

PETITIONER:
RAM AWADH (DEAD) BY LRS. & ORS.

Vs.

RESPONDENT:
ACHBALBAR DUBEY & ANR.

DATE OF JUDGMENT: 01/02/2000

BENCH:
S.P.Bharuchan, N.S.Hegde, Ruma Pal

JUDGMENT:

BHARUCHA. J:

This appeal stands referred to a Bench of three Judges because the two learned Judges who heard it earlier found difficulty in following the judgment of a Bench of two learned Judges in *Jupra. ^Sinah & Anr. vs. LabbSinah & Ors.* [(1995) 2 SCC 31].

It is not necessary to go into any great detail insofar as the facts are concerned. The appellants before us are the legal representatives of a subsequent purchaser of certain property. They were defendants to a suit by one Bachna for specific performance of an earlier agreement to sell that property to her. She had not pleaded in her plaint that she was ready and willing to perform her part of the agreement, but that plea was later introduced by way of an amendment. The question now is in regard to whether she or her legal representatives were, in fact, at all material times ready and willing to perform their part of

that agreement. The first appellate court declined to permit the present appellants to plead and contend that Bachna and her legal representatives were never prepared to perform their part of the agreement and, for this purpose, it relied upon the judgment of this Court in the case of *Jugraj Singh*. The High Court, in second appeal, affirmed that view.

In *Jugraj Singh's* case, upon substantially similar facts, this Court noted Section 16(c) of the Specific Relief Act and the dictum of the Privy Council in *Ardeshir H. Mama vs. Flora Sasson* (55 Ind App 360) that in a suit for specific performance the averment of readiness and willingness on the plaintiff's part, upto the date of the decree, was necessary. It also noted that this Court in *Somathinayagam Pillai vs. Palaniswami Nadar* [(1967) 1 SCR 227] had held that it was for the plaintiff in a suit for specific performance "to establish that he was, since the date of the contract, continuously ready and willing to perform his part of the contract. If he fails to do so, his claim for specific performance must fall." *Jugraj Singh's* case, however, held:

"That plea is specifically available to the vendor/defendant. It is personal to him. The subsequent purchasers have got only the right to defend their purchase

on the premise that they have no prior knowledge of the agreement of sale with the plaintiff. They are bona fide purchasers for valuable consideration. Though they are necessary parties to the suit, since any decree obtained by the plaintiff would be binding on the subsequent purchasers, the

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plea that the plaintiff must always be ready and willing to perform his part of the contract must be available only to the vendor or his legal representatives, but not to the subsequent purchasers."

The decision in Jugraj Singh's case was noted by a Bench of two learned Judges in Lakhi Ram vs. Trikha Ram [(1998) 2 SCC 720] and doubted, but the appeal there was decided on another point. - Section 16 of the Specific Performance Act reads:

"16. 'Personal bars to relief.--- Specific performance of a contract cannot be enforced in favour of a person--

(a) xxxxx

-(b)xxxxx

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant."

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

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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's case is erroneous.

In the circumstances, it becomes necessary to remand the suit to the trial court, namely, the Court of the Munsif, Gyanpur, Varanasi, to consider whether or not it has been established that the original plaintiff Bachna and her legal representatives- had proved that they had performed or were always ready and willing, to perform the terms of the agreement for sale in Bachna's favour.

The appeal is allowed. The judgments and order under appeal and the orders and decrees of the courts below are set aside and the suit is remanded to the trial court for

decision of the question stated above. The suit shall be decided as expeditiously as possible, and within a period of six months from today. - : No order as- to costs. ; i

JUDIS