



2025 INSC 850

Non-reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 2849 OF 2015

KRISHAN GOPAL

.....**Appellant**

VERSUS

GURMEET KAUR (DEAD), THROUGH LRs., & ORS. Respondents

with

**CIVIL APPEAL NO. 9495 OF 2025
(@ SLP (C) NO. 23476 OF 2016)**

JUDGMENT

SANJAY KUMAR, J

1. Leave granted in SLP (C) No. 23476 of 2016.
2. These appeals pertain to an extent of agricultural land admeasuring 73 Kanals 12 Marlas, i.e., over 9 acres, comprised in Khewat Khatauni Nos. 75/102, 145/275, 268/414 and Khasra Nos. 106/2(9K-12M), 3(8K), 4(8K), 5(8K), 107/1(8K), 2(8K), 9(8K), 10(8K) and 11(8K) situated in Mauja Dada Hadbast No. 496, Tehsil and District Hoshiarpur, Punjab. This land (hereinafter, 'the suit land') belonged to Krishan Gopal, the appellant in Civil Appeal No. 2849 of 2015. He entered into Agreement to Sell dated 08.10.2001 with Gurmeet Kaur and her two sons, Arvinder Singh and Kiranjit

Singh. Thereunder, Krishan Gopal agreed to sell the suit land to them for a total consideration of ₹10,00,000/-. A sum of ₹1,00,000/- was received by Krishan Gopal as earnest money and he undertook to execute a sale deed in their favour by 31.01.2002, after receiving the balance consideration of ₹9,00,000/-. The Agreement also contained the recital that Krishan Gopal, before execution of the sale deed, would obtain the possession of the suit land to the satisfaction of Gurmeet Kaur and her sons and hand over possession to them at the time of execution of the sale deed. This recital clearly implied that the possession of the suit land was not with Krishan Gopal at that time.

3. Thereafter, Gurmeet Kaur and her sons, Arvinder Singh and Kiranjit Singh, instituted Suit No. 508 of 20.04.2002 before the learned Civil Judge, Senior Division, Hoshiarpur, seeking specific performance of the aforesated Agreement to Sell dated 08.10.2001. In their suit plaint, they claimed that they were put in possession of the suit land by Krishan Gopal in November, 2001, and had spent about ₹8,00,000/- to make the land cultivable and fit for agriculture. They asserted that they were always ready and willing to perform their part of the contract by paying the remaining sale consideration to Krishan Gopal and had approached him on 25.01.2002 in that regard but he did not turn up on 31.01.2002 at the office of the Sub-Registrar, Hoshiarpur, to execute and register the sale deed in their favour. They, accordingly, prayed for a decree for the specific performance of the suit agreement by directing Krishan Gopal to execute and register the sale deed in their favour.

They also sought a consequential permanent injunction restraining him from interfering with their peaceful possession over the suit land. In the alternative, they prayed for a decree for recovery of ₹10,00,000/- in their favour along with costs.

4. In his written statement, Krishan Gopal admitted the execution of the Agreement to Sell dated 08.10.2001 but contested the readiness and willingness on the part of Gurmeet Kaur and her sons to pay the balance consideration of ₹9,00,000/-. He claimed that, as they had failed to pay the amount prior to 31.01.2002, he got issued legal notice dated 11.03.2002 calling upon them to do so and get the sale deed executed and registered within 15 days. He asserted that they intentionally did not accept the said notice and chose to file the suit. He, accordingly, prayed for the dismissal of the suit. Notably, this written statement was filed in December, 2002.

5. Gurmeet Kaur and her sons, the plaintiffs, examined three witnesses, including Arvinder Singh, plaintiff No.1, and adduced documentary evidence. Krishan Gopal, the defendant, examined four witnesses, including himself, and he also marked documents in evidence.

6. By judgment dated 21.10.2008, the learned Civil Judge, Senior Division, Hoshiarpur, decreed the suit. Therein, she opined that the readiness and willingness of the plaintiffs was to be seen from the evidence adduced and it was not necessary for them to produce the balance sale consideration as their financial position was shown to be quite sound and they had sufficient balances in their bank accounts, as evidenced by their exhibited statements

of accounts. Krishan Gopal's inconsistent stands about going to the Sub-Registrar's office at Hoshiarpur on 31.01.2002 also weighed with the learned Judge, as he had stated in one breath that there was no necessity for him to go there but, thereafter, he claimed that he attended the said office at 10.30 am on that day. Significantly, during the course of the trial, Arvinder Singh, who deposed as PW-2, admitted that one Arun Kalia had filed a case for correction of the Khasra Girdwari before the Tahsildar, Hoshiarpur, against Krishan Gopal, claiming to be in possession of the suit land, and that they, the plaintiffs, had filed an application in April, 2002, seeking to be impleaded therein, but without success. He claimed ignorance of the result of those proceedings. It is, however, an admitted fact that the Tahsildar-cum-Assistant Collector, Grade II, Hoshiarpur, passed order dated 22.05.2002 in that case holding that it was proved that Arun Kalia was in possession of the suit land. He, accordingly, directed correction of the Khasra Girdwari for the year 1998-99 by showing Arun Kalia therein as the cultivator. Krishan Gopal relied on the aforesaid order dated 22.05.2002 to attack the averment of the plaintiffs in their plaint that they had been put in possession. The plaintiffs, thereupon, pleaded that even if they had failed to claim the relief of delivery of possession, the Court could *suo motu* grant such relief. Accordingly, the learned Judge directed the plaintiffs to pay the balance sale consideration within two months, whereupon Krishan Gopal, the defendant, was directed to execute a sale deed in their favour. The plaintiffs were also held entitled to delivery of possession of the suit land.

7. Aggrieved by the decretal of the suit, Krishan Gopal filed Civil Appeal No. 78 of 05.12.2008 before the learned Additional District Judge, Hoshiarpur. However, this appeal came to be dismissed, *vide* judgment dated 01.12.2011.

8. Thereupon, Krishan Gopal filed a second appeal in R.S.A. No. 1219 of 2012 before the High Court of Punjab and Haryana at Chandigarh. However, this appeal also met with the same fate when it was dismissed on 29.03.2012. The High Court recorded that, in the light of the concurrent findings of fact that the plaintiffs were always ready and willing to perform their part of the contract, it had no hesitation in holding that no substantial question of law arose in that context for consideration. The High Court, accordingly, non-suited Krishan Gopal at the threshold. This judgment is subjected to challenge before us in Civil Appeal No. 2849 of 2015, arising out of SLP (C) No. 15898 of 2012. By order dated 09.05.2012 passed therein, this Court directed *status quo* obtaining as on that date to be maintained until further orders.

9. While so, in February, 2012, after the dismissal of Krishan Gopal's Civil Appeal No. 78 of 2008 on 01.12.2011 by the learned Additional District Judge, Hoshiarpur, the plaintiffs instituted execution proceedings. Thereupon, Arun Kalia and two others filed an application therein under Section 47 CPC read with Order XXI, Rule 97 CPC, raising objections. They alleged that the judgment and decree dated 21.10.2008 passed in favour of the plaintiffs was a result of collusion between the decree holders and the judgment debtor and was, therefore, not binding on them. According to them, the suit land was

given to Arun Kalia by Krishan Gopal through an oral agreement in January, 1998, to make it cultivable at his own expense, whereby he was entitled to cultivate the suit land for a period of 5 years without paying any rent and, thereafter, he would be treated as a tenant over the suit land. Arun Kalia claimed that his own land adjoined the suit land and that he spent a huge amount to make the suit land cultivable. He asserted that, after he did so, Krishan Gopal tried to forcibly take possession of the same, constraining him to file an application before the Tahsildar for correction of the Khasra Girdwari. He relied upon the order dated 22.05.2002 passed in the said proceedings, recording his name as the cultivator in possession of the suit land, and claimed that the plaintiffs had instituted the suit on the strength of a fabricated agreement so as to obtain a decree in collusion with the judgment debtor, simply to defeat his rights. He further claimed that Krishan Gopal had, in fact, sold the suit land to him for ₹11,50,000/- under two registered sale deeds dated 29.05.2002, without disclosing the pendency of the suit proceedings. He claimed that he had sold the suit land thereafter to the other two applicants, Krishan Dev Pathak and his wife, Kamla Dev Pathak, for ₹60,00,000/- under two registered sale deeds dated 04.04.2012. The applicants, accordingly, prayed for rejection of the execution petition, by declaring that the decree sought to be executed was a collusive and fraudulent one.

10. However, by order dated 08.07.2016, the Executing Court rejected the petition filed by Arun Kalia and the others. Therein, the Executing Court noted

that there was no evidence of the suit being a collusive and fraudulent one, as it had been hotly contested for over six years. Further, the judgment debtor had, thereafter, not only filed an appeal before the High Court but after failing therein, he also carried the matter to the Supreme Court. The Executing Court noted that the Tahsildar's order dated 22.05.2002 was also disclosed before the Trial Court and there was no suppression in that regard. The Court concluded that Krishan Gopal's sale deeds dated 29.05.2002 in favour of Arun Kalia and the sale deeds executed by Arun Kalia in favour of the other applicants on 04.04.2012 were hit by Section 52 of the Transfer of Property Act, 1882, and the doctrine of *lis pendens* and, therefore, Arun Kalia and the two others, being transferees *pendente lite*, could not obstruct the execution of the decree.

11. Aggrieved thereby, Arun Kalia and the other two applicants filed Civil Revision No. 4658 of 2016 before the High Court of Punjab and Haryana at Chandigarh. This Civil Revision was dismissed by a learned Judge of the High Court on 23.07.2016. The learned Judge observed that the petitioners fairly conceded that they were transferees *pendente lite* and had preferred objections in that capacity, as they were claiming under the judgment debtor, and were not third parties. Their Revision was, therefore, held to be maintainable but, noting the observations made by the Executing Court in support of its conclusion that the suit proceedings were neither collusive nor fraudulent, the learned Judge held that it was not required of the Executing Court to frame separate issues and allow parties to adduce evidence thereon.

Holding that such a course of action was not necessary in the absence of the objectors showing a *prima facie* case in their favour, the learned Judge rejected the contention that the order was liable to be set aside so as to invite a fresh decision on their objections. The Civil Revision was, accordingly, dismissed *in limine*. This order was assailed by Arun Kalia, Krishan Dev Pathak and Kamla Dev Pathak, by way of Special Leave to Appeal (C) No. 23476 of 2016. By order dated 10.08.2016 passed therein, this Court directed *status quo* to be maintained and tagged it with Civil Appeal No. 2849 of 2015.

12. This being the factual backdrop, we may note certain crucial aspects. The Agreement to Sell was admittedly executed on 08.10.2001 and the sale deed pursuant thereto was to be executed by 31.01.2002. The plaintiffs asserted that they were ready and willing to pay the balance consideration on that day and get the sale deed executed and registered but the defendant failed to turn up at the office of the Sub-Registrar, Hoshiarpur. The inconsistent stands of Krishan Gopal as to whether or not he attended the Sub-Registrar's office on that day must weigh against him. The financial position of the plaintiffs, having been found to be sound by the Trial Court as well as the First Appellate Court on the strength of their property holdings and the balances in their bank accounts, that issue is no longer open to question before us.

13. Well settled is the legal proposition that, to prove his readiness and willingness, a purchaser need not necessarily produce the money or carry it with him or vouch a concluded scheme of finance. [See ***Nathulal vs.***

Phoolchand¹; and ***Sukhbir Singh & Ors. vs. Brij Pal Singh & Ors.***²]. It is equally well settled that readiness and willingness is to be inferred from the conduct of the parties. [See ***His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar***³; and ***Bibi Jaibunisha vs. Jagdish Pandit & Ors.***⁴].

14. Further, we must also note that, though Krishan Gopal filed his written statement in the suit in December, 2002, he did not disclose therein that Arun Kalia was a tenant in possession of the suit land; that he had secured the order dated 22.05.2002 confirming that fact; and that he, Krishan Gopal, had executed two registered sale deeds on 29.05.2002 in Arun Kalia's favour. It was only during the course of the trial that he placed reliance on the order dated 22.05.2002 passed by the Tahsildar, Hoshiarpur, certifying that Arun Kalia was in possession of the suit land. Even at that stage, Krishan Gopal did not disclose that he had executed two registered sale deeds on 29.05.2002 in favour of Arun Kalia. As the said sale deeds were admittedly executed after the institution of the suit for specific performance by the plaintiffs, they were hit by Section 52 of the Transfer of Property Act, 1882, and the doctrine of *lis pendens* and did not confer legal and valid title upon him. In turn and in consequence, the two sale deeds executed on 04.04.2012 by Arun Kalia in favour of the two others, who are allegedly his own relations, must also suffer the same fate.

¹ (1969) 3 SCC 120

² (1997) 2 SCC 200

³ (1996) 4 SCC 526

⁴ (1997) 4 SCC 481

15. Arun Kalia alleged collusion and fraud in the filing of the specific performance suit but, on the other hand, we find that it is his so-called oral agreement of tenancy with Krishan Gopal that smacks of collusion and fraud. Krishan Gopal supposedly agreed to put him in possession to enjoy and cultivate the suit land for a period of five years without even paying any rent and continue thereafter as a regular tenant! This self-serving oral arrangement does not inspire confidence. Further, there is no explanation forthcoming as to why Krishan Gopal would suddenly execute sale deeds in favour of Arun Kalia, if there was already an oral agreement of tenancy between them. The other self-serving story of Krishan Gopal turning against Arun Kalia, constraining him to approach the Tahsildar, Hoshiarpur, also does not jell with the willing and voluntary execution of sale deeds by Krishan Gopal in Arun Kalia's favour immediately thereafter. Last, but not the least, Arun Kalia was obviously aware of the claim of Gurmeet Kaur and her sons as they unsuccessfully tried to get impleaded in April, 2002, in the proceedings initiated by him before the Tahsildar, Hoshiarpur, but he chose to silently remain in the wings till execution proceedings were instituted by Gurmeet Kaur and her sons on the strength of the decree secured by them.

16. The plaintiffs' conduct was not entirely blameless either as they asserted in the suit plaint that they were put in possession, contrary to the recital in the Agreement to Sell dated 08.10.2001. Further, by the date of institution of their suit on 20.04.2002, they had already filed an application for impleadment on 09.04.2002 in the proceedings initiated by Arun Kalia before

the Tahsildar, Hoshiarpur, which clearly indicates that they knew of the existence of Arun Kalia and his claim of possession as the cultivator of the suit land. Despite the same, an assertion was made in the suit plaint, to the contrary, that the plaintiffs were put in possession of the suit land in November, 2001, and that they spent ₹8,00,000/- to improve it. However, faced with the order dated 22.05.2002, produced by Krishan Gopal during the trial, the plaintiffs chose to modify their stand and pleaded that the Trial Court could *suo motu* grant them the relief of possession while decreeing their suit for specific performance. The Trial Court accepted this plea and directed delivery of possession of the suit land to them after execution and registration of the sale deed.

17. Section 22 of the Specific Relief Act, 1963, deals with the Court's power to grant the reliefs of possession, partition, refund of earnest money, etc., while dealing with specific performance of contracts. Section 22(1)(a) states that a person suing for specific performance of a contract for transfer of immovable property may ask for possession also in addition to such performance. In this regard, we may refer to ***Babu Lal vs. Hazari Lal Kishori Lal & Ors.***⁵. It was held therein that, in appropriate cases of specific performance of contracts of sale of immovable property, the Court can order delivery of possession of the property even if it has not been specifically asked for. It was observed that an order for delivery of possession without a corresponding amendment in the plaint would only be a mere omission which

⁵ (1982) 1 SCC 525

would not be fatal to the relief of possession under Section 22 of the Specific Relief Act, 1963, and more so, when the order is being made in furtherance of the cause of justice. Therefore, the failure on the part of the plaintiffs to amend their suit prayer, so as to seek the relief of delivery of possession, cannot be held against them. At best, it was an omission on their part which was not fatal.

18. It appears that the balance sale consideration of ₹9,00,000/- was deposited before the Executing Court by the plaintiffs in February, 2012. However, we are informed that there has been an astronomical rise in the prices of lands in the vicinity of the suit land. Even if that be so, mere escalation of land prices would not be a reason, by itself, to deny the equitable relief of specific performance once sufficient grounds are made out for granting such relief [See ***Kanshi Ram vs. Om Prakash Jawal & Ors.***⁶ and ***Gobind Ram vs. Gian Chand***⁷].

19. Given the dubious conduct of Krishan Gopal and his so-called tenant, Arun Kalia, we have no doubt that they made collusive efforts to defeat the rights of the plaintiffs and tried to thwart their claim by coming up with a fabricated and false oral agreement of tenancy. Not content therewith, they also followed it up with registered sale transactions, which were nevertheless hit by Section 52 of the Transfer of Property Act, 1882 and the doctrine of *litis pendens*. The claims of Arun Kalia and his cohort, therefore, have no legs to stand upon. Krishan Gopal also cannot maintain a plea at this stage that the

⁶ (1996) 4 SCC 593

⁷ (2000) 7 SCC 548

plaintiffs are not entitled to specific performance of their suit agreement dating back to the year 2001 by citing escalation of land prices.

20. However, balancing the interests of the parties, given the fact that the suit land is a fairly large extent of over 9 acres, and also the cause of justice, we are of the opinion that, in addition to the balance sale consideration of ₹9,00,000/- deposited with the Executing Court along with the interest accrued thereon, if any, Krishan Gopal should be paid a further sum of ₹25,00,000/- towards the sale consideration. This amount shall be deposited by the plaintiffs or their legal representatives, as the case may be, with the Executing Court within 12 weeks from the date of receipt of a certified copy of this judgment. Thereupon, the Executing Court shall proceed with the matter and pass appropriate orders to give effect to the decree dated 21.10.2008 in Suit No. 508 of 20.04.2002.

21. The two registered sale deeds dated 29.05.2002 executed by Krishan Gopal in favour of Arun Kalia and, in consequence, the two registered sale deeds dated 04.04.2012 executed by Arun Kalia in favour of Krishan Dev Pathak and Kamla Dev Pathak in relation to the suit land are declared null and void. The Registry shall communicate a copy of this judgment to the jurisdictional Sub-Registrar to enable him/her to make necessary corrections in the relevant records, in terms of Section 31(2) of the Specific Relief Act, 1963.

The appeals are disposed of in the above terms.

Status quo orders, granted in both cases, shall stand vacated.

In the circumstances, parties shall bear their own costs.

....., J.
Sanjay Kumar

....., J.
K.V. Viswanathan

July 15, 2025
New Delhi.

