the CPC, which is wholly // 12 // impermissible and which is beyond the scope and ambit of exercise of powers under Section 100 of the CPC.

Making above submissions and relying upon the above decisions, it is prayed to allow the present appeal.

4. Present appeal is vehemently opposed by Shri Pramod Swarup, learned Senior Advocate appearing on behalf of the defendant Nos.2 to 5.

4.1 It is submitted that the High Court has rightly dismissed the suit and refused to grant the relief for specific performance in favour of the plaintiff on the ground that there were no sufficient required averments in the plaint as per Section 16(c) of the Act.

4.2 It is submitted that the High Court has rightly drawn the distinction between readiness and willingness. It is submitted that cogent reasons have been given by the High Court on readiness and willingness. It is submitted that non-compliance of section 16(c) of the Act is fatal to the case of the plaintiff and therefore, the plaintiff is not entitled to the discretionary relief of decree for specific performance.

4.3 It is further submitted that even otherwise the High Court is absolutely justified in observing that in view of section 20 of the Act, the decree for specific performance is discretionary. It is submitted that therefore as such the High Court has rightly ordered the transferees to refund the amount of Rs.40,000/- to // 13 // the plaintiff with interest at the rate of 8% per annum with effect from 23.06.1984 till the payment which they had deposited. It is submitted that as such the respondents – defendant Nos.2 to 5 had deposited a sum of Rs.1,24,135/- on 11.10.2010 in the bank, however the plaintiff refused to take the money which was calculated as per the directions of the High Court.

4.4 It is further submitted by Shri Swarup, learned Senior Advocate appearing on behalf of the defendant Nos.2 to 5 that the agreement to sell was executed as far as back on 10.10.1976 and by now more than 45 years have passed and the defendant Nos.2 to 5 are in possession since many years, therefore, if the judgment and decree passed by the learned Trial Court is restored, defendant Nos.2 to 5 have to vacate the suit land and it will cause undue hardships to the defendant Nos.2 to 5 and therefore, considering Section 20 of the Act, it is prayed not to interfere with the impugned judgment and order passed by the High Court by which the High Court has granted equitable relief.

Making above submissions, it is prayed to dismiss the present appeal.

5. Heard learned counsel appearing for the respective parties at length.

5.1 At the outset it is required to be noted that the appellant herein – original plaintiff instituted the suit for specific performance of the agreement to sell dated 10.10.1976. The learned Trial // 14 // Court as well as the learned First Appellate Court decreed the suit in favour of the plaintiff. Both, the learned Trial Court as well as the learned First Appellate Court held all the issues in favour of the plaintiff including the issue that the plaintiff was always ready and willing to perform his part of contract. However, the High Court in exercise of powers under Section 100 of the CPC has reversed the concurrent findings recorded by both the Courts below on readiness and willingness, mainly / solely on the ground that there are no specific averments in the plaint which are required as per section 16(c) of the Act. The High Court has also allowed the appeal and consequently dismissed the suit for specific performance on the ground that the relief of specific performance is the discretionary relief under Section 20 of the Act and that even though the execution of the agreement to sell is proved and even the plaintiff was found to be always ready and willing to perform his part of the obligation under the agreement to sell, the decree of specific performance is not automatic and such grant of decree is dependent upon the principles of justice, equity and good conscience.

6. Now, so far as the observations made by the High Court on non-compliance of the provision of Section 16(c) of the Act is concerned, having gone through the necessary averments in the plaint it cannot be said that the averments / pleadings lack the requirement of Section 16(c) of the Act. The necessary averments and pleadings on readiness and willingness read as under:

// 15 // “2. That when two years were about to complete, the defendant requested the plaintiff to extend the date till 31.10.1981 and also took Rs.8000/- out of the balance money. Defendant No.1 is the father-in- law of the plaintiff and for that reason, the

plaintiff was ready to give all kinds of accommodations to him. Plaintiff gave further Rs.8000/- to the defendant No.1 on 30.09.1978 and the time period for the execution between the plaintiff and the defendant No.1 was extended to 31.10.1981. The defendant No.1 got this agreed date written legally and appended his thumb impression on it and gave it to the plaintiff.

3. That even by 31.10.1981, the defendant no.1 could not get his land cleared of the loan from the bank because his brother Ranjeet Singh was also involved in that loan and he did not want to give his share of money completely and for this reason, the defendant No.1 requested to further increase the time period for the execution so that the bank loan could be cleared and the land gets free from all liabilities and the same could be executed and registered in the name of the plaintiff. For the reason of the relation and also that there was too much of love and affection between the defendant No.1 and the wife of the plaintiff who is the daughter of the defendant No.1, the plaintiff agreed to accommodate the defendant No.1 in all manner and for this reason, plaintiff accepted the prayer of the defendant No.1 and extended the date for execution and registration till 31.10.1984 and also gave Rs.7000/- out of the balance amount of money to the defendant No.1. In this manner, out of the total amount of Rs.56,000/- agreed for the land, Rs.40,000/- had already reached the defendant No.1 and only Rs.16,000/- was balance to be paid by the plaintiff. The defendant No.1 also gave this in writing on 29.09.1981 to the plaintiff.

4. That the plaintiff has always been and even today, ready and willing to get the sale deed // 16 // executed and registered and perform his part of the agreement in terms of its terms and conditions and the same is in complete knowledge of the defendant No.1.

8. That the plaintiff even got the notice served through registered post by Sh. Mahesh Chandra Chaturvedi, Advocate in respect of the abovementioned agreement and gave him the warning that he would not get the execution and registration done in the name of any other person than the plaintiff. In hurry, there were some mistakes that occurred in the notice.

11. That it was told to the defendant No.1 to come to the Sub-Registrar's office at Chatta and in respect of the abovementioned agreement, execute and register the disputed land in the name of the plaintiff and also give the possession of the same and also told to the defendants No.2 – 5 that because they got the false sale deed registered in their favour, they should also get involved with the defendant No.1 in the execution and registration in the favour of the plaintiff. But the defendant No.1 said that because the defendants No.2 – 5 and their father are denying him and that he cannot go against their wished, he cannot do the execution and registration and the defendants No.2 – 5 also denied to do or get involved with defendant No.1 to do the execution and registration and for this reason, the plaintiff is forced to institute the present suit.” 6.1 Even in the deposition it was the specific case on behalf of the

plaintiff that he paid initially Rs.25,000/- as part sale consideration and the sale deed was to be executed within a period of two years. That, thereafter, the period was extended on the prayer of Ram Singh who as such was the father-in-law of the plaintiff. The time period was extended till 31.10.1984 // 17 // and then the plaintiff paid a further sum of Rs.7000/- to Ram Singh for which also the document was executed. Thus, from time to time, a total sum of Rs.40,000/- was paid out of the total sale consideration of Rs.56,000/-. As per the last document executed which has been held to be proved even by all the Courts below, the balance amount of Rs.16,000/- was to be paid at the time of execution of sale deed. It is specifically stated in the deposition that he was ready and willing to perform his part of the obligation in terms of agreement to sell and this fact was known to Ram Singh. Considering the aforesaid facts and circumstances, the High Court has committed a grave error in holding the issue with respect to readiness and willingness against the plaintiff solely on the ground that there are no specific averments / pleadings in the plaint as required under Section 16(c) of the Act. Considering the fact that initially payment of Rs.25,000/- was made at the time of execution of the agreement to sell and further sum of Rs.15,000/- in two installments were paid at the time when the subsequent two documents were executed for extension of time and even the time was extended at the instance of defendant No.1 and the balance amount of Rs.16,000/- was to be paid at the time of execution of the sale deed, it can safely be said that the plaintiff was always ready and willing to perform his part of the contract under the agreement to sell.

At this stage, the decision of this Court in the case of Syed Dastagir (*supra*) on pleadings as required under Section 16(c) of the Specific Relief Act on readiness and willingness to // 18 // perform essential terms of the contract is required to be referred to. In the case before this Court, the short question raised was, how to construe a plea of “readiness and willingness to perform” to subserve to the requirement of Section 16(c) of the Specific Relief Act and the interpretation of its explanation. In paragraph 9, it is observed and held as under:

“9. So the whole gamut of the issue raised is, how to construe a plea specially with reference to Section 16(c) and what are the obligations which the plaintiff has to comply with in reference to his plea and whether the plea of the plaintiff could not be construed to conform to the requirement of the aforesaid section, or does this section require specific words to be pleaded that he has performed or has always been ready and is willing to perform his part of the contract. In construing a plea in any pleading, courts must keep in mind that a plea 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. Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants to convey through only by reading the whole pleading, depending on the person drafting a plea. In India most of the pleas are drafted by counsel hence the aforesaid difference of pleas which inevitably differ from one to the other. Thus, to gather true spirit behind a plea it should be read as a whole. This does not distract one from performing his obligations as required under a statute. But to test whether

he has performed his obligations, one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded maybe in any form. The same plea may be // 19 // stated by different persons through different words; then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically requires a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded.”

7. Even otherwise it is required to be noted that as such there were concurrent findings of fact recorded by the learned Trial Court as well as the learned First Appellate Court on readiness and willingness on the part of the plaintiff, which were on appreciation of evidence on record. Therefore, in exercise of powers under Section 100 of the CPC the High Court ought not to have interfered with such findings of fact unless such findings are found to be perverse. Having gone through the findings recorded by the learned Trial Court as well as the learned First Appellate Court on readiness and willingness on the part of the plaintiff, we are of the opinion that findings recorded cannot be said to be perverse and/or contrary to the evidence on record. On the contrary High Court has ignored the necessary aspects on readiness and willingness which are stated hereinabove including the conduct on the part of the parties.

8. Even the observations made by the High Court that // 20 // Forms 47 and 48 of the Appendix A to the CPC provide for making an averment that the plaintiff has been “and still is ready and willing specifically to perform the agreement on his part” or that “the plaintiff is still ready and willing to pay the purchase money of the said property to the defendant” and that “there is non-compliance of Section 16(c) of the Specific Relief Act and the plaint does not even contain any averment that the plaintiff ever required defendant no.1 to attend the office of the Sub-Registrar to execute the sale deed within time agreed are too technical in the facts and circumstances of the case. The overall circumstances and the conduct on the part of the parties are relevant consideration for the purpose of deciding the aforesaid issues and the prayer of the plaintiff in whose favour the execution of the agreement to sell has been held to be proved. The High Court has given unnecessary stress on the word “still”.

9. Even while proving the readiness and willingness the plaintiff is not required to make any averment that the plaintiff required executant of the agreement to sell to attend the office of the Sub-Registrar to execute the sale deed within the time agreed. Even as held by this Court in the case of C.S. Venkatesh Vs A.S.C. Murthy (Dead) By Lrs. and Ors. reported in (2020) 3 SCC 280 to adjudge whether the plaintiff is ready and willing to perform his part of contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to filing of the suit alongwith other attending circumstances in a particular case. It is also further observed that whether the plaintiff was ready and was always ready to // 21 // perform his part of contract may be inferred

from the facts and circumstances of a particular case. It is further observed that it is not necessary for the plaintiff to produce ready money but it is mandatory on his part to prove that he has means to generate consideration amount. In the present case even it was not the case on behalf of the defendants and even there is no finding by the High Court that the plaintiff was not having any means to generate consideration amount. It is required to be noted that as per the last extension and the document executed the balance amount of sale consideration i.e. Rs.16,000/- was to be paid at the time of execution of the sale deed and earlier out of Rs.56,000/- of total sale consideration, Rs.40,000/- was already paid and there were two extensions at the instance of the original defendant No.1 who was his father-in-law.

10. Now, so far as the finding recorded by the High Court and the observations made by the High court on Section 20 of the Act and the observation that even if the agreement is found to be duly executed and the plaintiff is found to be ready and willing to perform his part of the Agreement, grant of decree of specific performance is not automatic and it is a discretionary relief is concerned, the same cannot be accepted and/or approved. In such a case, many a times it would be giving a premium to the dishonest conduct on the part of the defendant / executant of the agreement to sell. Even the discretion under Section 20 of the Act is required to be exercised judiciously, soundly and reasonably. The plaintiff cannot be punished by refusing the relief of specific performance despite the fact that // 22 // the execution of the agreement to sell in his favour has been established and proved and that he is found to be always ready and willing to perform his part of the contract. Not to grant the decree of specific performance despite the execution of the agreement to sell is proved; part sale consideration is proved and the plaintiff is always ready and willing to perform his part of the contract would encourage the dishonesty. In such a situation, the balance should tilt in favour of the plaintiff rather than in favour of the defendant – executant of the agreement to sell, while exercising the discretion judiciously.

For the aforesaid, even amendment to the Specific Relief Act, 1963 by which section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide.

10.1 Even otherwise it is required to be noted that as such on applicability of Section 20 of the Act, no issue was framed either by the learned Trial Court or by the learned First Appellate Court or even by the High Court. The same has been dealt with by the High Court for the first time in a Second Appeal under Section 100 of the CPC. Even otherwise no cogent reasons have been given as to why the decree of // 23 // specific performance shall not be passed in favour of the plaintiff.

11. Now, so far as the submission on behalf of the defendant Nos.2 to 5 that the agreement to sell was executed long back and that defendant Nos.2 to 5 are in possession of the suit property / land since many years and if the suit is decreed, in that case, they will have to vacate the suit land and therefore, the discretion may be exercised in favour of defendant Nos.2 to 5 while declining the decree of specific performance in favour of the plaintiff is concerned, the aforesaid cannot be

accepted in the facts and circumstances of the case narrated hereinabove. There are concurrent findings of fact recorded by the Courts below that the defendant Nos.2 to 5 were in knowledge of the agreement to sell in favour of the plaintiff; despite the same they purchased the suit land surreptitiously. Even the sale consideration mentioned in the sale deed in their favour is found to be doubtful. Apart from the same, for all these years the defendant Nos.2 to 5 cultivated the suit land and enjoyed the fruits while in possession. On the contrary the balance must tilt in favour of the plaintiff as plaintiff is deprived of the possession for all these years because of the long- drawn litigation. The learned trial Court passed the decree as far as back on 07.02.1987 but because of the appeal before the learned First Appellate Court and thereafter, Second Appeal before the High Court and thereafter a remand order by the High Court and again the decision by the learned First Appellate Court and thereafter by the High court and the proceeding before this Court, huge time has lapsed, which // 24 // cannot be to the disadvantage of the plaintiff.

12. In view of the above and for the reasons stated hereinabove, the impugned judgment and order 09.09.2010 passed by the High Court in Second Appeal No.836/2010 is unsustainable and same deserves to be quashed and set aside and is, accordingly, quashed and set aside. The judgment and decree dated 07.02.1987 passed by the learned Civil Judge, Mathura City, Mathura in Civil Suit No.254 of 1984 is hereby restored and the suit is decreed and there shall be a decree for specific performance of the agreement to sell dated 10.10.1976 in favour of the plaintiff. The defendants – heirs and legal representatives of defendant No.1 as well as defendant Nos.2 to 5 to execute the sale deed in favour of the plaintiff within a period of four weeks from today and hand over the peaceful and vacant possession of the suit land to the appellant – original plaintiff within a period of four weeks from today.

Appeal is allowed accordingly. No costs.

..... J.
[M.R. SHAH]

NEW DELHI;
OCTOBER 26, 2021.

..... J.
[ANIRUDDHA BOSE]