



RSA-3384-2010

**217 IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**RSA-3384-2010 (O&M)
Decided on:18.08.2025

Avtar Singh

.... Appellant

versus

Mahesh Kumar

.... Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAINPresent: Mr. Vipin Mahajan, Advocate
for the appellant.Mr. Arun Abrol, Advocate
for the respondent.

Pankaj Jain, J. (Oral)

1. The defendant is in regular second appeal. The plaintiff filed a suit seeking decree for possession by way of specific performance by agreement to sell dated 17.06.2005 qua land measuring 12 kanals as detailed out in the head note of the plaint.

2. As per the pleaded case of the plaintiff, defendant agreed to sell the suit land in his favour by executing an agreement to sell dated 17.06.2005 for valuable consideration of Rs.2,60,000/- per acre. The defendant received Rs.3,10,000/- as earnest money and the parties agreed to get the sale deed executed on or before 10.08.2005. The plaintiff claims to have remained present on the appointed date in the office of Sub Registrar from 10.00 am to 5.00 pm. He, however, claims that defendant failed to turn up to execute the sale deed in his favour. The plaintiff got his presence marked by way of an affidavit and served legal notice dated 19.08.2005 through his counsel to the



RSA-3384-2010

defendant calling him to execute the sale deed on or before 06.09.2005. As per the plaintiff, he remained present in the office of Sub Registrar on the said date, however, defendant again failed to turn up. The plaintiff claims that he remained ready and willing to perform his part throughout. The present suit was instituted on 14.09.2005.

3. The suit was contested by the defendant. As per defendant, plaintiff is a commission agent. The defendant borrowed an amount of Rs.40,000/- from the plaintiff in the month of June, 2005 on interest @ 1% per month. The plaintiff in order to secure his amount asked the defendant to sign on blank stamp papers. As per the defendant, agreement to sell was never executed by him and it is those blank stamp papers signed by him, which have been misused by the plaintiff for execution of agreement to sell. The defendant at the same time claims that on return of money, when he asked the plaintiff to return the blank stamp papers, the same were torn by the plaintiff in his presence. The defendant also denied receipt of earnest money of Rs.3,10,000/-.

4. The suit filed by the plaintiff was put up to trial for recording of following issues:

1. Whether the plaintiff is entitled to the specific performance of the agreement dated 17.06.2005? OPP
2. Whether the plaintiff is ready and willing to perform his part of the contract dated 17.06.2005? OPP
3. If issue No.2 is not proved, whether the plaintiff is entitled to the alterative relief? OPP
4. Whether the suit is not maintainable? OPD



RSA-3384-2010

5. Whether the plaintiff has no cause of action to file the present suit? OPD

6. Relief.

In order to prove execution of agreement to sell, the plaintiff examined both the attesting witnesses namely Manga Masih as PW-2 and Rattan Chand as PW-3.

5. Answering issue No.1 and 2, the Court of the first instance found that the execution of agreement to sell stands proved by testimony of Manga Masih and Rattan Chand. The defendant failed to lead any evidence to prove his defence of blank stamp papers having been misused for creating agreement to sell. While recording finding with respect to readiness and willingness of the plaintiff, trial Court found that the presence of the plaintiff stands proved by affidavits Ex.P-2 and Ex.P-4. Legal notice dated 19.08.2005 Ex.P-3 served at the behest of plaintiff calling upon the defendant to come and execute the sale deed also stands proved. The major amount out of the total sale consideration stood paid as earnest money at the time of execution of sale deed. Residual amount of Rs.80,000/- was to be paid by the plaintiff. This shows that the plaintiff-respondent remained ready and willing to perform his part. The Court accordingly decreed the suit filed by the plaintiff granting him main relief of the decree of specific performance.

6. The aforesaid findings stand affirmed by the Lower Appellate Court in appeal.

7. Dis-satisfied with the judgment and decree passed by the Courts below, defendant is before this Court in regular second appeal.



RSA-3384-2010

8. Mr. Mahajan has drawn the attention of this Court through notice of motion, which reads as under:

“CM No.9919-C of 2010

Application for exemption from filing certified/original copy of judgment and decree dated 25.08.2008 is allowed in view of the averments made in the application which are duly supported by an affidavit.

RSA No. 3384 of 2010

Contention of the counsel for the appellant is that it was the specific case of the defendant-appellant that he had borrowed Rs.40,000/-from plaintiff-respondent, who was a commission agent, in the month of June, 2005 whereas the agreement is dated 27.06.2005. Defendant-appellant had been asked to sign one blank paper which was converted into the agreement to sell by the plaintiff-respondent in connivance with the marginal witnesses. He has pointed out that a perusal of the agreement to sell (Exhibit P1) shows that the signatures of the defendant-appellant is below the typed portion whereas one of the witnesses signed above the typed portion. It is also contended that in the cross-examination of the defendant-appellant, nothing has been put to him regarding the fact whether the plaintiff-respondent was a commission agent who had given out loan, and therefore, the averments made in his affidavit would stand.

Notice of motion for 14.05.2012.

In the meanwhile, operation of the judgments and decrees of the Courts below are stayed.”

9. Mr. Mahajan submits that bare perusal of the agreement to sell Ex.P-1 would show that a blank stamp paper has been utilized to create agreement to sell propounded by the plaintiff. He submits that there was



RSA-3384-2010

specific testimony of the defendant regarding plaintiff being a commission agent, who lent an amount of Rs.40,000/- to the defendant. There is no cross-examination on the said aspect. Even suggestion has not been put to the defendant qua same. Thus, the stand of the defendant stands admitted by the plaintiff.

10. Per contra, Mr. Abrol, Advocate points out the defence pleaded by the defendant. He submits that careful perusal of the defence pleaded by the defendant reveals that he himself admits that blank stamp paper signed by the defendant at the time of availing loan of Rs.40,000/- were destroyed by the plaintiff in his presence. He further refers to the statement of the defendant wherein he denies his signatures on the agreement to sell and submits that there is no evidence with respect to the defence pleaded. The evidence brought on record by the defendant is not supported by the pleadings. He submits that accordingly, the Courts below have rightly decreed the suit filed by the plaintiff as the defendant failed to prove his defence. He further submits that it being a regular second appeal, reappraisal of evidence is beyond the scope thereof. Concurrent findings of fact recorded by the Courts below need not to be disturbed.

11. I have heard learned counsel for the parties and gone through the record with their able assistance.

12. In order to succeed in a suit filed seeking decree of specific performance of agreement to sell, the plaintiff is required to plead and prove:

- (i) valid execution of agreement to sell and payment of earnest money;



RSA-3384-2010

(ii) his continuous readiness and willingness to perform his part of the agreement to sell.

13. In the present case, the plaintiff in order to prove execution of agreement to sell and payment of earnest money, examined both the attesting witnesses to the agreement to sell. Both the attesting witnesses have proved that the agreement to sell was signed by defendant in their presence on receipt of earnest money of Rs.3,10,000/-. It also stands proved on record that legal notice dated 19.08.2005 Ex.P-3 was served at the behest of the plaintiff and received by the defendant. The same remained un-responded. In the considered opinion of this Court, defendant himself was at sea with respect to certainty of his stand. Though he claimed that plaintiff procured his signed blank stamped papers while lending him loan but in the same breath, he admitted that blank stamped papers were destroyed by the plaintiff in his presence. To make things worse while appearing in the witness box defendant denied his signatures on agreement to sell Ex.P-1. The inference that can be drawn is that the stamped papers on which agreement to sell Ex.P-1 has been executed, is not the one which was signed by the defendant Avtar Singh, at the time he availed loan of Rs.40,000/- from the plaintiff.

Though he claims in his testimony that the signatures on the agreement to sell are not his signatures, however, no evidence was led by him to prove the same. Thus, the defence pleaded by the defendant having fallen flat, the Courts below rightly disbelieved the same.

14. Qua the issue of readiness and willingness is concerned, it needs to be pointed out that out of the total sale consideration of Rs.3,90,000/-,



RSA-3384-2010

Rs.3,10,000/- were paid at the time of execution of agreement to sell on 17.06.2005. On the targeted date i.e. 10.8.2005, plaintiff proved his presence before the office of Sub Registrar vide Ex.P-2. Within 9 days, legal notice dated 19.08.2005 Ex.P-3 was served upon the defendant calling him to appear before the Sub Registrar on 06.09.2005 to execute the agreement to sell. On 06.09.2005, plaintiff proved that he remained present before the Sub Registrar. His presence is demonstrated vide affidavit Ex.P-4. The present suit was filed on 14.09.2005 i.e. within 8 days of the second default committed by the defendant. In view thereof, this Court finds that both the Courts below have rightly found that the plaintiff was ready and willing to perform his part throughout.

15. Finding no merit, the present appeal stands dismissed.

18.08.2025
sonia

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No