IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-275-2014 (O&M)
Kanta Rani (since deceased) through her legal heirs ...Appellant(s)

Vs.

Surinder Kumar ...Respondent(s)

The date when the judgment is reserved:	07.04.2026
The date when the judgment is pronounced:	17.04.2026
The date when the judgment is uploaded on the website:	17.04.2026
Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced:	Full judgment

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sunil Chadha, Senior Advocate assisted by
Ms. Kashish Aggarwal, Advocate
for the appellant.

Ms. Promila Nain, Senior Advocate assisted by
Mr. Mohinder Singh Nain, Advocate,
Mr. Pranab Bansal, Advocate and
Ms. Kanchan, Advocate
for the respondent.

NIDHI GUPTA, J.

CM-17621-C-2016

Prayer in the present application under Order 41 Rule 27 CPC read with Section 151 CPC is for producing certified copies of plaint, application under Order 7 Rule 11 CPC, written statement etc. and zimni

orders in case titled as **Surinder Kumar Vs. Kanta Rani** regarding the same property in dispute, by way of additional evidence.

2. Order sheets show that notice in the present application was issued by Predecessor Bench vide order dated 02.02.2017; whereafter reply dated 02.03.2020 to the application has been filed by learned counsel for the non-applicant/plaintiff.

3. I have heard learned counsel for the parties.

4. In view of averments made in the application, which is supported by an Affidavit of the applicant/respondent, the same is allowed; and above said documents are taken on record by way of additional evidence, subject to all just exceptions.

RSA-275-2014 (O&M)

Present Second Appeal has been filed by the plaintiff against the judgment of reversal; whereby suit filed by the appellant for possession by way of specific performance and permanent injunction, although decreed by the learned Trial Court, has been dismissed by the learned First Appellate Court.

2. Brief facts of the case are that the plaintiff/appellant had filed a civil suit seeking possession as owner of suit plot measuring 248 sq. yds as described in the plaint by way of a specific performance of Agreement to Sell dated 04.01.1986; **and** suit for permanent injunction restraining the defendant from alienating the property in dispute. It was the pleaded case of the plaintiff that the defendant being owner of the suit property had agreed to sell the same to the plaintiff by way of Agreement to Sell dated

04.01.1986 for total sale consideration of Rs.1 lac. It was alleged that at the time of execution of the Agreement itself, defendant had received entire sale consideration of Rs.1 lac from the plaintiff i.e. Rs.50,000/- in cash and Rs.50,000/- by way of cheque dated 04.01.1986. Actual physical possession was also stated to have been delivered to the plaintiff at that time. No time for execution and registration of Sale Deed was fixed. It was further alleged that plaintiff was always ready and willing to perform her part of contract, but defendant had postponed the matter. Plaintiff had approached the defendant a week prior to filing of the present suit with a request to execute the Sale Deed, but defendant had demanded Rs.1 lac more and had threatened that otherwise he will alienate the suit land to some other person. Hence, present suit was filed on 30.05.2012.

3. Upon notice, defendant had put in appearance and resisted the suit by filing written statement averring that the suit is not maintainable as the plaintiff has not come to the court with clean hands and is not having no locus-standi to file the present suit. It was alleged that the present suit is counter blast to the previously instituted suit of the defendant titled as **Surinder Kumar Vs. Kanta Rani**. It was pleaded that the defendant never agreed to sell the property in dispute to the plaintiff. No agreement of sale dt. 4.1.86 had ever been executed by the defendant in favour of the plaintiff. It was alleged that a sum of Rs.50,000/- was borrowed by the defendant vide cheque No. 748843 dt. 4.1.86 from the husband of plaintiff namely Tarsem Lal, real brother of defendant which was subsequently returned. The alleged agreement of

sale is forged and fabricated document prepared by the plaintiff with an intention to grab the property. Since no agreement was executed by the defendant, as such, no question of readiness and willingness to perform her part by the plaintiff arises. Denying rest of the plaint, prayer for dismissal of same was made.

4. On the basis of pleadings of the parties, following issues were framed by learned Trial Court:-

> *"1. Whether the plaintiff is entitled for possession of the property in dispute? OPP*
> *2. Whether the plaintiff is entitled for permanent injunction restraining the defendant from alienating the suit land and from dispossessing the plaintiff from the suit land? OPP*
> *3. Relief."*

5. Upon appraisal of the pleadings and the evidence led by the parties, learned Additional Civil Judge (Senior Division), Ludhiana had decided issues in favour of the plaintiff and against the defendant; and had consequentially decreed suit of the plaintiff vide judgment and decree dated 30.05.2012, as follows: -

> *"12. In view of my aforesaid discussion, the suit of the plaintiff succeeds and the same is hereby decreed with costs in favour of the plaintiff and against the defendant for possession by way of specific performance of the agreement to sell dt. 4.1.86 with regard to suit property and the defendant is directed to execute the sale deed in favour of the plaintiff pertaining to the property within a period of 3 months from today on deposit of balance sale consideration by the plaintiff within one month from today. The defendant*

is permanently restrained from alienating the above said property to anybody else except the plaintiff and dispossessing the plaintiff illegally and forcibly from it. Decree sheet be prepared and file be consigned to record room."

6. While decreeing the suit of the plaintiff for specific performance what had weighed with the learned Civil Judge was that the plaintiff had succeeded in proving the Agreement in question from the evidence of PW1 Vikas Gupta GPA of the plaintiff; PW2 Naveen Talwar son of Puran Chand Talwar, who was the marginal witness of the Agreement, who had identified signature of his father on the Agreement; and PW3 marginal witness Satish Thapar. Learned Trial Court had also held that defendant had received entire sale consideration of Rs.1 lac on 04.01.1986 and possession was also delivered. It was further observed that defendant had pleaded that Agreement is forged and fabricated. However, no evidence to this effect was brought on record. Defendant himself did not come to witness box and had failed to rebut the suit of the plaintiff.

7. Defendant had then filed Civil Appeal; which was allowed by the learned Additional District Judge, Ludhiana vide impugned judgment and decree dated 28.05.2013. Hence, present second appeal by plaintiff.

8. It is *inter alia* submitted by learned Senior Counsel for the appellant/plaintiff that learned First Appellate Court was in error in reversing the well reasoned judgment of the learned Trial Court as it failed to consider the fact that appellant/plaintiff has been able to establish her case not only regarding the due execution of the agreement to sell dated

04.01.1986 in respect of the suit property in her favour by the respondent/defendant but also the fact that on receiving the whole of the consideration amount of Rs. 1 lac mentioned in the said agreement, she had been put in actual physical possession of the suit property; and after coming into possession thereof, plaintiff has raised construction of a dwelling unit and is residing therein alongwith her family as of even now. On the other hand, defendant neither brought any evidence much less meaningful evidence and thus failed to substantiate his own apparently false stand, which he had taken up in his written statement, nor could he rebut the evidence of the appellant/plaintiff in any manner. It is submitted that it is a case where through the evidence is of unimpeachable nature, yet, first Appellate Court has failed to read it correctly.

9. Learned Senior Counsel for the appellant further submits that while reversing the well-reasoned judgment and decree dated 30.05.2012 passed by the Court of learned Additional Civil Judge (Senior Division), Ludhiana, the learned Lower Appellate Court laid much emphasis upon: -

(i) Original agreement has not been produced, and Exhibit P/2 is merely the photocopy of the agreement to sell dated 04.01.1986 and further that no application was filed for secondary evidence.

(ii) Since at the time of execution of the agreement to sell dated 04.01.1986, Vikas Gupta was barely 14 years of age, therefore, it cannot be said that the execution of the agreement to sell dated 04.01.1986 and the passing of the consideration was to his personal knowledge and the

plaintiff ought to have stepped into the witness box herself in order to prove her case.

(iii) Once full consideration amount of Rs.1 lac had been paid then why the sale deed was not executed for 19 years.

10. It is contended by learned Senior Counsel for the appellant that the aforesaid findings of the Lower Appellate Court are absolutely unsustainable in the eyes of law for the reasons mentioned below:-

(i) In his evidence in affirmative, which Sh. Vikas Gupta (PW1) tendered by way of affidavit dated 20.05.2008, he submitted that he has brought the original agreement but a photocopy thereof is being placed on record as Ex. P2. The cross-examination of Sh. Vikas Gupta was partly recorded on 05.04.2010, on which date, his remaining cross-examination was deferred for want of original agreement. In his said statement dated 05.04.2010, Sh. Vikas Gupta stated that on that day he has not brought the original agreement (Ex. P2) and he can produce the same on the next date of hearing. Thereafter, remaining cross-examination of Sh. Vikas Gupta was conducted on 12.08.2011. A perusal of the said remaining cross-examination of Sh. Vikas Gupta (PW1), which came to be recorded on 12.08.2011 it can be well inferred that since he had produced the original agreement (Ex. P2) before the Court, therefore, no objection of any kind was raised on behalf of the defendant.

Besides the statement of her said attorney Sh. Vikas Gupta (PW1), plaintiff examined Sh. Naveen Talwar as PW2 and Sh. Satish Thapar as PW3, as her witnesses. Satish Thapar (PW3) is one of the two attesting

witnesses of the agreement to sell dated 04.01.1986 whereas Naveen Talwar (PW2) is the son of Sh. Puran Chand Talwar, who was the second witness of the agreement to sell dated 04.01.1986 and since he had died, therefore, in order to prove that the agreement (Ex. P2) bears the signatures of his father Sh. Puran Chand Talwar, his son Naveen Talwar (PW3) deposed to that effect before the learned Court below.

(ii) Even though Vikas Gupta (PW1) was 14 years of age at the time of executing the agreement to sell dated 04.01.1986 but the fact remains that on the date of his appearance in the witness box, he was 36 years of age and keeping in view the fact that he is none other than the real son of the appellant-plaintiff and is living with the plaintiff only, it cannot be said that he had no personal knowledge about the transaction in question, i.e. execution of the agreement to sell dated 04.01.1986.

(iii) It is the categorical case of the plaintiff that on the date of execution agreement to sell itself, since the whole consideration amount of Rs. 1 lac stood paid, therefore, the possession of the suit property was delivered to her and thereafter, she has raised even construction thereon i.e. a residential house and she is residing therein with her family even as of now. There is absolutely no rebuttal to the said settlement of PW1 to that effect.

(iv) Since the appellant/plaintiff and the respondent/defendant are closely related, it is only for that reason that the sale deed was not registered on the date of execution of the agreement to sell though the full consideration amount stood paid to the respondent/defendant.

11. Learned Senior Counsel for the plaintiff further submits that First Appellate Court was in patent error in holding that PW1 Vikas Gupta was not competent to depose on behalf of the appellant. It is submitted that the appellant has duly proved the execution of GPA Ex.P1 in favour of PW1 Vikas Gupta. As such, PW1 was competent to depose on her behalf.

12. It is further submitted that even evidence of PW2 Naveen Talwar has been wrongly rejected on the ground that no Death Certificate of his father Puran Chand Talwar has been produced. Learned Senior Counsel for the appellant contends that during cross-examination, no such suggestion was put to the plaintiff in respect of death of Puran Chand Talwar. In fact, PW2 has not been examined with regard to death of his father. No cross-examination of PW2 has been conducted by the defendant regarding death of Puran Chand Talwar. Consequentially, the learned First Appellate Court was in error in discarding the evidence of PW2.

13. As regards production of original Agreement to Sell dated 04.01.1986, learned Senior Counsel for the appellant submits that on 05.04.2010 upon objection raised by Vikas Gupta while appearing as PW1, he had stated that he will produce the original Agreement to Sell dated 04.01.1986 on the next date of hearing. Learned Senior Counsel submits that on the next date of hearing i.e. 12.08.2011, and even thereafter, no objection in this regard was raised by learned counsel for the defendant; which automatically implies that original agreement was produced by PW1 and was seen by the defendant and the Court. As such, nonsuiting of

the appellant on the ground that original Agreement to Sell is not produced, is not sustainable. It is reiterated that cross-examination of the appellant was allowed to proceed without objections by the respondent which necessarily implied that appellant had duly produced the original Agreement and the same was returned after seeing it. It is submitted that it is for this reason only that the respondent did not object and cross-examination was allowed to proceed.

14. It is lastly submitted by learned Senior Counsel for the appellant that possession of the appellant over the suit property is also proved from the fact that that there is a categoric writing to this effect in the Agreement dated 4.1.1986, that possession has been delivered. This is substantiated from the statement of PW1 who has deposed that plaintiff has raised construction on the suit land. PW1 has not been cross-examined by the respondent in this regard as to whether construction has been raised by the plaintiff on suit property or not. Therefore, possession of the plaintiff on the suit property cannot be disputed. It is submitted that after delivery of possession vide Agreement in question, plaintiff has raised substantial construction on the suit property at great expense. Suit of the plaintiff has been decreed for permanent injunction also. Thus, respondent cannot dispossess the plaintiff except in due course of law.

15. It is accordingly prayed that present Appeal be allowed; and impugned judgments and decrees of the ld. District Courts be set aside.

16. *Per contra*, learned Senior Counsel appearing on behalf of the respondent submits that admittedly alleged Agreement is dated

04.01.1986; whereas civil suit has been filed on 10.08.2005 i.e. after 19years. It is submitted that no explanation whatsoever has been given by the plaintiff as to why there is so much delay in filing the civil suit. It is contended that adverse inference is necessarily liable to be drawn against the appellant for such delay in filing of suit.

17. Learned Senior Counsel for the respondent further submits that respondent had previously filed Civil Suit No. 144 dated 26.11.1998 (Annexure R-1) titled as **Surinder Kumar Vs. Kanta Rani** before the learned Civil Judge (Senior Division), Ludhiana for declaration and permanent injunction. It is submitted that in the said suit, the present appellant as defendant had moved application dated 14.05.1999 under Order 7 Rule 11 CPC (Annexure R-2) for rejection of the said plaint. Learned Senior Counsel refers to the said application (Annexure R-2) to submit that in the same, there is no mention whatsoever of the present Agreement to Sell dated 04.01.1986. It is argued that in case such an Agreement had indeed existed the same would have been necessarily mentioned by the appellant in her application under Order 7 Rule 11 CPC in the suit filed by the respondent.

18. It is submitted that thereafter, the respondent had suffered a paralytic attack due to which she was unable to pursue the said suit. Consequentially, the same was dismissed by the learned Civil Judge (Junior Division), Ludhiana vide order dated 09.10.2007. However, upon application the same was restored vide order dated 28.10.2010. E-Courts website shows that the said civil suit No. 144 of 1998 was dismissed under

Order 9 Rule 2 CPC vide order dated 23.05.2012 by learned Civil Judge (Junior Division), Ludhiana.

19. It is further submitted that as regards the alleged possession of the plaintiff over the suit property, it is established fact on record that the suit property has no electricity and water connection. Therefore, as per the established tenets of law, there is no possession without electricity and water connection. It is contended that in actual fact, the appellant is having a house adjoining to the suit property. Therefore, the submissions made by learned Senior Counsel for the appellant to the effect that appellant has no other property, is misleading and incorrect.

20. As regards payment of Rs.50,000/- made by the plaintiff to the defendant by way of cheque, learned Senior Counsel for the respondent submits that it is not disputed at any stage by the plaintiff that the respondent was having joint business relations with his brother i.e. husband of the present plaintiff. It is submitted that the said amount of Rs.50,000/- by way of a cheque dated 04.01.1986 was given to the respondent by the husband of the plaintiff in normal course of business. It is for this reason that the said cheque has been issued by husband of the plaintiff and not by the plaintiff herself. As such, it is nowhere proved on record that any payment has been made by the plaintiff to the respondent. He accordingly prays for dismissal of the present Appeal.

21. No other argument is raised on behalf of learned counsel for the parties. I have heard learned counsel and perused the case file in

detail. I find no merit in the submissions advanced on behalf of the appellant.

22. It has firstly been submitted on behalf of the appellant that the Agreement to Sell dated 4.1.1986 stands proved from the evidence of numerous prosecution witnesses. Admittedly, plaintiff herself has not stepped into witness box neither any explanation has been given by the plaintiff for not appearing in the witness box. Instead, plaintiff has examined her son and GPA holder PW1 Vikas Gupta, who has deposed in respect of the Agreement to Sell dated 04.01.1986 that: "*The defendant being owner of the property in question agreed to sell the same to his mother for a total sale consideration of Rs. 1 lac on 4.1.86 and he received entire sale consideration of Rs. 1 lac i.e. Rs.50000/- in cash and Rs. 50000/- vide cheque No. 748843 dt.4.1.86 and possession was delivered. He proved on record copy of agreement Ex.P2. Further he proved on record copy of sale deed Ex.P3 for showing that the adjoining plot of the property in question is owned by his mother. He also established on file that no time for execution and registration of the sale deed was fixed and the plaintiff always remained ready and willing to perform his part of the contract and she is still ready and willing to perform her part of the contract but the defendant refused to execute the sale deed.*" However, GPA cannot have personal knowledge in regard to the acts of the plaintiff; and is therefore not competent to depose on behalf of the plaintiff. It is established position in law that GPA can only depose in respect of acts or transactions done by the GPA on behalf of the plaintiff. However, GPA may

not depose in respect of acts and transactions done by the plaintiff herself.

23. I am supported in my above view by landmark judgment of the Hon'ble Supreme Court in **Man Kaur v. Hartar Singh Sangha (SC) : Law Finder Doc Id # 224670,** wherein it is held as under: -

> *"11. To succeed in a suit for specific performance, the plaintiff has to prove: (a) that a valid agreement of sale was entered by the defendant in his favour and the terms thereof; (b) that the defendant committed breach of the contract; and (c) that he was always ready and willing to perform his part of the obligations in terms of the contract. If a plaintiff has to prove that he was always ready and willing to perform his part of the contract, that is, to perform his obligations in terms of the contract, necessarily he should step into the witness box and give evidence that he has all along been ready and willing to perform his part of the contract and subject himself to cross examination on that issue. A plaintiff cannot obviously examine in his place, his attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness. Readiness and willingness refer to the state of mind and conduct of the purchaser, as also his capacity and preparedness on the other. One without the other is not sufficient. Therefore a third party who has no personal knowledge cannot give evidence about such readiness and willingness, even if he is an attorney holder of the person concerned.*
>
> *12. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:*

(a) An attorney holder who has signed the plaint and instituted the suit but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

13. In this case, the matter has been handled by different persons at different points of time on behalf of the plaintiff - (a) the negotiations and execution of agreement on 20.10.1978 were handled by plaintiff's attorney holder Paramjit Singh; (b) on 7.6.1979, the plaintiff was personally present and dealt with the matter himself; and (c) from 1.3.1980, the matter was dealt with by plaintiff's new attorney holder Jagtar Singh Sangha. The plaintiff neither signed the agreement of sale nor signed the plaint nor gave evidence, in particular, about his readiness and willingness. The agreement of sale was executed by plaintiff's attorney holder Paramjit Singh who was not examined. The plaint was signed by plaintiff's attorney holder Jagtar Singh Sangha (PW1) in whose favour plaintiff had executed the power of attorney on 1.3.1980 and who had no

personal knowledge of the transaction. The said attorney holder (PW1) was not aware of the execution of the agreement, nor what happened till the last date fixed for performance had elapsed, nor what transpired on 7.6.1979. The said attorney holder (PW1) clearly stated in his evidence that he was not aware of anything that transpired prior to 1.3.1980 when the power of attorney was executed in his favour. Nothing of relevance transpired after 1.3.1980 except the issue of the suit notice dated 5.3.1980. He did not know whether defendant committed breach nor did he know about the readiness and willingness of the plaintiff. He admitted in his evidence :

> *"I do not know the detailed terms and conditions of the transaction.... I do not know the facts of this transaction before my appointment in the year 1980..... I do not know whether plaintiff wrote any letter that he is ready to purchase this plot.... I do not know if anybody else also did any bargain in the transaction or not. I do not know who has been in correspondence on behalf of the plaintiff till June 1979".*

<u>The evidence of PW1 is therefore of no assistance in a suit for specific performance except to prove that he was authorised by the plaintiff to file a suit for specific performance.</u>

14. <u>The plaintiff who ought to have given evidence never appeared and gave evidence. As his attorney holder PW1 had no knowledge of the transaction</u>, the plaintiff solely relied on the evidence of the property dealer Balraj Singh (PW2) to prove the execution of the agreement, the terms of the agreement, his readiness and willingness to perform the agreement and the alleged breach by the defendant. But Balraj Singh cannot become a substitute for the plaintiff to give evidence about the finances or intentions or the readiness and willingness of plaintiff which were within the personal knowledge of the

plaintiff. Balraj Singh was a property dealer engaged by plaintiff and supporting the plaintiff. He was not an attorney holder acting on behalf of plaintiff. Therefore, neither the evidence of Jagtar Singh (PW 1) nor the evidence of Balraj Singh (PW2) can be relied upon to prove that plaintiff was always ready and willing to perform his obligations under the contract, in terms of the contract. Therefore, it has to be held that though there were necessary averments in the plaint about the readiness and willingness of the plaintiff, and though PW1 and PW2 gave evidence about his readiness and willingness, the suit has to fail for failure to comply with Section 16(c) of the Specific Relief Act, as there was no acceptable or valid evidence of such readiness and willingness of plaintiff to perform his part of the obligations in terms of the contract." (Emphasis added)

24. In this regard, reference may also be made to another judgment rendered by the Hon'ble Supreme Court in **Appeal (Civil) No. 6790 of 2003** titled as **Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. And others, decided on 06.12.2004,** wherein it is held that: –

*"……… **Vidhyadhar vs. Manikrao and Another, (1999) 3 SCC 573** observed at page 583 SCC that "where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct. ……… **Shambhu Dutt Shastri Vs. State of Rajasthan, 1986 2WLL 713** it was held that a general power of attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. No one can delegate the power to appear in witness box on behalf of*

<u>himself.</u> To appear in a witness box is altogether a different act. <u>A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.</u>

*The aforesaid judgment was quoted with the approval in the case of **Ram Prasad Vs. Hari Narain & Ors. AIR 1998 Raj. 185.** It was held that the word "acts" used in Rule 2 of Order III of the CPC does not include the act of power of attorney holder to appear as a witness on behalf of a party. Power of attorney holder of a party can appear only as a witness in his personal capacity and whatever knowledge he has about the case he can state on oath but be cannot appear as a witness on behalf of the party in the capacity of that party. If the plaintiff is unable to appear in the court, a commission for recording his evidence may be issued under the relevant provisions of the CPC. …………… We hold that the view taken by the Rajasthan High Court in the case of Shambhu Dutt Shastri (supra) followed and reiterated in the case of Ram Prasad (supra) is the correct view. ………"*

(Emphasis added)

25. The judgment of the Hon'ble Supreme Court in **Rajesh Kumar v. Anand Kumar, (SC) : Law Finder Doc Id # 2582158**, is also pertinent, relevant paras of which read as under:-

*"12. Having noticed the three judgments of this Court in **Janki Vashdeo Bhojwani (supra), Man Kaur (supra) & A.C. Narayanan (supra)**, we are of the view that in view of Section 12 of the Specific Relief Act, 1963, in a suit for specific performance wherein the plaintiff is required to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, <u>a</u>*

<u>Power of Attorney Holder is not entitled to depose in place and instead of the plaintiff (principal).</u> In other words, if the Power of Attorney Holder has rendered some `acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the act done by the principal and not by him. Similarly, <u>he cannot depose for the principal in respect of the matter of which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined.</u> If a plaintiff, in a suit for specific performance is required to prove that he was always ready and willing to perform his part of the contract, it is necessary for him to step into the witness box and depose the said fact and subject himself to cross-examination on that issue. <u>A plaintiff cannot examine in his place, his attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness.</u> The term `readiness and willingness' refers to the state of mind and conduct of the purchaser, as also his capacity and preparedness, one without the other being not sufficient. Therefore, a third party having no personal knowledge about the transaction cannot give evidence about the readiness and willingness.

13. In the light of above settled legal position, we are of the view that in the instant case, the plaintiff/appellant has failed to enter into the witness box and subject himself to cross-examination, he has not been able to prove the prerequisites of Section 12 of the Specific Relief Act,1963 and more so, when the original agreement contained a definite time for registration of sale deed which was later on extended but the suit was filed on the last date of limitation calculated on the basis of the last extended time."

(Emphasis added)

26. Even otherwise, evidence of PW1 cannot be relied upon as, as per the Affidavit Ex.PW1/A, Vikas Gupta's age is mentioned as 36 years old. Therefore, at the time of execution of Agreement to Sell dated 04.01.1986, PW1 was barely a child of 14 years of age. In this view of the matter also, it cannot be held that PW1 was competent or equipped to depose on behalf of the plaintiff. It cannot be said that PW1 has personal knowledge of the facts as deposed above by him. Thus, the learned trial court was in patent error in relying upon evidence of PW1 in holding that the Agreement was proved as per law. In this regard, relevant findings of the learned First Appellate Court are contained in para 27 of the judgment dated 28.05.2013, which reads as under: -

> *"27. It is further pertinent to mention that the alleged cheque, which was per the plaintiff was given by her for Rs. 50,000/-, and her having paid the total sale consideration, but the said cheque had not been issued by the plaintiff. It is further worth making mention that on perusal of testimony of PW1 Vikas Gupta, the attorney of the plaintiff, who has stepped into the witness box for proving the case of the plaintiff, it has clearly come that as per him his age was 36 years at the time of tendering his affidavit, thus, at the time of alleged agreement, which is dated 4.1.1986, he was hardly of 14 years of age. Can it be taken that PW1 had personal knowledge qua the alleged transaction, which as per him had taken for the sale of the plot measuring 248 sq. yards and the plaintiff having paid a sum of Rs. 1 lac to the defendant? The answer is certainly in the negative. In such like eventuality, the best course for the plaintiff was that she should have*

herself stepped into the witness box as the facts, which are in the knowledge of the attorney, or which have taken place in his presence, he can depose regarding the same. But with regard to the facts qua the transaction, the plaintiff could have proved the same. Thus, his testimony (PW1) carries no weight for proving the case of the plaintiff."

27. In order to prove the Agreement in question, the Plaintiff has also examined PW2 Naveen Talwar son of attesting witness Puran Chand Talwar. PW2 has stated in his evidence that his father had expired. PW2 has further identified signatures of his father on the Agreement to Sell dated 04.01.1986 Ex.P2. However again, the evidence of PW2 is not reliable for the reason that PW2 has failed to produce Death Certificate of Puran Chand Talwar. In fact, he was not even able to apprise the Court in regard to the date of death of his father. This Court finds it very odd that a son would not know the date of death of his father.

28. Furthermore, on 24.03.2012, PW2 Naveen Talwar has categorically deposed that "*……. I know the parties in suit at the time of execution of Ex.P2. I alongwith my father Puran Chand was present. It is correct that I have not signed as marginal witness of the Agreement. Agreement of Sell was executed between the parties at the house of the plaintiff. ………".* Whereas PW3 Suresh Thapar while deposing on 24.03.2012 itself, has deposed that "……… *The Agreement Ex.P2 was got scribed in the Court Complex and was executed over there."* Even further, PW2 has also deposed that he was present with his father at the time of execution of the alleged Agreement to Sell. However, this fact does not

find mention in the deposition of either PW1 Vikas Gupta or PW3 Satish Thapar. Both of them had not mentioned that PW2 Naveen Talwar was present. Thus, evidence of plaintiff witnesses suffers from material discrepancies.

29. Thirdly, plaintiff has examined PW3 Satish Thapar, marginal witness of the Agreement, who has deposed in favour of the Agreement. However, there is major discrepancy even in the evidence led by PW3, who has stated that Agreement was scribed and executed in the Court Complex; whereas both PW1 GPA Vikas Gupta and PW2 Naveen Talwar had deposed that Agreement to Sell was scribed and executed at the house of the plaintiff. No explanation whatsoever has been given by learned Senior Counsel for the plaintiff in regard to these discrepancies and lacunae in the evidence of the plaintiff. Thus, by no stretch of the imagination, can it be said that plaintiff has succeeded in proving the execution of the Agreement.

30. Another major flaw in the case put up by the appellant is that she has failed to produce the original Agreement to Sell. No explanation whatsoever is there on record as to why the same is not produced by the appellant. Arguments of learned Senior Counsel for the appellant in this regard are far fetched and in the realm of imagination to say the least. It has been submitted on behalf of the appellant that on 5.4.2010, appellant had stated that he will produce the Agreement on the next date of hearing. It has been contended that as on the next date of hearing, which is 12.08.2011, no objection was raised by the respondent regarding

production of Agreement to Sell, therefore, it can be inferred that appellant had produced the original agreement before the Court. It is my view that such a submission is utterly conjectural and borders on the ridiculous. A perusal of the zimni orders on record of the file shows that on 05.04.2010 when questioned about non-production of Agreement to Sell, PW1/Vikas Gupta has stated that he will produce the same on the next date of hearing. In the Zimni order dated 05.04.2010, learned ACJ (Senior Division) has categorically recorded that PW1 has stated on SA that "*I have not brought original Agreement Ex.P2 today. I will produce on the next date of hearing. ………*" Whereafter the Court has adjourned the matter by stating that "*Further cross-examination deferred for producing original Agreement to Sell.*" Needless to say, if the appellant had produced the original Agreement, it would be so recorded in the zimni order dated 12.8.2011, that original Agreement is produced by the plaintiff and returned after seeing it. No such zimni order has been brought to the notice of this Court by the appellant, wherein it is so recorded. From the above, it is clear that despite grant of numerous opportunities, plaintiff had failed to produce the original Agreement.

31. Contention of the appellant that it was upon the respondent to raise objection again for producing original Agreement, is untenable. It is for the plaintiff herself to prove her own case. She cannot rely upon any alleged weakness in the defence. Contention of the appellant that non-raising of objection by the respondent implies that original Agreement was produced, is a desperate ploy/attempt to absolve herself of the onus

and responsibility of proving the Agreement in question. I shall be referring to relevant case law here in below in support of my above view.

32. Relevant findings of the learned First Appellate Court in this regard are contained in para 26 of the judgment dated 28.05.2013, which read as under: -

> *"26. After giving thoughtful consideration to the rival submissions and on careful perusal of the record of the learned lower court, impugned judgment and decree passed, coupled with the due assistance rendered, the ratio decidendi laid down in the case law referred, the court finds merit in the submissions put forth by the learned counsel for the appellant. It is pertinent to mention that the appellant being aggrieved from the impugned judgment and decree dated 30.5.2012, whereby the suit of the plaintiff has been decreed for the relief of specific performance, has filed the instant appeal. The perusal of the evidence makes it abundantly clear that the plaintiff had filed the suit for the relief of specific performance qua the plot measuring 248 sq. yards on the basis of alleged agreement to sell dated 4.1.1986, <u>but in spite of the request having been made by the learned counsel for the defendant for producing the original, the original agreement had not been produced. Even, at the time of cross-examination, the court had directed for producing the original agreement to sell, but the same has not been produced. The suit has been decreed by the learned trial court on the strength of photo copy of the agreement to sell, which is Ex.P2</u>. As per the plaintiff, the entire sale consideration was allegedly paid i.e. Rs. 50.000/- way of cash and qua the remaining sum of Rs.50,000/- a cheque was given, <u>but the original agreement to sell has not been</u>*

> *<u>produced.</u> There is specific mention at the time of deferring the cross- examination for producing the original agreement to sell on the next date of hearing. Thus, in the absence of original agreement to sell, and further the directions having been accorded by the court for producing the agreement to sell, <u>no application has been moved for proving the agreement to sell by way of secondary evidence, thus, it strengthens that the learned trial court has fallen in an error by decreeing the suit of the plaintiff on the basis of photo copy of the agreement to sell, which has been exhibited as Ex.P2.</u>"* (Emphasis is mine)

33. It is also not denied by learned Senior Counsel for the appellant that the cheque dated 04.01.1986 for an amount of Rs.50,000/- had not been issued by the plaintiff and had been issued by her husband. The said admission would therefore, lend credence to the case put forth by the respondent that there were joint business dealings between the husband of the plaintiff and the respondent in pursuance to which the said cheque has been issued by the husband of the plaintiff in favour of the respondent. Thus, plaintiff has failed to prove her assertion that entire sale consideration of ₹1,00,000/- stood paid to the respondent.

34. As regards possession, it has been contended on behalf of the appellant that she was put in possession of the suit property at the time of execution of the Agreement. However, once the Agreement itself is not proved, where is the question of possession being delivered? Moreover, appellant has failed to produce any documentary evidence to show her possession over the suit property. Appellant has also not denied that

there is no electricity or water connection in the suit premises for the last seven years. Learned Senior Counsel for the respondent has stated on instructions received from Sh. Dhiren Bhaku on behalf of the respondent Surinder Kumar that appellant has no electricity or water connection in her own name. Even no water or sewerage connection has been taken; and that the appellant is using electricity, water and sewerage by fraudulent means of the adjoining building. Even further, it has not been denied on behalf of the appellant that the appellant is the owner in possession of the property adjoining the suit property. Appellant's building is O/463 whereas suit property is 463/I. The relevant findings of ld. First Appellate Court are in para 28 of the judgment dated 28.05.2013, which read as under: -

> *"28. It is further pertinent to mention that much emphasis has been laid by the learned counsel for the respondent, as to the possession having been delivered to the plaintiff, but there is no document showing the factum qua the possession of the plaintiff. The plaintiff has though taken up a specific plea that he was put into possession at the time of alleged agreement i.e. on 4.1.1986, but, neither the agreement has been proved in accordance with law nor any document has been produced fortifying the factum of possession, which could have been easily produced in case the possession was actually delivered to the plaintiff."*

35. Thus, possession of the appellant over the suit property is also not established.

36. On a Court query, it has also been admitted by learned Senior Counsel for the appellant that even no legal notice was served by the appellant calling upon the respondent for execution of Sale Deed. Learned Senior Counsel for the appellant has been unable to give any explanation whatsoever as to why the Sale Deed was not sought to be executed by the plaintiff at any stage; especially view of the fact that entire sale consideration allegedly stood paid to the defendant; and why in respect of Agreement dated 04.01.1986, Civil Suit was filed almost 20 years thereafter on 10.08.2005. The appellant has also been unable to deny that the respondent had previously filed Civil Suit No. 144 dated 20.11.1998 (Annexure R-1) seeking declaration that the respondent (defendant herein) is the exclusive owner in possession of the present suit property as per Jamabandi for the year 1969-1970; **and** for grant of permanent injunction restraining the present appellant (defendant therein) from interfering in the construction of partition wall on the suit property. It is also not denied that in the said Suit, an application dated 14.05.1999 (Annexure R-2) was moved by the appellant under Order 7 Rule 11 CPC for rejection of the plaint; and that in the said application appellant has made no mention whatsoever of any Agreement between the parties. Needless to say, if such an Agreement had existed between the parties, the same would find mention in the application for rejection of the plaint. All that is stated therein is that: "*2. That the plaintiff has alleged in the plaint that there is site plan attached with the plaint, in which the property in dispute is shown as red in site plan. But the inspection of the file by the*

applicant/defendant, shows that there is no site plan attached with the plaint. The plaint of the plaintiff, is therefore, vague and is liable to be rejected on this short score alone." This fact also goes to prove that no such Agreement was executed between the parties as alleged by the plaintiff.

37. In the facts and circumstances of the present case, it would be apposite to refer to judgment of the Hon'ble Supreme Court in **Rangammal v. Kuppuswami (SC) : Law Finder Doc Id # 260942**, the relevant para of which reads as under: -

> *"14. Section 101 of the Indian Evidence Act, 1872 defines 'burden of proof' which clearly lays down that whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party. In view of this legal position of the Evidence Act, it is clear that in the instant matter, when the plaintiff/respondent No. 1 pleaded that the disputed property fell into the share of the plaintiff by virtue of the sale deed dated 24.2.1951, then it was clearly for the plaintiff/respondent No. 1 to prove that it was executed for legal necessity of the appellant-while she was a*

minor. But, <u>the High Court clearly took an erroneous view while holding that it is the defendant/appellant who should have challenged the sale deed after attaining majority as she had no reason to do so since the plaintiff/respondent No. 1 failed to first of all discharge the burden that the sale deed in fact had been executed for legal necessity of the minor's predecessor mother was without permission of the court.</u> It was not the defendant/respondent who first of all claimed benefit of the sale deed or asserted its genuineness, hence the burden of challenging the sale deed specifically when she had not even been dispossessed from the disputed share, did not arise at all." (Emphasis added)

38. It is my clear view that in the present case, as well, the plaintiff has failed to discharge the burden of proving the Agreement to Sell; proving payment of sale consideration; and has also failed to prove that she is in possession of the suit property. Thus, she could not have been granted the discretionary relief of specific performance.

39. Reference may also be made to another judgment passed by Hon'ble Supreme Court in **H. Siddiqui (D) By Lrs. v. A. Ramalingam (SC) : Law Finder Doc Id # 247723**, the relevant paras of which read as under:-

"10. Provisions of Section 65 of the Act 1872 provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where original documents are not produced at any time, nor, any factual foundation has been led for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. <u>Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is</u>

<u>accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof. Therefore, the documentary evidence is required to be proved in accordance with law.</u> The court has an obligation to decide the question of admissibility of a document in secondary evidence before making endorsement thereon. (Vide: The Roman Catholilc Mission & Anr. v. The State of Madras & Anr., AIR 1966 Supreme Court 1457; State of Rajasthan & Ors. v. Khemraj & Ors., AIR 2000 Supreme Court 1759; Life Insurance Corporation of India & Anr. v. Ram Pal Singh Bisen, 2010(2) RCR (Civil) 459 : 2010(2) S.C.T. 217 : 2010(2) R.A.J. 351 : (2010) 4 SCC 491; and M. Chandra v. M. Thangamuthu & Anr., 2010(4) RCR (Civil) 696 : 2010(5) R.A.J. 551 : (2010) 9 SCC 712).

11. The Trial Court decreed the suit observing that as the parties had deposed that the original power of attorney was not in their possession, question of laying any further factual foundation could not arise. Further, the Trial Court took note of the fact that the respondent herein has specifically denied execution of power of attorney authorising his brother R. Viswanathan to alienate the suit property, but brushed aside the same observing that it was not necessary for the appellant/plaintiff to call upon the defendant to produce the original power of attorney on the ground that the photocopy of the power of attorney was shown to the respondent herein in his cross-examination and he had admitted his signature. Thus, it could be inferred that it is the copy of the power of attorney executed by the respondent in favour of his brother (R. Viswanathan, second defendant in the suit) and therefore,

there was a specific admission by the respondent having executed such document. So it was evident that the respondent had authorised the second defendant to alienate the suit property.

12. In our humble opinion, the Trial Court could not proceed in such an unwarranted manner for the reason that the respondent had merely admitted his signature on the photocopy of the power of attorney and did not admit the contents thereof. More so, the court should have borne in mind that admissibility of a document or contents thereof may not necessary lead to drawing any inference unless the contents thereof have some probative value."

(Emphasis added)

40. The judgment passed by Hon'ble Supreme Court in Civil Appeal No. 6620 of 2008 titled as **Lakshmi Sreenivasa Cooperative Building Society vs. Puvvada Rama (Dead) By L.Rs and others** is also pertinent, relevant extract of which reads as under: -

"14. Applying the principle expounded in the aforementioned decision, we must enquire into whether the finding recorded by the two Courts below is manifestly unreasonable and unjust in the context of ……… such as neither were the attesters and scribe to the suit agreements examined to prove execution thereof by the real owners of the property nor was any explanation or justification forthcoming for such failure. The suit agreements are unregistered. The defendants have denied having signed any such agreement. No attempt was made by the appellant/plaintiff to confront the defendants and discharge the burden by examining any Handwriting expert. The appellant/plaintiff failed to produce any document to show that the nine members in whose favour

the initial alleged agreement dated 30th June, 1977 was executed, have relinquished their possession in favour of the appellant/plaintiff. The co-owner of the property (5th defendant) was neither joined as party in the suit agreement dated 16th October, 1981, nor was his authority for execution of such agreement forthcoming. The other two purchasers, along with whom the suit agreement was executed, were also not examined. No proof was forthcoming regarding payment of earnest money amount at the time of execution of the suit agreements or otherwise made to the owners of the suit property. The appellant/plaintiff did not file any document to show that the cheque was encashed and availed by defendant No.4 as payment in respect of the suit agreement. No endorsement was taken on the suit agreement dated 30th June, 1977 (Exhibit A1), either of the vendors or vendee before or at any time after execution of the suit agreement dated 16th October, 1981 (Exhibit A2). The sole testimony of PW-I regarding execution of the suit agreement was not enough to prove its execution. No witness was examined to prove that there was any bargain and settlement between PW-1 and defendant Nos. 1-4 in respect of the sale transaction prior to execution of suit agreement Exhibit Al. There is no recital in the suit agreement to the effect that along with defendant Nos. 1-4, defendant No.5 had also agreed to sell the property and to execute the sale deed in favour of the appellant/plaintiff. There was no signature of defendant No.5 on the suit agreements or any reference to her, much less that she agreed to join with defendant Nos. 1-4 for sale of the suit property. The suit agreements are executed by the first defendant alone and not by all the co-owners. The Trial Court, no doubt, did not accept the plea of defendant No.1 being of unsound mind. But the

High Court, on analysis of the relevant evidence, has accepted the evidence as sufficient in that regard.

XXXXXXXXX

20. ……… that the appellant/plaintiff had failed to prove the factum of payment of earnest money amount to the owners of the suit property. Notably, the factum of execution of the suit agreements in itself is doubted. ………"

41. In **Jagdish Prasad Patel (Dead) v. Shivnath (SC) : Law Finder Doc Id # 1420987**, the Supreme Court held as under:-

*"41. In the suit for declaration for title and possession, the plaintiffs-respondents could succeed only on the strength of their own title and not on the weakness of the case of the defendants-appellants. <u>The burden is on the plaintiffs-respondents to establish their title to the suit properties to show that they are entitled for a decree for declaration. The plaintiffs-respondents have neither produced the title document i.e. patta-lease which the plaintiffs-respondents are relying upon nor proved their right by adducing any other evidence.</u> As noted above, the revenue entries relied on by them are also held to be not genuine. In any event, revenue entries for few Khataunis are not proof of title; but are mere statements for revenue purpose. They cannot confer any right or title on the party relying on them for proving their title. Observing that in a suit for declaration of title, the plaintiffs-respondents are to succeed only on the strength of their own title irrespective of whether the defendants-appellants have proved their case or not, in **Union of India and others v. Vasavi Cooperative Housing Society Limited and others 2014(2) RCR (Civil) 76 : (2014) 2 SCC 269**, it was held as under:-*

"15. It is trite law that, in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff."

42. Upon appreciation of evidence, the trial court has recorded findings on various issues which was reversed by the first Appellate Court. Since the first Appellate Court reversed the judgment of the trial court, in the second appeal, the High Court ought to have weighed and considered the evidence and materials. The order of the High Court dismissing the appellant's appeal by affirming the findings of the first Appellate Court is mainly on the ground that in the absence of any order of abandonment or revocation of the patta granted to the respondents-plaintiffs, grant of patta (Ex.D-20) in favour of the appellants-defendants was illegal. The High Court, in our view, did not appreciate the patta (Ex.D-20) granted in favour of the forefathers of the appellants by the competent authority in 1929 and the report of the Revenue Inspector dated 05.10.1969. The first Appellate Court and the High Court did not consider Ex.D-1- Order of the Commissioner dated 17.07.1973 and the report of the SDO dated 21.10.1969 and other revenue records showing that the forefather of the appellants-defendants namely Gaya Din was given the patta (Ex.D-20) and since then, Gaya Din and Hanuman Din were in possession of the properties. The High Court has not properly appreciated the evidence and materials on record and the impugned judgment is liable to be set aside."

42. In **Union of India v. Vasavi Co-op. Housing Society Ltd. (SC) : Law Finder Doc Id # 519776**, the Hon'ble Supreme Court has held that "*Plaintiff has to succeed only on the strength of his case and not on the*

weakness of the case set up by the defendants in a suit for declaration of title and possession.".

43. Relevant findings of the First Appellate Court are contained in paras 30 and 31 of the judgment dated 28.05.2013, which read as under: -

> *"30. The arguments put forth by the learned counsel for the plaintiff/respondent, do not inspire any confidence. He has laid much emphasis as to the agreement having been duly proved by examining PW2 Naveen Talwar, who is the son of one of the marginal witness and the other witness PW3 Satish Thappar. He has laid much emphasis as to entire sale consideration having been paid and further the plaintiff having been put into possession, but the perusal of entire evidence adduced by the plaintiff in no manner substantiates as to the plaintiff having proved the due execution of agreement to sell. <u>The original agreement to sell has not been produced in spite of directions of the court and there is nothing on the file to fortify as to the plaintiff having been put into possession over the suit property. It is further worth taking judicial notice of the fact that in case the entire sale consideration, which as per the plaintiff was paid on 4.1.1986 itself, then why the sale deed has not been executed and that too for a long period of 19 years?</u>*
>
> *31. It is pertinent to mention that the ratio decidendi laid down in **Hakam Singh's Case (Supra)** is squarely applicable to the facts of the present case, as when the execution of agreement to sell is disputed, the onus is upon the plaintiff to prove its due execution. The plaintiff in the present case has failed to prove as to there being an agreement to sell dated 4.1.1986, the original of which has not been produced on the file in spite of directions issued by the court. It is further*

*worth making mention that as per the ratio decidendi laid down in **Malireddy Buthiramanna Dora & Anr's case (Supra)** is also squarely applicable to the facts of the present case, as it has been made abundantly clear therein that if there is an undue delay or indifference on the part of plaintiff then willingness deserves to be doubted. In the present case, the agreement to sell, on the basis of which the suit has been filed is dated 4.1.1986, the suit has been filed on dated 10.8.2005 after a gap of 19 years, in case there was an agreement to sell then why the sale deed could not be executed?"*

44. In view of the above discussion, and the above noted factual and legal position, the present Regular Second Appeal is **dismissed.**

45. Pending applications, if any, stand disposed of.

17.04.2026 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No