

Rakha Singh Vs. Babu Singh

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Court : Punjab and Haryana

Decided On : Jan-11-2002

Reported in : 2003(1)ARBLR22(P& H)

Judge : M.L. Singhal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : Regular Second Appeal No. 1404 of 1986

Appellant : Rakha Singh

Respondent : Babu Singh

Advocate for Def. : I.K. Mehta, Sr. Adv.,; M.S. Kohli,; Ranjit Mehta and

Advocate for Pet/Ap. : R.C. Setia, Sr. Adv. and; Anish Setia, Advs.

Disposition : Appeal allowed

Judgement :

M.L. Singhal, J.

1. Rakha Singh filed suit for possession by way of specific performance of an agreement to sell dated 10.9.1980 in respect of one plot measuring 100 sq yards against Babu Singh-defendant, situated at village Baddi comprising Khasra Nos. 640, 641 Khata No.490/613. It is alleged in the plaint that vide agreement dated

10.9.1980, the defendant agreed to sell plot measuring 100 sq. yards as detailed above, for a sum of Rs. 4000/- to him. A sum of Rs.500/- was paid as earnest money, at the time of execution of the agreement in the presence of the witnesses. Defendant agreed to execute sale deed in his favour after obtaining permission from the Land Ceiling Authority. It was agreed by the plaintiff that he was pay the remaining sale consideration, at the time of the execution of the sale deed. Thereafter, the plaintiff and the defendant submitted the requisite papers through Shri K.L. Verma, Advocate, who drafted the agreement for getting the requisite permission from the Land Ceiling Authority, as required under the law. The Competent Authority, Urban Land Ceiling, Ludhiana, gave permission on 2.2.1981. The defendant was informed about the grant of permission by the Urban Ceiling Authority, Ludhiana. Thereafter, the plaintiff made strenuous efforts and requested the defendant several times to execute sale deed in his favour. On receipt of the remaining sale money from him, but to no effect. The defendant turned dishonest and became inclined to alienate the said plot to some one else as (here was an appreciation in the rates of urban property in the vicinity. Defendant's inclination to commit breach of the agreement, which he had entered with him, was without any cogent reason. Plaintiff was always ready and willing to pay the remaining sale consideration to the defendant and obtain from him the sale deed. It was the defendant who was prevaricating and evading to execute sale deed in his favour. Plaintiff served notice through his counsel Shri J.B. Bhardwaj, Advocate, Ludhiana, upon the defendant, but the defendant gave no reply to that notice.

2. Defendant - Babu Singh contested the suit of the plaintiff. It was argued that this suit is not maintainable as the plaintiff himself had committed the breach of the terms of the contract to sell. He had lost his status as a buyer of the plot after 1.3.1981 for not complying with (he mandatory condition of the contract to sell. Execution and registration was to be compleled within one month from the date of sanctioning of sale from the competent authorised Permission was granted by the Urban Land Ceiling Officer on 2.2.1981. Which was well within the knowledge of the plaintiff, as the plaintiff and the defendant both had applied to the Urban Land Ceiling Authority for permission. The plaintiff lost his right to purchase the plot as he could purchase plot within one month of the date of the grant of permission by the Urban Land Ceiling Authority, Ludhiana. Time was of the essence of the

contract. On the default of either party to the contract, the penal clause was to operate. Plaintiff failed to perform his part of the contract as he had no money to pay. Defendant served the plaintiff with notice through his counsel Sh. K.L. Verma, Advocate, before the expiry of the period of limitation, but the plaintiff failed to perform his part of the contract. It was urged that the plaintiff cannot take advantage of his own default. It was denied that the plaintiff paid Rs. 500/- as earnest money. After the Urban Land Ceiling Authority had granted sanction on 12.2.1981 for the sale of this plot, the defendant approached the plaintiff many times and requested him to purchase stamp etc and obtain sale deed from him. Plaintiff could not obtain sale deed from him as money was not ready with him. Finding no other alternative, the defendant served him with notice dated 27.2.1981, through his counsel to complete his part of own agreement by 1.3.1981, but he failed to do so. After 1.3.1981 the contract lost its efficacy and no more subsisted.

3. On the pleadings of the parties, the following issues were framed by the learned trial Court :-

1. Whether the plaintiff entered into an agreement with the plaintiff on 10.9.1980 for the sale of the suit land and received Rs. 500/- as earnest money ?OPP

2. Whether the plaintiff was ready and willing to perform his part of the contract and is still ready and willing to perform the contract. If so its effect OPP.

3. Whether the defendant was ready and willing to perform the part of his contract and is still ready and willing to perform the contract. If so its effect OPP.

4. Relief.

4. Vide order dated 6.12.1982, Subordinate Judge First Class Ludhiana, decreed the plaintiffs suit for possession through specific performance qua plot measuring 100 sq. yards as detailed in the heading of the plaint against the defendant on payment of Rs. 4000/- minus Rs. 500/- already paid as earnest money, in view of his finding, that defendant entered into an agreement to sell plot to the plaintiff for Rs. 4000/-. It was found that the plaintiff had paid Rs. 500/- as earnest money to

the defendant at the time of the execution of the agreement to sell dated 10.9.1980. It was further found that the plaintiff was always ready and willing to perform his part of the contract i.e. to pay remaining Rs. 3500/- and got the sale deed from the defendant and that the plaintiff served the defendant with notices dated 2.3.1981 and 13.3.1981 calling upon him to execute the sale deed in his favour, but, the defendant prevaricated and defaulted. It was found that the Urban Land Ceiling Authority, Ludhiana, gave permission on 2.2.1981. Defendant handed over that permission to his counsel Sh. K.L. Verma, Advocate, on 4.2.1981 after 4.2.1981, the defendant took no steps to inform the plaintiff to be ready to obtain sale deed from him on payment of Rs. 3500/-. It was found that it was only on 27.2.1981 that the defendant sent intimation through his counsel Sh. K.L. Verma, Advocate to the plaintiff which was received by the plaintiff on 2.3.1981.

5. It was found that the plaintiff withdrew the amount on 2.3.1981 and approached Sh. K.L. Verma, Advocate, but the defendant did not turn up. On 2.3.1981, the plaintiff served notice to the defendant through Sh. K.L. Verma, Advocate for getting the sale deed executed and registered. But, the defendant never contacted his counsel Sh. K.L. Verma, Advocate, for fixing a date for the execution and registration of the sale deed on 1.3.3.1981, the plaintiff got served notice to the defendant through Shri J.B. Bhardwaj, Advocate for getting the sale deed executed and registered. It was found that the plaintiff was always ready and willing to pay the remaining sale money to the defendant and obtain sale deed from him and it was the defendant who prevaricated and defaulted.

6. Not satisfied with this judgment and decree dated 6.12.1981 passed by Sub Judge 1st Class, Ludhiana, defendant went in appeal. Vide order dated 10.3.1986, Additional District Judge, Ludhiana, partly allowed the appeal of the defendant. He set aside the decree for possession through specific performance passed in favour of the plaintiff by Sub Judge 1st Class, Ludhiana, but granted him decree for the recovery of Rs. 500/-.

7. Not satisfied with the decree passed by Additional District Judge, Ludhiana, dated 10.3.1986, plaintiff has come up in appeal to this Court.

8. I have heard the learned counsel for the parties and have gone through the record.

9. There can be no manner of doubt that agreement Ex.P2 was executed by Babu Singh in favour of Rakha Singh dated 10.9.1980 whereby he under took to sell plot measuring 100 sq. yards to Rakha Singh for a consideration of Rs. 4000/-. Again there can be no manner of doubt, that the plaintiff had paid Rs. 500/- as earnest money to the defendant at the time of the execution of the agreement to sell. Babu Singh was to apply for permission to the Urban Land Ceiling Authority to sell this plot. Babu Singh was required to inform the plaintiff that he received permission from the Urban land Ceiling Authority to sell this plot and that he should be ready to pay him the remaining sum of Rs.3,500/- and obtain sale deed within one month of the receipt of permission. Agreement to sell Ex.P2 was drafted by Sh. K.L. Verma, Advocate, Ludhiana, who appeared as PW-2. Babu Singh defendant applied through him for permission to the Urban Land Ceiling Authority for the sale of this plot. He stated that at the instance of Babu Singh, he wrote letter to Rakha Singh and then Rakha Singh came to him on that date, Babu Singh did not come there. Then he sent registered letter Ex. P-3 to Babu Singh. Ex.P-3 was received by him back as Babu Singh refused to receive it. It may be mentioned here that through letter Ex.P-3 dated 2.3.1981 Sh. K.L. Verma Advocate informed Shri Babu Singh that 2.3.1981 is the last day for the execution of the sale deed and Rakha Singh is present with him after receiving notice, which he served upon him. Rakha Singh is ready to obtain sale deed and is present in his office. Through notice Ex.P-3 dated 2.3.1981, he called upon Babu Singh to be present in his office on any working day and fix date for the execution of the sale deed so that Rakha Singh could also be informed accordingly. Sh. K.L. Verma Advocate was counsel for Babu Singh. Vide notice dated. 27.2.1981 Ex.D1, he informed Rakha Singh that Babu Singh had obtained permission from the Urban Land Ceiling Authority on 2.2.1981 for the sale of this plot and that the last date for the execution of the sale deed per agreement dated 10.9.1980 Ex.P2 is dated 1.3.1981. Through notice Ex.D1 sent to Rakha Singh through Sh. K.L. Verma Advocate, he called upon him (Rakha Singh) to be ready with the sale money of Rs. 3700/- and obtain sale deed on or before 1.3.1981 and if he failed to do so, he would lose his right to ask for specific performance and the earnest money paid by him would stand

forfeited. Rakha Singh (PW-3) stated that Babu Singh defendant agreed to sell this plot measuring 100 sq. yards to him for a sum of Rs. 4000/-. He paid Rs. 500/- as earnest money, balance sale money was to be paid at the time of the registration of the sale deed. Sale deed was to be executed and registered after one month of the receipt of permission from the competent authority - Urban Land Ceiling, Ludhiana. Permission was to be received by Babu Singh defendant. Shri K.L. Verma, Advocate had told him to get the sale deed registered He went to Shri K.L. Verma, Advocate and told him that he was ready to get the sale deed executed. He was with the balance sale consideration when he went to Shri K.L. Verma Advocate. Babu Singh defendant was not present. He asked Shri Verma to send the message to Babu Singh. Babu Singh never came to him afterwards. He also served him notice through counsel for the execution of the sale deed. He stated that he had withdrawn Rs. 4000/- from the State Bank of India. He had withdrawn the amount from the bank prior to the receipt of notice dated 27.2.1981. Babu Singh defendant did not turn up. Thereafter he got a notice sent through Advocate, to Babu Singh defendant (reference is to notice Ex.P-1 dated 13.3.1981). He stated that Babu Singh defendant approached him at village Baddi for getting sale deed registered and he further stated that he never refused to obtain sale deed from Babu Singh defendant saying that he did not have the requisite money with him.

10. Babu Singh defendant DW-1, on the other hand, stated that after he had got permission from the competent authority - Urban Land Ceiling, Ludhiana, for the sale of this plot, he approached Rakha Singh thrice to pay him the balance sale money and obtain sale deed from him but Rakha Singh plaintiff expressed his inability to obtain sale deed from him saying that he could not arrange the requisite money. He served notice Ex.D-1 upon Rakha Singh, still he did not come to him. He stated that even after sending notice Ex.D-1 dated 27.2.1981 to Rakha Singh, he approached him thrice for paying him the requisite sale money and obtaining sale deed from him. He first went on 4.2.1981 then on 15 or 16.2.1981 and then on 25.2.1981. Shri Verma handed over to him the permission from the competent authority - Urban Land Ceiling, Ludhiana, on 4.2.1981. He got served notice from Shri Verma Advocate on 27.2.1981. Then he met Slid Verma on the third day of the notice It is thus clear that the defendant entered into an agreement to sell with

the plaintiff qua plot measuring 100 sq. yards dated 10.9.1980 for a consideration of Rs. 4000/-. Plaintiff paid him Rs. 500/- as earnest money. Defendant was to execute sale deed within one month of the receipt of permission to sell that plot from the competent authority Urban Land Ceiling, Ludhiana. Competent authority Urban land Ceiling, Ludhiana, gave permission, which is dated 2.2.1981 to Babu Singh to sell this plot in favour of Rakha Singh. Under the terms of the agreement to sell, Babu Singh was duty bound to inform Rakha Singh about the obtaining of permission by him from the competent authority - Urban Land Ceiling, Ludhiana. So that he could pay the remaining sale money and obtain sale deed. As per Shri K.L. Verma, Advocate, PW-2, he served notice dated 27.2.1981 Ex.D1 acting for Babu Singh defendant informing Rakha Singh about the receipt of permission by him to sell this plot. Through notice Ex.D1 Rakha Singh was informed that sale deed shall be executed within one month of 2.2.1981 i.e. upto 1.3.1981. As per K.L. Verma Advocate PW- on receipt of notice Ex.D1, Rakha Singh came present in his office on 2.3.1981, which was the last day for the execution of the sale deed. Babu Singh however, did not turn up to receive the sale money and execute sale deed in favour of Rakha Singh. Shri J.B. Bhardwaj, Advocate (PW-1) served notice copy of which is Ex.P1 upon the plaintiff dated 13.3.1981 calling upon him to receive sale money from the plaintiff and execute sale deed in his favour within a period of seven days from the receipt of this notice. It was on 18.3. 1981 that the suit was filed by Rakha Singh. Defendant got permission on 2.2.1981 from the competent authority, Urban Land Ceiling, Ludhiana, to sell this plot. After 2.2.1981 defendant did not take any steps to call upon the plaintiff to be ready to pay him the sale money and obtain sale deed from him. It was on 27.2.1981 that the defendant got notice Ex.D1 served upon the plaintiff through Shri K.L. Verma, Advocate. On 2.3. 1981 Rakha Singh received intimation dated 27.2.1981. On 2.3.1981 plaintiff withdrew the amount and approached Shri K.L. Verma Advocate but the defendant did not turn up. On 2.3.1981 the plaintiff got served notice to the defendant through Shri K.L. Verma Advocate for getting the sale deed executed and registered. Babu Singh defendant neither contacted Rakha Singh plaintiff nor Shri K.L. Verma Advocate for fixing a date for getting sale deed executed and registered. On 13.3.1981, the plaintiff got served notice to the defendant through Shri J.B. Bhardwaj, Advocate, for getting the sale deed executed and registered. It

was submitted that all this shows that the plaintiff was ready and willing to pay the remaining sale consideration and obtain the sale deed. It was submitted by the learned counsel for the appellant that he was always ready and willing to pay the remaining sale money and get sale deed from the respondent and it was the respondent who prevaricated and defaulted.

11. Learned counsel for the respondent on the other hand submitted that he was not bound to receive the remaining sale money from the appellant after 1.3.1981 and after 1.3.1981 the appellant had lost his right to ask him to convey him this plot. It was also submitted by him that the appellant did not have the requisite money with him. It was submitted that the appellant has failed to show the withdrawal of any money by him from any bank. It was also submitted by him that the plaint has not been drawn up in accordance with the requirements of Form 47 and 48 of First Schedule to the Code of Civil Procedure. It was submitted that in a suit for specific performance' it is incumbent upon the plaintiff not only to set out the agreement on the basis of which he claims specific performance in all its details, he must go further and plead that he has applied to the defendant specifically to perform the agreement on his part but the defendant has not done so. Plaintiff has been and is still ready and willing, specifically to perform the agreement on his part of which the defendant has had notice. It was submitted that it is prescribed in Form No. 48 that the plaintiff tendered money to the defendant on a particular date and demanded the transfer of the property by a sufficient instrument. It was submitted that in this case, the plaintiff has failed to make any such averment in the plaint. It was submitted that he has also not made any such statement in conformity with the said plea. It was submitted that the plaintiff had failed to plead and prove the requirement of Form No. 47 and 48 of the First Schedule to Code of Civil Procedure. In support of this submission that the plaintiffs suit must fail because he has failed to plead and prove the requirements of Form 47 and 48 of the first schedule to the Code of Civil Procedure, he has drawn my attention to *Dhanna Singh v. Malkiat Singh and Anr.*, (1983)85 PLR 275. We have to go by the substance and not the form of the plaint. In the plaint, the plaintiff has clearly averred that after the defendant conveyed him information about the receipt of permission by him from the competent authority Urban Land Ceiling to sell this plot, he requested him several times to execute to sale deed in

his favour but in vain, he has also averred that he has always been ready and willing to perform his part of the contract and he contacted the defendant several times with the requisite balance consideration and also the necessary amount required for purchase of the stamp but the defendant made evasive reply and refused to execute the sale deed on 17.3.1981. There is, thus, substantial compliance of the requirements of form 47 and 48 of the first Schedule to the Code of Civil Procedure. In *Bhag Ram and Ors., v. Pala Singh and Ors.* (1995-3)111 PLR 708), it was held that where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in Court any money except when so directed by the Court.

12. It was submitted by the Id. counsel for the respondent that the plaintiff has stated that he withdrew money from bank. He has however not produced any pass book to show that on that day he had any amount in the bank and if so, he had that much amount in the bank. After 1.3.1981 Babu Singh had not served any notice upon Rakha Singh telling him that he was not liable to execute sale deed in his favour because the sale deed could be got executed from him only on or before 1.3.1981 and he was not bound to execute any sale deed in his favour after 1.3.1981 as time was of the essence of the contract. In my opinion, time was not of the essence of the contract in this case. Plaintiff could call upon the defendant to execute sale deed in his favour even after 1.3.1981. Plaintiff filed this suit for specific performance of the contract on 18.3.1981. In the agreement to sell the stipulation that the defendant shall execute sale deed within one month after the receipt of the permission from the Urban Land Ceiling Authority, Ludhiana, intended not to defeat the plaintiffs right to ask for the specific performance after 1.3.1981 but intended only this much that the sale deed be obtained soon after the receipt of permission by the defendant by the competent authority - Urban Land Ceiling Authority, Ludhiana, so that the transaction did not keep lingering for an indefinite period. In cases of contracts touching immovable property by the stipulation that it shall be performed till such and such date is usually not intended that after that date no specific performance would be had, unless the parties intended through incorporating specifically the stipulation that after that date specific performance shall not be had. In this case to my mind date 1.3.1981 was not term of the contract. It was not made term of the contract specifically by the

parties to the contract. All that is mentioned is that the defendant will apply to the competent authority - Urban Land Ceiling Authority, Ludhiana, for permission to sell this plot. After he secures permission for the sale for this plot from him, he will inform the plaintiff that he has received permission for the sale of this plot from the competent authority - Urban Land Ceiling Authority, Ludhiana, and that he should be ready with the requisite money to be able to obtain sale deed from him. After the plaintiff got information from him that he had received the necessary permission from the Urban Land Ceiling Authority, he went to Shri K.L. Verma, Advocate informed the defendant that Rakha Singh is present in his office, ready to obtain sale deed from him, and he should come to his office on any working day and fix date for the execution of the sale deed. Defendant did not receive this notice as he was found to be residing at Ludhiana and not at village Ramgarh Sardaran, Sub Tehsil Paya. After the defendant had obtained permission from the Urban Land Ceiling Authority, on 2.2.1981, the defendant could call upon the plaintiff through registered notice that he should be ready with the requisite sale money on such and such date in the office of the Sub Registrar, Ludhiana, so that stamp could be purchased and sale deed executed and got registered. If the defendant wanted to test the plaintiff's capacity to purchase this land, he could call upon him when he appeared before the Court on 16.5.1981 that he should be ready with the sale money on such and such date in the office of the Sub Registrar and that he would execute the sale deed. It would bear repetition that in cases touching contract of immovable property time is usually not of the essence of the contract. Parties can make time as of the essence of the contract through specifically inserting this clause in the agreement. Babu Singh defendant was served on 9.4. 1981. He could appear before the Court immediately thereafter and request the Court that the plaintiff be called upon to be ready with the requisite sale money on such and such date and that he would execute the sale deed. He did not do so.

13. It was submitted by the learned counsel for the defendant that the plaintiff has not been able to prove that on 1.3.1981 or 2.3.1981 he had the requisite money with him. Suffice it to say plaintiff has stated that he had account in the State Bank of India, which is situated near the Courts. Defendant could summon some bank official to state¹ whether he had or he did not have any account in the bank and if

he had any account in the bank he had that much money in his account. It was submitted by the learned counsel for the respondent :hat the plaintiff has no where averred in the plaint that he had money in the bank and that he had withdrawn money from the bank. He has not disclosed the account number. Suffice it to say these are matters of evidence and these are not matters to be pleaded. He has pleaded that he has been ready and is still ready and willing to perform his part and he contacted the respondent several times with the sale consideration and also with the money necessary for the purchase of the stamps, but the defendant kept putting him off. It was also submitted by him that there is no mention in the plaint that he even went to the office of Sh. K.L. Verma, Advocate. He is not aware of the location of the office of Sh. K.L. Verma, Advocate nor is he aware of the location of the office of Sub Registrar. Suffice it is to say Shri K.L. Verma, Advocate has stated that he was present in his office with him on 2.3.1981 and on 2.3.1981, he sent information to Babu Singh requiring him to be present in his office on any working day and fix date for the execution of the sale deed.

14. It was submitted by the learned counsel for the respondent that the learned Addl.Distt. Judge, has found as a fact that the plaintiff was not possessed money to be able to obtain sale deed from the defendant and this finding of fact should not be interfered with by this Court sitting in second appeal. Learned Addl. Distt. Judge, has observed that in this case the plaintiff has stated that he went with the balance sale consideration to Shri Verma but Shri Verma has not stated that the plaintiff had money with him when he came to him. Learned Addl. Distt. Judge, has observed that in notice Ex.P-3, it has nowhere been stated that Shri Rakha Singh had the requisite money with him. Suffice it to say in notice Ex.P-3. it is mentioned that Shri Rakha Singh is present and is ready to get the sale deed executed. How could he be ready to obtain sale deed if he did not have the requisite money with him? Subordinate Judge had arrived at this finding on consideration of evidence that Rakha Singh had the requisite money with him and was ready and willing to obtain sale deed. Finding of fact arrived at without consideration of the entire pros and cons of the case can be interfered with by this court in second appeal. Subordinate Judge, who decided the suit recorded the evidence. He had thus occasion to have a look at the demeanour of the witnesses and form his own impressions about their truthfulness or otherwise. Additional Distt. Judge, should

have gone after the weight of evidence. He should not have picked up one sentence from here and one sentence from there in the statements of the witnesses and then recorded a finding of fact. He should have gone through the statements of the witnesses in their entirety and then formed his own impressions about the probabilities or improbabilities of each other's version. Appreciation of evidence in a manner that it leads to mis-carriage of justice would, be an error of law, which the High Court has the duty to correct at the appellate stage. For the reasons given above, this Regular Second Appeal has to be allowed. It is accordingly allowed. In consequence the judgment and decree of the Lower Appellate Court are set aside and those of the trial Court are restored. The defendant is directed to execute sale deed within three months in favour of the plaintiff. If the defendant fails to execute the sale deed within three months in favour of the plaintiff, the plaintiff shall be able to compel him through the process of the Court to execute sale deed in his favour. On receipt of the remaining sale money i.e. Rs. 4000/- minus Rs. 500A = 3500/-. In view of the peculiar facts, I would leave the parties to bear their own costs through out.