



**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

FIRST APPEAL No. 130 of 2002

MANOJ KUMAR AHUJA

Versus

GURMEJ SINGH (SINCE DEAD) THR. LRS. & ORS.

Appearance:

Shri Sameer Kumar Shrivastava – Advocate for appellant.

*Shri Rajeev Shrivastava – Advocate for respondent Nos.1(1) to 1(4)
and respondent No.3 with Dinesh Kumar Agrawal – Advocate for respondent
No.3.*

Shri S.S. Kushwah – Government Advocate for respondent No.4/State.

Reserved on : 04.09.2025

Pronounced on : 08.09.2025

JUDGMENT

1. This First Appeal under Section 96 of CPC has been filed against the Judgment and Decree dated 22-7-2002 passed by 1st Additional District Judge, Dabra, Distt. Gwalior in Civil Suit No. 78-A/1991.
2. The appellant is the Plaintiff, who has lost his case from the Trial Court.
3. The appellant/plaintiff had filed a civil suit for Specific Performance of Contract, pleading interalia that Survey No. 29 min area 3.718 hectares is recorded in the name of defendant no.1, Survey No. 27 Min area 1.045 hectares and Survey No. 29 Min area 2.673 hectares, total area 3.718 hectares



is recorded in the name of Defendant no.2, and Survey No. 29 Min area 3.717 is recorded in the name of Defendant no.3. The disputed property is situated in Dabra, Distt. Gwalior.

4. The defendants no. 1 to 3 and Kabul Singh and Avtar Singh entered into an agreement to sell the aforesaid disputed property at the rate of Rs. 15,500/- per Bigha, and accordingly an agreement to sell was executed between the plaintiff and the defendants no. 1 to 3 on 19-12-1988. In all, an amount of Rs.50,000/- was paid by plaintiff by way of advance and it was agreed that the remaining amount shall be payable at the time of execution of sale deed. As per agreement, the sale deed was to be executed by 1-6-1989. The defendants no. 1 to 3 did not execute the sale deed. The defendants had misrepresented that the disputed property is not under mortgage and that fact was also mentioned in the agreement to sell. On 30-5-1989 and 1-6-1989, the appellant went to the office of Sub-Registrar, where a letter of Sahkari Kendriya Bank Maryadit, Gwalior was produced on 30-5-1989 to the effect that the disputed property is mortgaged with the bank and loan is outstanding. Therefore, the sale deeds could not be executed. The plaintiff was all the time requesting the defendants no. 1 to 3 to execute the sale deed but the defendants were avoiding to do so. The plaintiff had also offered that he is ready to redeem the mortgage provided the defendants no.1 to 3 are ready to adjust the same in the consideration amount. However, the defendants no. 1 to 3 did not agree for the same also and also did not give the No Dues certificates from the bank. The plaintiff was always ready and willing to perform his part of contract and accordingly, the plaintiff had also sent a notice to the defendants but still the defendants did not come for execution of sale deed. The plaintiff was continuously making request to execute the sale deed but the defendants did not come to do the same. Thereafter, the plaintiff



filed civil suit no.7A/1989, but the plaint was returned on the question of jurisdiction, against which appeal is pending. On 24-11-1991, the defendants have specifically refused to execute the sale deed and accordingly a suit for specific performance of contract was filed.

5. The defendants no. 1 to 3 filed their written statement and admitted the execution of agreement to sell. However, it was pleaded that the plaintiff has not disclosed that to whom Kabul Singh and Avtar Singh have sold the land. It was pleaded that in fact the plaintiff was not ready and willing to perform his part of contract and he was all the time avoiding on the pretext that he is short of funds. The defendants no. 1 to 3 were all the time ready and willing to perform their part of contract, but it was the plaintiff who was not ready and willing to perform his part of contract. On 30-31 of May and on 1-6-1989, defendants no. 1 to 3 regularly went to the office of Sub-Registrar, but the plaintiff did not come and accordingly, the defendants no. 1 to 3 gave an application to the Sub-Registrar, thereby expressing their willingness to execute the sale deed. It was denied that the sale deed could not be executed because of letter of the bank. The appellant was not having money for execution of sale deed. He also did not appear before the office of Sub-Registrar, Dabra on 30-31 May and 1-6-1989. It was denied that plaintiff had purchased stamps papers for execution of sale deed in favour of Smt. SunitaSavilani and Basant Kumar. Smt. Sunita and Basant are not known to the defendants and there is no privity of contract between the defendants no. 1 to 3 and Smt. Sunita and Basant. The appellant with a dishonest intention had created forged documents in the name of Smt. Sunita and Basant. If plaintiff had purchased the stamp papers, then he would have certainly mentioned the said fact in his plaint. It was also denied that any application for refund of amount of stamp paper was ever made on 28-7-1989 by Smt. Sunita and



Basant and the order dated 9-8-1989 was also denied on the ground that no notice in that regard was ever given to the defendants. It was further pleaded that even in plaint of Civil Suit which is pending in the Court of Civil Judge Class I, Dabra there is no mention of purchase of stamp papers. It was also pleaded that the mortgage was already redeemed and no offer was ever made by plaintiff that he would repay the mortgage amount after adjusting the same in the outstanding consideration amount. In fact the plaintiff was not ready and willing to perform his part of contract. He was not in possession of money to purchase the property. It was also denied that the defendants had ever avoided the execution of sale deed. It was further pleaded that for the similar relief, the plaintiff had filed a civil suit and the plaint was returned back against which appeal is pending therefore, the present suit is not maintainable. It was further pleaded that in fact the plaintiff is a property broker and in fact the master mind are Ramesh Parashar and Jagdish who are also property brokers. In fact agreement to sell had taken place between Ramesh Parashar and Jagdish, whereas the plaintiff is not known to the defendants. The plaintiff is the resident of Gwalior. The plaintiff never issued any notice to the defendants that he is intending to get the sale deed executed in favour of Smt. Sunita and Basant. It was also not informed that the stamp papers have been purchased. Since there is no privity of contract between the defendants no. 1 to 3 and Smt. Sunita and Basant, therefore, it is clear that return of stamp papers has nothing to do with the case. Each defendant was entitled for Rs. 2,69,000/- therefore, it is incorrect to say that the plaintiff had agreed to purchase the property of each defendants for a consideration amount of Rs. 1,24,000/-.

6. The Trial Court after framing issues and recording evidence dismissed the suit on the ground that the appellant was never ready and willing to



perform his part of contract.

7. Challenging judgment and decree passed by the Trial Court, it is submitted by Counsel for Appellant that in fact the defendants no. 1 to 3 did not appear before the office of Sub-Registrar on 30-5-1989 and 1-6-1989. The appellant was having sufficient funds for payment of the remaining consideration amount. In fact the defendants had entered into an agreement to sell by suppressing the fact that the property is mortgaged but they specifically declared in the agreement to sell that the property is free from all encumbrances.

8. Per contra, the Counsel for the respondents have supported the findings recorded by the Trial Court.

9. Heard the learned Counsel for the parties.

10. The moot question for consideration is that whether the appellant was ever ready and willing to perform his part of contract or not?

11. Readiness and Willingness are two different aspects and both are required to be proved by Plaintiff. Readiness means that the plaintiff had sufficient to means to pay the outstanding consideration amount as well as to bear the registration charges, whereas willingness means that the plaintiff is willing to perform his part of contract.

12. In order to show his readiness and willingness, it is the case of the plaintiff that he went to the office of Sub-Registrar on 30-5-1989 but the defendants did not come and accordingly, he sent a registered notice, Ex. P. 3 to the defendants no. 1 to 3 to execute the sale deed on 1-6-1989.

13. From plain reading of this notice, it is clear that there is no mention of fact that on 30-5-1989, when the plaintiff went to the office of Sub-Registrar, then he came to know that the property is already mortgaged, but in the notice, it was mentioned by the plaintiff that the defendants no. 1 to 3 must



execute the sale deed on 1-6-1989. Therefore, the plaint averment that on 30-5-1989, the plaintiff came to know that the property is already mortgaged is false. If plaintiff had gone to the office of Sub-Registrar on 30-5-1989, then no body had prevented him from giving an intimation to the Sub-Registrar, but no such intimation was given by the plaintiff. Further, it is the case of the plaintiff that the stamp papers were already purchased, therefore, the plaintiff had gone to the office of Sub-Registrar for execution of sale deed, but the plaintiff himself has relied upon order dated 9-8-1989, Ex. P. 12 and P.13 by which the amount of stamp paper was directed to be refunded to Basant and Smt. Sunita and in this order also, it is mentioned that stamp papers were purchased on 31-5-1989 and 1-6-1989. Furthermore, it appears that on 1-6-1989, the plaintiff had given an intimation to the Sub-Registrar at 4:30 P.M., Ex. P. 10C that the defendants no. 1 to 3 are not signing the sale deed and the plaintiff is intending to get the sale deed executed in favour of third persons. If the plaintiff had appeared before the Sub-Registrar on 30-5-1989 and had already received the information that the property is already mortgaged, then why that fact is not mentioned in the application/intimation given by plaintiff to Sub-Registrar, Ex. P.10C? Thus, it is clear that the plaintiff never appeared before the office of Sub-Registrar on 30-5-1989, to execute the sale deed.

14. The next question for consideration is that whether the plaintiff was having money to pay the remaining consideration amount to the defendants no. 1 to 3 or not?

15. Except mentioning that the plaintiff was in possession of sufficient means, no other documentary evidence was produced by the appellant to show that he was in possession of money. The appellant has not filed the copy of his bank statement to show that he had sufficient money in his bank account. He has also not filed his Income Tax Return to show that he was



having sufficient money with him. Although it was submitted by Counsel for Appellant that the appellant would have paid the consideration amount to the defendants by cash but in view of Section 269SS of Income Tax Act, any payment in excess of Rs. 20,000 cannot be made in cash.

16. Furthermore, it is clear that the plaintiff never purchased any stamp paper for execution of sale deed. It is clear from order dated 9-8-1989 Ex. P. 12 and P.13, that the stamp papers were purchased by Basant and Smt. Sunita on 31-5-1989 and 1-6-1989 and they had claimed refund. Although it is mentioned in the agreement to sell, Ex. P.1, that the defendants would execute the sale deed by 1-6-1989 either in favour of plaintiff or any person as desired by him, but it is not the case of the plaintiff that for any good reason he had decided to get the sale deed executed in favour of Basant and Smt. Sunita. It appears that the plaintiff was working as property broker and he was intending to get the sale deed executed in favour of Basant and Smt. Sunita. therefore, it is clear that the appellant was neither in possession of money to pay the consideration amount and bear the registration charges, and was also not willing to perform his part of contract.

17. Whether Basant and Smt. Sunita had purchased the stamp papers only for the purposes of purchasing the property in question or not, is also one of the burning question. For the reasons best known to the plaintiff, he didn't examine Basant and Smt. Sunita to prove that they had purchased the stamp papers to purchase the property in dispute and they were present in the office of Sub-Registrar on 30-5-1989 and 1-6-1989. Whether Basant and Smt. Sunita had sufficient amount to pay the consideration amount or not, is also an important question which could have been explained and proved by Basant and Smt. Sunita but as they never entered in the witness box, therefore, it is held that the plaintiff has failed to prove that stamp papers were purchased by



Basant and Smt. Sunita, for execution of sale deed in pursuance to the agreement to sell, Ex. P.1 and they were having sufficient funds for execution of sale deed. If the plaintiff was already having sufficient funds with him for purchase of suit property, then why he was intending to get the sale deed executed in favour of Basant and Smt. Sunita has not been explained. The defendants are right in contending that in fact the plaintiff was a property broker having no intention to purchase the property by himself.

18. It is submitted by Counsel for Plaintiff, that in fact he was misrepresented by the defendants no. 1 to 3 that the property is free from all encumbrances. Considered the submissions made by Counsel for the plaintiff.

19. Section 19 of Contract Act reads as under :

19. Voidability of agreements without free consent.—When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of Section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party of whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

20. From plain reading of Section 19 of Contract Act, it is clear that if an agreement is caused by fraud or misrepresentation, then it is voidable at the instance of party whose consent was obtained by fraud. Therefore, the



plaintiff could have refused to go ahead with agreement to sell by claiming that it has been executed by suppressing the fact that the property was already mortgaged, but after having decided to go ahead with the agreement, the plaintiff cannot make a complaint that his consent was obtained by fraud or misrepresentation.

21. For the above mentioned reasons, this Court is of the considered opinion, that the plaintiff has failed to prove that he was ready and willing to perform his part of contract.

22. No other argument is advanced by Counsel for the parties.

23. Accordingly, the Judgment and Decree dated 22-7-2002 passed by 1st Additional District Judge, Dabra, Distt. Gwalior in Civil Suit No. 78-A/1991 is hereby affirmed.

24. The appeal fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge