

(2001) 09 MP CK 0023
In the Madhya Pradesh High Court
Case No : First Appeal No. 191/90

Hazarilal (deceased) through L.Rs. Ashok Kumar Adalia and Others APPELLANT

Vs

Munnibai and Others RESPONDENT

Date of Decision : 22-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Specific Relief Act, 1963 — Section 16

Citation : (2001) ILR (MP) 1013 : (2001) 4 MPHT 243 : (2002) 2 MPLJ 17

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : T.C. Naik and Divesh Jain, for the Appellant; Ravish Agarwal and Ajay Ojha, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is defendant's first appeal u/s 96, CPC challenging the decree for specific performance of contract for sale of a house.

It is no longer in dispute that defendant Hazarilal by Ikrarnama dated 17-12-1979 (Ex. P-1) agreed to sell two blocks of house in 8th lane, Itarsi to the plaintiffs for Rs. 23,000/- and received an amount of Rs. 9,000/- from them on that date. The plaintiff No. 1 was living in one of the blocks as a tenant of the defendant at a monthly rent of Rs. 54/-. A cheque for Rs. 6,000/- which was to be received by the plaintiff No. 1 from the Labour Court was to be delivered to the defendant within a week. The balance amount of Rs. 8,000/- was to be paid on or before 30-6-1980 and the sale-deed was to be executed and registered on that date. The time was mutually extended upto 5-7-1980 but on that date the sale-deed was not executed. There was exchange of various notices between the parties.

The plaintiffs case is that they were always ready and willing to perform their part of the contract. They gave the cheque for Rs. 6,000/- to the defendant within a week of the sale of agreement but he did not encash it. They expressed their readiness and willingness to pay the amount of Rs. 14,000/- to the defendant by their notices dated 22-6-1980 (Ex. P-11) and dated 29-6-1980 (Ex. P-12) and called upon him to execute the sale-deed. The defendant sent the reply dated 1-7-1980 (Ex. P-7) asking the plaintiffs to buy the stamp papers and stating therein that he is prepared to execute the sale-deed on 5-7-1980. The plaintiffs purchased the stamp papers worth Rs. 2070/- on 4-7-1980 and waited for the defendant in the office of the Sub-Registrar on 5-7-1980 but he did not turn up. The plaintiffs again sent the notices dated 6-7-1980 and dated 18-7-1980 (Ex. P-18) but he did not respond. The plaintiffs returned the stamp papers. Again he sent the notice dated 20-1-1981 (Ex. P-19) to the defendant and filed the present suit. The plaintiffs have made averment in the plaint that they were always and are still ready and willing to perform their part of the contract i.e. payment of Rs. 14,000/- but the defendant is declining to perform his part of the contract.

The defendant has denied the receipt of the cheque of Rs. 6,000/- from the plaintiffs. He has pleaded that they had no money to pay and committed breach of the contract. The defendant was present in the office of the Sub-Registrar on 30-6-1980 and 5-7-1980 but the plaintiffs did not come there as they had no money. The time was the essence of the Contract. It is also pleaded that the property in dispute is the joint family property of the defendant and his sons and the defendant alone could not sell it as there was no legal necessity.

The Trial Court after considering the documentary and oral evidence held that the plaintiffs were always ready and willing to perform their part of the Contract and the defendant committed its breach. It has also been held that the property in dispute is not the joint family property of the defendant and his sons.

In this appeal the only point which has been debated and which arises for determination is whether the plaintiffs were ready and willing to perform their part of the Contract.

Defendant Hazarilal (D.W. 1) has admitted in Examination-in-Chief itself in Para 3 that he was given the cheque for Rs. 6,000/- on 18-12-1979 as per receipt Ex. P-22. He returned this cheque to the plaintiff No. 1 and did not ask her to pay the amount of the cheque as he thought that it can be paid up to 30-6-1980. As per agreement Ex. P-1 this cheque was to be given by the plaintiff No. 1 to the defendant within a week and she complied with that term of the agreement.

The next step to be taken by the plaintiff No. 1 was payment of the balance consideration. From the notices dated 9-4-1980 (Ex. P-10), dated 22-6-1980 (Ex. P-11) and dated 29-6-1980 (Ex. P-12) sent by the plaintiff No. 1 to the defendant it is clear that she was very anxious to get the sale deed executed on payment of the balance consideration. In the notice dated 29-6-1980 (Ex. P-12)

she has clearly mentioned that the money is available with her. Munnibai (P.W. 1) has deposed that she had Rs. 14,000/- with her and she had purchased the stamp papers worth Rs. 2070/- on 4-7-1980 as per notice dated 4-7-1980 (Ex. P-15) as demanded by the defendant by his notice dated 1-7-1980 (Ex. P-7). The document Exs. P-23 and 24 go to prove that the stamp papers were actually purchased by the plaintiff No. 1 on 4-7-1980 and when these were not used an amount of Rs. 1,863/- was refunded to the plaintiff No. 1 after deduction of Rs. 207/-. She has further deposed that she was present in the Office of the Sub-Registrar on 5-7-1980 with the stamp papers and the amount of Rs. 14,000/- but the defendant did not come to that Office. Her testimony has been corroborated by her brother Nand Kishore (P.W. 5). He was with her in the Office of the Sub-Registrar from 10 A.M. to 3 P.M. on 5-7-1980 but the defendant did not reach there. On the other hand Hazarilal (D.W. 1) has deposed that he was in the Office of the Sub-Registrar on 5-7-1980 but the plaintiffs did not come. The plaintiff No. 1 in her notice dated 18-7-1980 (Ex. P-18) has stated that she was present on 5-7-1980 in the Office of the Sub-Registrar with the balance consideration but the defendant did not come to that Office. This notice has not been replied by the defendant. The subsequent conduct of the plaintiff No. 1 substantiates her evidence. On careful scrutiny of the evidence of both the sides it is found that the plaintiffs' evidence on this point is more trustworthy. The very fact that she had purchased the stamp paper worth Rs. 2070/- indicates that she was ready and willing to perform her part of the Contract and she was having Rs. 14,000/- with her when she came to the Office of the Sub-Registrar on 5-7-1980 but the defendant did not come to that Office on that date. The finding of the Trial Court on this point is confirmed. The defendant committed the breach of the Contract.

Even in face of the evidence discussed above and clear recital in the plaint the learned counsel for the appellant has argued that the plaintiffs were not ready and willing to perform their part of the Contract. This argument has no substance and is full of rhetorics only. It has been found as a fact that the plaintiff No. 1 had purchased the stamp papers and was ready with the balance consideration in the Office of the Sub-Registrar on 5-7-1980. It is explicit that she was ready and willing to perform her part of the Contract. The defendant did not attend that Office on that day and thus avoided execution of the sale-deed. She had the funds with her and that could be paid to the defendant on his signing the sale-deed. In similar circumstances the Supreme Court has observed in *Sukhbir Singh and others Vs. Brij Pal Singh and others*, , that it is not necessary for the plaintiff to always carry money with him from the date of the suit to the date of decree.

In *Syed Dastagir Vs. T.R. Gopalakrishnasetty*, , it has been held that "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 mechanical production of the exact words of statute is to insist for the

form rather than essence. So absence of form cannot dissolve an essence if already pleaded". Similarly in Motilal Jain Vs. Smt. Ramdasi Devi and Others, , the Supreme Court has again observed that an averment of readiness and willingness in the plaint is not a mathematical formula which should only be in specific words. If the averments in the plaint as a whole do clearly indicate the readiness and willingness of the plaintiff to fulfil his part of the obligations under the contract which is subject-matter of the suit, the fact that they are differently worded will not militate against the readiness and willingness of the plaintiff in a suit of specific performance of contract for sale.

In the present case, the prior and subsequent conduct of the plaintiff No. 1 shows that she was always ready and willing to perform her part of the Contract. She has expressed her readiness and willingness in the plaint in unequivocal words. She has deposited the amount of Rs. 14,000/- in the Court immediately on passing of the decree for specific performance of Contract. The impugned decree is unassailable.

The appeal is dismissed.

First Appeal dismissed.