

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-447-2019 (O&M)****Reserved on: 19.03.2025****Pronounced on: 24.03.2025****USHA RANI**

. . . .APPELLANT

Vs.

SHAKUNTLA AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr. Shiv Kumar Sharma, Advocate, for the appellant
(on 07.03.2025).

Mr. Shiv Kumar Sharma, Advocate, for the appellant
(on 19.03.2025).

Mr. Sumeet Mahajan, Sr. Advocate, with
Mr. Saksham Mahajan and Ms. Shruti Singla, Advocates,
for respondent Nos.1 to 4 (on 07.03.2025 & 19.03.2025)

Present: None on 24.03.2025.

DEEPAK GUPTA, J.

Suit for possession by way of specific performance, regarding property in dispute, based on agreement to sell dated 03.01.2004 filed by plaintiffs Shakuntla and others (*respondents No.1 to 4 herein*) was dismissed by the trial Court of Id. Additional Civil Judge (Sr. Divn.), Bhiwani vide judgment dated 02.01.2015. However, the appeal filed by the said plaintiffs was accepted by Id. Additional District Judge, Bhiwani, who reversed the findings of the trial Court and decreed the suit vide judgment dated 08.10.2018. Against this reversal, one of the defendants, a subsequent vendee, has approached this Court by way of the present Regular Second Appeal.

2. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3. Suit was filed by four plaintiffs - Smt. Shakuntla and others (*respondents No.1 to 4 herein*) against three defendants namely, Mange Ram, Jagdish and Om Parkash (*respondents No.5 to 7 herein*). Defendants



No.4 to 19 (*appellant and respondents No.8 to 22 herein*) were impleaded later on as subsequent vendees.

4.1. Concededly, defendants No.1 to 3, being owners of the suit land measuring 39 kanal 10 marla had agreed to sell the same to the plaintiffs vide an agreement to sell dated 03.01.2004 @ ₹10.60 lakh per acre. Amount of ₹7 lakh was received as earnest money by defendants No.1 and 2 for themselves and on behalf of defendant No.3. As per the agreement, possession of the land was delivered to plaintiffs. Defendants No.1 and 2 being brothers of defendant No.3 had undertaken the liability to get the sale deed executed and registered on behalf of defendant No.3 also. Target date for execution and registration of the sale deed was agreed to be 02.07.2005 and plaintiffs being vendees were entitled to get the sale deed executed in their favour and in favour of their nominees on payment of balance sale consideration. Later on, defendant No.2 was appointed as General Power of Attorney by defendant No.3 vide registered GPA dated 29.07.2004, who acknowledged the receipt of 1/3rd of the earnest money on behalf of defendant No.3 and also confirmed the terms and conditions of the agreement on behalf of defendant No.3 by making an endorsement to that effect on 30.07.2004 on the back side of the first page of the agreement.

4.2 As per plaintiffs, prior to the target date, they requested the defendants No.1 to 3 to get the sale deed executed and registered on 04.07.2005, as it would be holidays on 02.07.2005 & 03.07.2005. It was further pleaded that on 04.07.2005, plaintiffs accompanied by their relative/attesting witness to the agreement namely, Sube Singh went to the office of Sub-Registrar, Bhiwani for getting the sale deed executed along with balance sale consideration and other expenses but defendants No.1 to 3 did not turn up. Plaintiffs got their presence marked through affidavits of attendance dated 04.07.2005 attested by Sub Registrar, Bhiwani. Plaintiffs pleaded further that they have always been ready and willing and still ready and willing to perform their part of contract and asked the defendants many times but they deferred the matter on one or the other pretext. Later, on



29.12.2006, plaintiffs sent a legal notice to defendants No.1 to 3, but they failed to perform their part of contract, constraining the plaintiffs to file the present suit seeking decree for specific performance of the agreement to sell dated 03.01.2004 or in the alternative for refunding double the earnest money along with interest.

4.3 Later on, plaint was amended by the plaintiffs by challenging the four sale deeds all dated 30.06.2005, whereby defendants No.1 to 3 had sold the suit property to defendants No.4 to 10. They further challenged the subsequent sale deeds as executed by defendants No.4 to 10 in favour of defendants No.11 to 19. All these sale deeds are alleged to be null, illegal and void and not binding on the rights of the plaintiff.

5.1 In their joint written statement, defendants No.1 and 2 admitted the execution of the agreement to sell and the receipt of the earnest money by them and also on behalf of defendant No.3. They pleaded that later on, they had also acquired the share of their brother-defendant No.3. However, according to them, actually relative of plaintiffs, namely Sube Singh was the real person, with whom they had dealt with, as Sube Singh wanted to purchase the suit property in the name of plaintiffs. They further pleaded that on the asking of Sube Singh, they had alienated the suit property in favour of defendants No.4 to 10 and consideration was paid by Sube Singh. As per them, at the time of execution of the sale deeds in favour of defendants No.4 to 10, Sube Singh, Kailash and Rajbir were present.

5.2 When they received notice of the present suit, they contacted Sube Singh and asked reason for filing the suit and then Sube Singh told them that he was having dispute with Rambir, the middle man regarding the transaction between them and because of that dispute, he had got filed the present suit so as to settle his account with him. As per these defendants No.1 & 2, they pleaded their case to Sube Singh, but he did not pay any heed. It is also their stand that they did not know the plaintiffs and rather, they were dealing only with Sube Singh. They also pleaded that they had firstly delivered possession of the suit land to Sube Singh and thereafter, Sube



Singh himself had delivered the possession to the subsequent purchasers. Defendants No.1 and 2 pleaded ignorance regarding the existing position about possession. With these submissions, they prayed for dismissal of the suit.

5.3 Defendant No.3 in his separate written statement denied any concern with the agreement to sell. However, according to him, he intended to sell 12 kanal of land in favour of his brothers i.e. defendants No.1 and 2 but by misrepresentation, they had succeeded in getting the sale deed dated 05.05.2006 from him regarding 13 kanal of land, which was under challenge in the separate suit. He too prayed for dismissal *of the suit*.

5.4 Defendants No.4 and 5 (*including the appellant herein*) in their written statement, pleaded to be *bona fide* purchasers of the suit property for consideration and without any notice. According to them, their vendors were in possession of suit land at the spot. They also raised question about the validity of the agreement of sell, submitting that only defendants No.1 & 2 had signed the same and not defendant N: 3. They reiterated the stand of defendants N: 1 & 2 that plaintiffs were men of Sube Singh. As per these defendants, they had entered into bargain in question through Rajbir, who was the nominee of the plaintiffs. They further pleaded collusion between plaintiffs, defendants No.1 & 2 and Rajbir. They also stated that immediately after purchasing their part of the suit property through sale deed dated 03.06.2005, mutation was entered in their name and as such, plaintiffs were in knowledge of the sale deeds in their favour. They pleaded the suit to be barred by time and prayed for dismissal of the same.

5.5 Rest of the defendants took almost the same stand as taken by defendants No.4 and 5 by contending them to be *bona fide* purchasers of the part of the suit property for value and without notice. They also pleaded their possession on the part of the suit land as per their share.

6.1 Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court found that agreement to sell and receipt of



earnest money by defendants No.1 and 2 from plaintiffs was duly proved. It was further held that there was no misrepresentation to defendant No.3 and that endorsement was made on his behalf by his attorney defendant No.2 on the agreement as Ex.A1/1. It was observed further that as per the evidence produced on file, only Sube Singh had gone on 04.07.2005 in the office of Sub Registrar and that none of the plaintiffs had gone there, which was contrary to the pleadings. It was further found that Sube Singh was GPA holder only on behalf of plaintiffs i.e. shakuntla and Smt. Vinod but not for the purpose of getting the sale deed executed. As such, the trial Court concluded that plaintiffs had failed to prove their readiness and wiliness to perform their part of contract. It was also found that contrary to the stipulation in the agreement, possession of the plaintiffs on the suit land was not proved. Trial Court further found that subsequent purchasers were the *bona fide* purchasers for value and without notice. Consequent to all these findings on material issues, suit was dismissed vide judgment dated 02.01.2015.

7.1 In the appeal filed by the plaintiffs, learned First Appellate Court endorsed the findings of the trial Court to the effect that agreement to sell and the receipt of earnest money by defendants No.1 and 2 for themselves and on behalf of defendant No. 3 in favour of plaintiffs was duly proved and later on, defendant No.3 had also acknowledged the execution of the agreement to selling in favour of the plaintiffs.

7.2 First Appellate Court also observed that though only Sube Singh had gone to the office of Sub Registrar, Bhiwani on 04.07.2005 for getting the sale deed executed and that none of the plaintiffs had gone there but it was noticed that said Sube Singh was the close relative of the plaintiffs being brother of three of the plaintiffs and *mama* of the other plaintiff and as such, he was competent to appear on their behalf to get the sale deed executed, as there was no legal requirement for the vendees to be present as their signatures were not required on the sale deed. Besides, plaintiffs had the valid reason not to go on 04.07.2005 as due to some family affair, they had to go urgently somewhere. On appreciation of the evidence on record, the



First Appellate Court came to the conclusion that plaintiffs were ready and willing to perform their part of contract. As such, the finding to the contrary given by the trial Court was reversed in this regard.

7.3 First Appellate Court further held that defendants No.4 to 10 and the subsequent vendees i.e. defendants No.11 to 19 were not the bona fide purchases for value and without notice and that sale deeds in their favour could not be protected. Ld. First Appellate Court also referred to Sections 23 and 47 of the Registration Act and Section 48 of the Transfer of Property Act to come to this conclusion and as such, finding of the trial Court on this issue was reversed.

7.4 First Appellate Court also held that it was not required for the plaintiffs to specifically claim the relief of possession, as the said relief of possession was implicit in a suit for specific performance.

7.5 Consequent to all these findings, the First Appellate Court reversed the judgment of the trial Court and decreed the suit of the plaintiffs for specific performance in terms of the agreement to sell dated 03.01.2004, vide judgment dated 08.10.2018.

8. The above judgment of Id. Additional District Judge, reversing judgment of the trial Court, has been assailed by only one of the defendants namely Usha Rani, who was defendant No.4 before the trial Court. She is one of the subsequent purchasers, having purchased part of the suit land from defendants No.1 and 2 vide sale deed dated 30.06.2005. The vendors i.e. defendants No.1 to 3; as well as all other subsequent purchasers have been impleaded as the proforma respondents in this appeal.

9.1 It is contended by Id. Sr. Advocate, Dr. Anmol Rattan Sidhu on behalf of the appellant that the judgment & decree as passed by the first appellate Court is illegal and void based upon conjectures and surmises and that same has been passed in utter ignorance of the provisions of law reflecting non-application of judicial mind. It is urged that Section 47 of the Registration Act and Section 48 of the Transfer of Property Act were not at all



applicable to the case of an agreement to sell and have been wrongly applied by first Appellate Court to come to the conclusion that subsequent vendees were not the bona fide purchases.

9.2 Though Id. Senior Advocate has not challenged the findings of the Courts below to the effect that execution of the agreement to sell and receipt of earnest money were duly proved on behalf of the plaintiffs, but Id. senior counsel seriously disputed the finding of the First Appellate Court regarding readiness and willingness of the plaintiffs to perform their part of contract. It is urged that evidence was absolutely lacking to prove the readiness and willingness of the plaintiffs to perform their part of contract. There was even no evidence that plaintiffs had financial capacity or funds ready with them to pay the balance sale consideration on 04.07.2005, when they had sent Sube Singh to get the sale deed executed.

9.3 It is argued that Sube Singh alleges to be GPA of two of the plaintiffs namely Smt. shakuntla and Smt. Vinod but did not produce any such GPA on record, authorising him to representing them to appear before Sub-Registrar or to purchase land on their behalf. Even otherwise, GPA holder cannot appear in place of purchasers to prove the readiness and willingness. To support his contention, Id. Sr. counsel has relied upon ***Rajesh Kumar vs. Anand Kumar, Law Finder Doc ID # 258158.***

9.4 To the specific query put by this Court, as to whether the subsequent vendee has the right to challenge the readiness and willingness of the buyers/plaintiffs to perform their part of contract, Id. Senior Advocate has relied upon ***Kadupugotla Varalakshmi vs. Vudagiri Venkata Rao & Ors., 2021 (2) RCR (Civil) 246***, wherein it has been held by Hon'ble Supreme Court that it is open to any defendant including subsequent buyer to challenge readiness and willingness of the plaintiff in a suit for specific performance of the agreement to sell. It is contended by Id. Senior Advocate that plaintiffs in this case utterly failed to prove their readiness and willingness to perform their part of contract and as such, the First Appellate Court was absolutely incorrect in reversing the finding of the trial Court in this regard.



9.5 With all the above submissions, prayer is made for setting aside the judgment and decree of the First Appellate Court and to restore that of the trial Court, dismissing the suit for specific performance, by allowing this appeal.

10.1 Refuting the aforesaid contentions, Mr. Sumeet Mahajan, Ld. Senior Advocate for the contesting respondents-plaintiffs contended that issue of readiness & willingness has not been raised in the grounds of appeal and so, appellants cannot be allowed to raise this issue.

10.2 It is contended further that by virtue of documents – GPAs Ex.DA & Ex.DB Smt. Shakuntla and Smt. Vinod had authorised their brother Sube Singh to manage their properties in any manner and that general powers include to power to appear before Sub-Registrar to get the sale deed executed and registered in their favour.

10.3 It is argued further that the First Appellate Court has re-appreciated the entire evidence on file and has rightly concluded that plaintiffs had been successful in proving their readiness & willingness to perform their part of contract and that the subsequent vendees were not the bona fide purchasers and as such, suit for specific performance has been rightly decreed.

10.4 With these submissions, prayer is made for dismissal of the appeal.

11. This Court has considered submissions of both the sides at depth and has appraised the entire evidence on record including the trial Court record.

12. Execution of agreement to sell dated 03.01.2004 (Ex.P1) by defendants No.1 and 2 for themselves and on behalf of defendant No.3 in favour of plaintiffs, is not in dispute. It is also undisputed that later on, defendant No.3 also acknowledged the execution of the said agreement vide endorsement Ex.D1 through his attorney made on the back of page No.1 of the agreement to sell Ex.P1.



13. Trial Court non-suited the plaintiffs on the ground that they had failed to prove readiness and willingness to perform their part of contract; whereas, First Appellate Court reversed this finding by holding that readiness and willingness on their part to perform their part of contract was proved. It is the settled position of law that it is for the plaintiffs-buyers not only to plead that they have been always ready and willing to perform their part of contract and are still ready and willing to do so, they are further required to prove the same.

14. The contention of Ld. Senior Advocate for the respondents that appellants cannot be permitted to raise the issue of readiness & willingness on part of plaintiffs-respondents to perform their part of contract, as it is not pleaded in the grounds of appeal, has absolutely no merits. As has been noted above, the issue of readiness & willingness was hotly contested before the courts below and they differed in their findings on the issue, in as much as trial Court held that plaintiffs had failed to prove readiness and willingness to perform their part of contract; whereas, first Appellate Court reversed this finding by holding that readiness and willingness on their part to perform their part of contract was proved. It is the pleadings before the trial court, which are to be looked into, as to whether a particular issue has been raised or not; and not the pleas taken in grounds of appeal before the High Court. Said grounds don't form part of pleadings. The readiness & willingness of plaintiffs to perform their part of contract, having been duly pleaded by them and questioned by defendants and the two courts below having differed in their findings on this contentious issue, it is held by this court that objection of Ld. Senior Advocate for the respondents to the effect that appellants cannot raise this issue, simply because the plea in this regard is not taken in the grounds of appeal, is unsustainable and as such, contention is rejected.

15. Proceeding further, as has been held by Hon'ble Supreme Court in ***C.S. Venkatesh Vs. A.S.C. Murthy (D) by LRs. & Ors., (2020) 3 SCC 280***, to adjudge as to whether 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 the filing of the suit along with other attending circumstances in a particular case. The question that whether the plaintiff was ready and was always ready to perform his part of contract, may be inferred from the facts and circumstances of the particular case. It has also been observed in that case that though it is not necessary for the plaintiff to produce ready money, but it is mandatory on his part to prove that he has the means to generate the consideration amount. To the same effect is the view taken by Hon'ble Supreme Court in ***Sughar Singh Vs. Hari Singh (dead) through LRs and others, (2021) 17 SCC 705.***

16. In present case, though vendors – defendants N: 1 to 3 have not approached this Court challenging the finding of the Appellate Court, regarding the readiness and willingness of the plaintiffs to perform their part of contract but it cannot be ignored that the vendors - defendants No.1 to 3 having already sold the entire suit property to the subsequent vendees i.e. defendants No.4 to 10 vide sale deeds dated 30.06.2005, so obviously vendors had lost interest in the litigation. It is the subsequent vendees, who are affected by the fate of this case.

17. Further, the question as to whether the subsequent buyer has right to challenge the readiness and willingness of the plaintiff, in a suit for specific performance of agreement to sell, was considered by Hon'ble Supreme Court in the case of ***Kadupugotla Varalakshmi (supra)*** and it was held as under: -

“7. Thus, the submissions advanced on behalf of the appellant i.e. subsequent purchaser were not taken into account on the premise that it would not be open to a subsequent purchaser to challenge the readiness and willingness on part of the plaintiff. The High Court had relied upon the decision of this Court rendered in ***Jugraj Singh and Another vs. Labh Singh and Others [(1995) 2 SCC 31]*** to come to such conclusion.

8. It must be stated here that the principles laid down in ***Jugraj Singh and Another (supra)*** were not accepted by a larger Bench of this Court. The relevant discussion in paragraph 6 in the case of ***Ram Awadh (Dead) by Lrs.***



and Others vs. Achhaibar Dubey and Another [(2000) 2 SCC428] was as under:

“6. The obligation imposed by [Section 16](#) is upon the court not to grant specific performance to a plaintiff who has not met the requirements of clauses (a), (b) and (c) thereof. A court may not, therefore, grant to a plaintiff who has failed to aver and to prove that he has performed or has always been ready and willing to perform his part of the agreement the specific performance whereof he seeks. There is, therefore, no question of the plea being available to one defendant and not to another. It is open to any defendant to contend and establish that the mandatory requirement of [Section 16\(c\)](#) has not been complied with and it is for the court to determine whether it has or has not been complied with and, depending upon its conclusion, decree or decline to decree the suit. We are of the view that the decision in [Jugraj Singh case \[\(1995\) 2 SCC 31\]](#) is erroneous.”

9. Learned counsel appearing for the plaintiff - respondent no.1 sought to support on facts the conclusion arrived by the High Court on the issue of readiness and willingness.

10. However, the fact remains that the entire perspective with which the matter was considered by the High Court was clearly erroneous and as the observations made by the High Court in paragraph 76 disclose, the High Court went on the footing that it was not open to the appellant i.e. subsequent purchaser to raise any submissions on the issue of readiness and willingness. Thus, the judgment under challenge clearly fell in serious error.”

18. In the light of the aforesaid legal position, this Court has no hesitation to conclude that appellant-defendant No.4 being one of the subsequent vendees, has the right to assail the finding of the First Appellate Court regarding the readiness and willingness of the plaintiffs to perform their part of contract.

19. Coming to the most material issue, as to whether the plaintiffs were able to prove their readiness and willingness to perform their part of



contract, it is very important to notice that though on 02.07.2005, the target date fixed in the agreement for execution and registration of the sale deed, was holiday and 03.07.2005 was holiday, plaintiffs were required to appear on next working day i.e., 4.7.2005. However, none of the plaintiffs attended the office of Sub Registrar, Bhiwani on 04.07.2005 so as to get the sale deed executed and registered in their favour. Rather, it is only Sube Singh (PW2), who was sent by plaintiffs on 04.07.2015 for getting the sale deed executed and registered on their behalf.

20. Trial Court has rightly noticed the material contradiction in this regard, inasmuch as, in the pleadings, plaintiffs specifically contended that all of them accompanied by Sube Singh had gone to the office of Sub Registrar, Bhiwani on 04.07.2005 along with the balance sale consideration and expenses necessary for getting the sale deed executed and registered in their favour. However, in the legal notice dated 29.12.2006 (Ex.PW4/A), it is specifically mentioned that it is only Sube Singh, who had gone to the office of Sub Registrar, Bhiwani on 04.07.2005 being the close relative of the plaintiffs and also being attorney of two of the plaintiffs namely shakuntla and Vinod. Affidavit dated 04.07.2005 (Ex.P4) also shows that it has been executed by Sube Singh alone and it is mentioned therein that on behalf of the plaintiffs, he had come on that day for getting the sale deed executed and registered in favour of the plaintiffs. Sube Singh examined as PW2, candidly admitted that he had gone to the office of Sub Registrar, Bhiwani on behalf of the plaintiffs on 04.07.2005. Thus, the contradiction made in the pleadings in this regard remains unexplained. Fact remains that none of the plaintiffs had gone to the office of Sub Registrar, Bhiwani on 04.07.2005 for getting the sale deed executed and registered in their favour.

21. It is admitted position that PW2 Sube Singh is the real brother of plaintiffs Smt. shakuntla, Smt. Vinod and Balwan and maternal uncle of the fourth plaintiff namely Ajay. As per the explanation given by plaintiff No.3- Balwan, who appeared in the witness box as PW3, on the relevant date of 4.7.2005, none of the plaintiffs including he (Balwan) could go to the office of



Sub Registrar, Bhiwani due to some urgent work, as they had to go out of station and that is why they had sent Sube Singh on their behalf. PW3 could not explain the nature of urgent work, due to which none of the plaintiffs could appear on 04.07.2005 before Sub-Registrar. It has been rightly observed by the Id. trial Court that it is highly improbable that PW3 would forget the nature of urgent work and none of the plaintiffs would appear on such an important date i.e. 04.07.2005, on which they had to get the sale deed executed sale deed in their favour pursuant to the agreement to sell.

22. Still further, it is claimed that Sube Singh (PW2) who was sent by the plaintiffs for getting the sale deed executed was also the attorney of two of the plaintiffs, namely, shakuntla and Smt. Vinod. Perusal of GPA dt. 26.04.2004 (Ex.DA) would reveal that that by way of this document, Smt shakuntla (sister) & Smt. Sewapati (wife) of Sube had authorised him to manage the properties already owned and possessed by them at various places, in any manner whatsoever including power to sell, mortgage, lease, exchange etc or to appear before any authority for this purpose. Similar GPA dated 18.05.1988 (Ex.DB) was executed by Smt. Vinod in favour of Sube. These documents did not authorise Sube Singh to represent them to appear before Sub-Registrar or to purchase land on their behalf. No such power of attorney has been placed on record in order to show that Sube Singh had been authorized to get the sale deed executed or registered in favour of said shakuntla & Vinod. Admittedly, he was not even attorney of the other plaintiffs Balwan and Ajay.

23. Moving ahead, assuming for the sake of arguments that as signatures of the purchaser was not required on the sale deed and that plaintiffs had sent their close relative Sube Singh for getting the sale deed executed, the question is as to whether readiness and willingness on the part of the purchasers can be proved by said Sube Singh, without examining the plaintiffs except one of them namely Balwan, who appeared in witness box as PW3, particularly when PW3 could not explain the reason for non-appearance of none of the plaintiffs on 04.07.2005 in the office of Sub Registrar,



Bhiwani for getting the sale deed executed and registered in their favour. Absence of any of plaintiffs in the office of Sub-registrar on the target date, is a big question mark on their readiness and willingness to perform their part of contract.

24. In ***Rajesh Kumar case (supra)***, Hon'ble Supreme Court considered as to whether it is necessary for the buyer to step into the witness box and depose the fact regarding readiness and willingness to perform his part of contract, or whether the attorney can appear on his behalf. Hon'ble Supreme Court after referring to ***Janki Vashdeo Bhojwani v. IndusInd Bank Ltd. (2005) 2 SCC 217; Man Kaur v. Hartar Singh Sangha 2010 (10) SCC 512*** and ***A.C. Narayanan v. State of Maharashtra (2014) 11 SCC 790*** held as under: -

“12. Having noticed the three judgments of this Court in ***Janki Vashdeo Bhojwani (supra)***, ***Man Kaur (supra)*** & ***A.C. Narayanan (supra)***, we are of the view that in view of Section 12 of the Specific Relief Act, 1963, in a suit for specific performance, wherein the plaintiff is required to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, a Power of Attorney Holder is not entitled to depose in place and instead of the plaintiff (principal). In other words, if the Power of Attorney Holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the act done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined. If a plaintiff, in a suit for specific performance is required to prove that he was always ready and willing to perform his part of the contract, it is necessary for him to step into the witness box and depose the said fact and subject himself to cross-examination on that issue. A plaintiff cannot examine in his place his attorney holder, who did not have personal knowledge either of the transaction or of his readiness and willingness. The term 'readiness and willingness' refers to the state of mind and conduct of the purchaser, as also his capacity and preparedness, one without the other being not sufficient. Therefore, a third



party having no personal knowledge about the transaction cannot give evidence about the readiness and willingness.”

25. It is, thus, clear from the legal position as above that power of attorney cannot appear on behalf of the plaintiffs-purchasers for proving the readiness and willingness to perform their part of contract. As such, statement of Sube Singh to prove readiness and willingness does not advance the case of plaintiffs; whereas PW3 Balwan & none of other plaintiffs has appeared before Sub-registrar to get the sale deed executed in their favour on 4.7.2005, i.e., the next working day after the target date.

26. Apart from above, certain important factors have been ignored by both the Courts below. Total area of the suit land was 39 kanal 10 marla, which was agreed to be sold by vendors i.e. defendants No.1 to 3 @ ₹10.6 lakh per acre. Total consideration works out to be ₹52,33,750/-. Only an amount of ₹7 lakh had been paid as earnest money on 03.01.2004 i.e. balance amount payable on the date of execution and registration of the sale deed was ₹45,33,750/-. Target date for execution and registration of the sale deed has been fixed to be 02.07.2005 i.e. more than 1½ year from the date of execution of the agreement. As per the stipulation in the agreement, possession of the suit land was handed over to the vendees/plaintiffs. It is highly unusual and improbable that by getting only an amount of ₹7 lakh with huge amount of ₹45,33,750/- still payable, the defendants will hand over the possession of suit land to the plaintiffs and will agree execute the sale deed after 1½ year. Not only this, from the statement of PW2-Sube Singh and PW3-Balwan, it has been rightly found by the Courts below that though it is stipulated in the agreement that possession was handed over to the plaintiffs, but in fact the actual possession was not handed over to them and presently, it is subsequent vendees, who are in possession of the suit property as per the respective shares purchased by them.

27. Still further, there is absolutely no evidence on record to show that on 04.07.2005, when plaintiffs had sent Sube Singh on their behalf to get the sale deed executed and registered, Sube Singh was having the balance



sale consideration of ₹45,33,750/- besides the other expenses required for execution and registration of the sale deed. In the affidavit Ex.P4 dated 04.07.2005, only this much is mentioned by Sube Singh that he was present in the office of Sub Registrar, Bhiwani since 09.00 AM and was waiting for the defendants - vendors, who had not appeared but there is absolutely no mention in this affidavit that he had come there along with the balance sale consideration and necessary expenses required for execution and registration of the sale deed.

28. PW2-Sube Singh was also confronted in this regard during his cross-examination and as per him, the plaintiffs had given different shares of amounts to him to purchase the suit land, but he was unable to tell as to how much amount was paid by the different plaintiffs. It is absolutely not believable that huge amount of ₹45,33,750/- was brought by the plaintiffs in cash and still he did not mention about the said fact in his affidavit Ex.P4. There is absolutely no evidence that on that day i.e. on 04.07.2005, Sube Singh purchased any stamp paper for getting the sale deed executed and registered in favour of the plaintiffs. There is no evidence that he got prepared any bank draft or any cheque from the plaintiffs. No evidence whatsoever has been produced that any of the plaintiffs had necessary amount in their bank accounts to pay the huge amount of balance sale consideration of more than ₹45 lakhs.

29. The Courts below have also ignored the important aspect as to why the plaintiffs themselves had not gone to the office of Sub Registrar, Bhiwani on 04.07.2005 and as to why the defendants i.e. defendants No.1 to 3 - vendors had also not gone there. In fact, defendants No.1 to 3 had already sold the suit property in favour of subsequent vendees-defendants No.4 to 10 by virtue of four sale deeds, all executed on 30.06.2005. Copies of those sale deeds as Ex.P10, Ex.P12, Ex.P14 and Ex.P16, whereas the mutations sanctioned on the basis of these sale deeds are Ex.P11, Ex.P13, Ex.P15 and Ex.P17. All these mutations were sanctioned on 17.09.2005. Since defendants No.1 to 4 had already sold the suit property on 30.06.2005 to subse-



quent vendees i.e. defendants No.4 to 10, that is the reason that they did not appear in the office of Sub Registrar, Bhiwani on 04.07.2005. The circumstances clearly indicate that plaintiffs were also well aware of this fact and this is the reason that they also did not go there on that day.

30. In the above circumstances, the stand of the defendants No.1 and 2 to the effect that they had struck the bargain with Sube Singh, who had conducted the transaction on behalf of the plaintiffs, appears to be more plausible. It is so because Sube Singh was not only the attesting witness to the agreement to sell (Ex.P1), it is Sube Singh who was sent by the plaintiffs to get the sale deed executed and registered. As such, the case pleaded by the vendor - defendants and their testimony in this regard is quite believable that they had sold the suit property to defendants No.4 to 10 on the asking of Sube Singh.

31. Still further, assuming for the sake of arguments that plaintiffs were not aware of the fact that defendants No.1 to 3 had already sold the suit property to defendants No.4 to 10 prior to 04.07.2005, at least on that day i.e. 04.07.2005, when they had sent Sube Singh for getting the sale deed executed and registered and defendants did not turn up, they had come to know that defendants were reluctant to execute the sale deed executed and registered in their favour. Mutations had been sanctioned on 17.09.2005 on favour of subsequent vendees. Still, it took more than 1 year and 5 months for the plaintiffs to send the legal notice to the vendors-defendants to execute the sale deed, inasmuch as legal notice Ex.P4/A was sent by the plaintiffs on 29.12.2006.

32. It is absolutely not explained that when defendants did not turn up on 04.07.2005 for executing the sale deed and get it registered, why the plaintiffs did not immediately or within the reasonable time issue the legal notice to the vendors-defendants to execute the sale deed in their favour and perform their part of contract on receipt of balance sale consideration. Mutations Ex.P11, Ex.P13, Ex.P15 and Ex.P17 based upon four sale deeds all dated 30.06.2005 in favour of defendants No.4 to 10 had already been sanc-



tioned on 17.09.2005 i.e. much prior to sending the legal notice dated 29.12.2006 or filing of the suit on 31.01.2007. A registered sale deed and the entry in the revenue record in the form of mutation is notice to all. Still, plaintiffs did not refer about the said subsequent sale deeds in the plaint initially.

33. All the aforesaid circumstances clearly indicate that plaintiffs were well aware about the subsequent sale deeds having been executed by defendants No.1 to 3 in favour of defendants No.4 to 10. It is further proved from the entire facts and circumstances that plaintiffs utterly failed to prove their readiness and willingness to perform their part of contract. The finding to the contrary as given by the First Appellate Court is absolutely not correct. Ld. First Appellate Court has wrongly held that plaintiffs have proved their readiness and willingness to perform their part of contract. Said finding is set aside and the finding of the trial Court in this regard is hereby restored.

34. Proceeding further, it is noticed that in order to arrive at the conclusion that defendants No.4 to 10 were not the bona fide purchases, the First Appellate Court has noticed that sale deeds in their favour were executed on 30.06.2005 i.e. just two days prior to the target date fixed for execution and registration of the sale deed as per the agreement to sell (Ex.P1). It is also noticed that total sale consideration as per these sale deeds i.e. 30.06.2005 is lower than the sale consideration in the agreement to sell (Ex.P1). It is also noticed that there was no prior agreement to sell in favour of defendants No.4 to 10 before execution of the sale deeds dated 30.06.2005.

35. In this regard, the First Appellate Court clearly went in error. There is no requirement of law that before getting the sale deed executed and registered, there must be prior agreement to sell. In case defendants No.4 to 10 have purchased the suit property by way of four sale deeds dated 30.06.2005, execution of those sale deeds cannot be doubted simply because there was no prior agreement to sell in their favour.



36. Still further, there is no cogent evidence that defendants No.4 to 10 were aware about the prior agreement to sell dated 03.01.2004 (Ex.P1) in favour of the plaintiffs. Appellate Court failed to notice the fact that all the defendants No.4 to 10 are residents of different places comparing to the plaintiffs or defendants No.1 to 3-vendors. Agreement to sell (Ex.P1) was not a registered document and so, no inference could be drawn that agreement to sell was notice to the public at large. The entry regarding said agreement to sell was not there in the revenue record. It has been found from the evidence that possession was not delivered to the vendees-plaintiffs and that said possession was still with the vendors-defendants No.1 to 3. In these facts and circumstances, there could be absolutely no way for the subsequent vendees i.e. defendants No.4 to 10 to come to know that there was a prior agreement to sell dated 03.01.2004 in favour of the plaintiffs.

37. Defendant No.5 Krishan, defendant No 6 Sanjay and defendant No 10 Sandeep have entered the witness box as DW5, DW8 and DW9, respectively and all of them have duly proved that they did not have the notice of the prior agreement to sell in favour of the plaintiffs and that they purchased the part of the suit property in their favour by virtue of the sale deeds on 30.06.2005 with value and without any notice.

38. As per Section 19(b) of the Specific Relief Act, specific performance of a contract may be enforced against any person claiming under the vendor by a title arising subsequent to the contract except a transferee for value, who had paid his money in good faith and without notice of the original contract. It is not required that the value for which the subsequent vendee has purchased the suit property must be the higher or equal to the consideration for which the vendee under the agreement to sell had agreed to purchase the suit property.

39. In the aforesaid facts and circumstances, there was no reason for the Id. First Appellate Court to come to the conclusion that defendants No.4 to 10 were not the *bona fide* purchasers. The finding to this effect by the First Appellate Court is certainly based upon conjectures and surmises



and it has wrongly reversed by the finding of the trial Court in this regard. As such, the finding of the First Appellate Court is reversed and that of the trial Court is hereby restored by holding defendants N: 4 to 10 to be the bonafide purchasers.

40. As far as Section 23 & 47 of the Registration Act, 1908 and Section 48 of the Transfer of Property Act are concerned, these have no application in a case of an agreement to sell. Ld. First appellate court wrongly applied these provisions to ignore the plea of subsequent vendees to the effect that they were bonafide purchasers.

41. Even otherwise, once it has been found by this Court that plaintiffs utterly failed to prove their readiness and willingness to perform their part of contract, it is irrelevant as to whether the subsequent vendees-defendants No.4 to 10 and their vendees-defendants No.11 to 19 are the *bona fide* purchasers or not. It was utmost necessary for the plaintiffs not only to prove the agreement to sell, which of course they proved, but it was further required for them to prove their readiness and willingness to perform their part of contract. They utterly failed to prove the same.

42. Consequently, the judgment and decree as passed by the First Appellate Court are hereby set aside. The judgment and decree of the trial Court, dismissing the suit of plaintiffs for specific performance, are hereby restored. Present appeal is hereby allowed, and suit of the plaintiffs-respondents No.1 to 4 is hereby dismissed.

24.03.2025

Pry

(DEEPAK GUPTA)

JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>