

A JUGRAJ SINGH AND ANR.

v.

LABH SINGH AND ORS.

NOVEMBER 28, 1994

B [K. RAMASWAMY AND N. VENKATACHALA, JJ.]

*Specific Relief Act, 1963:*

C *Section 16(c)—Readiness and willingness to perform the essential terms of the contract—Such a plea available to the vendor or his legal representatives—Not to the subsequent purchasers.*

D The petitioners were defendants 2 and 3 in the suit. The first defendant - executed an agreement of sale dated 30-8-1984 in favour of the plaintiffs. The petitioners had an agreement of sale on 4-1-1985. The plaintiffs filed the suit against the first defendant. All the courts have concurrently found that the petitioners/defendants 2 and 3 were not *bona fide* purchasers for value without notice of the prior agreement dated 30-8-84 and accordingly, decreed the suit. Hence this S.L.P.

E The petitioners contended that the trial court having found the petitioners to be necessary parties, was not right in negating the plea of the petitioners that plaintiff 'L' was not ready and willing to perform his part of the contract and that the High Court committed an error of law in rejecting that plea.

F Dismissing the Petition, this Court

G HELD : 1.1. Section 16(c) of the Specific Relief Act, 1963 provides that the plaintiff must plead and prove that he has always been ready and willing to perform his part of the essential terms of the contract. The continuous readiness and willingness at all stages from the date of the agreement till the date of the hearing of the suit need to be proved. The substance of the matter and surrounding circumstances and the conduct of the plaintiff must be taken into consideration in adjudging readiness and willingness to perform the plaintiff's part of the contract. That plea is specifically available to the vendor/defendant. It is personal to him. [ 169 H], [170 A & D]

H

1.2. 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 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. [170 E]

*Ardeshir R. Rama v. Flora Sasson*, AIR (1928) P.C. 208 and *Gomathinavagam Pillai and Ors. v. Palaniswami Nadar*, AIR (1967) SC 868, relied on.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 19640 of 1994.

From the Judgment and Order dated 31-5-94 of the Punjab and Haryana High Court in Regular Second A. No. 2069 of 1990.

Rajinder Sachher, Ms. Rani Chhabra and Ms. Bharathi Sharma for the Petitioners.

The following Order of the Court was delivered :

The petitioners are defendants 2 and 3. The first defendant-Jasbir Singh had executed an agreement of sale dated 30-8-1984 in favour of the plaintiffs Labh Singh and his brother Surinder Singh. The petitioners had an agreement of sale on 4-1-1985. The plaintiffs filed the suit against Jasbir Singh, the first defendant. All the courts have concurrently found that the petitioners/defendants 2 and 3 are not *bona fide* purchasers for value without notice of the prior agreement dated 30-8-84 and accordingly, decreed the suit. Thus, this S.L.P.

It is contended for the petitioners that the trial court having found the petitioners to be necessary parties was not right in negating the plea of the petitioners that Labh Singh - plaintiff was not ready and willing to perform his part of the contract and that the High Court equally committed an error of law in rejecting that plea. We find no force in the contention.

Section 16 (c) of the Specific Relief Act, 1963 provides that the plaintiff must plead and prove that he has always been ready and willing to perform his part of the essential terms of the contract. The continuous

A readiness and willingness at all stages from the date of the agreement till the date of the hearing of the suit need to be proved. The substance of the matter and surrounding circumstances and the conduct of the plaintiff must be taken into consideration in adjudging readiness and willingness to perform the plaintiff's part of the contract.

B The Privy Council in *Ardeshir R. Rama v. Flora Sasson*, AIR (1928) P.C. 208 has held that in a suit for specific performance the averment of readiness and willingness on plaintiff's part upto the date of the decree is necessary.

C This Court in *Gomathinavagam Pillai and Ors. v. Palaniswami Nadar*, AIR (1967) SC 868 quoting with approval *Ardeshir's* case (supra) had held as follows:

D "But the respondent has claimed a decree for specific performance and it is for him 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 fail."

E 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 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 High Court, therefore, was right in rejecting the petitioners' contention and rightly did not accept the plea. We do not find any ground warranting interference.

F The S.L.P. is accordingly dismissed.

G.N

Petition dismissed.