



## IN THE HIGH COURT OF PUNJAB &amp; HARYANA AT CHANDIGARH

RSA-409-2025 (O&amp;M)

Date of Decision: 06.02.2025

ROHTASH (SINCE DECEASED) THROUGH HIS LRS

.....Appellants

Vs.

KULDEEP

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Yogesh Vashista, Advocate  
for the appellants.

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**DEEPAK GUPTA, J.**

Based upon an agreement to sell dated 27.09.2016 executed by defendant-Rohtash (*appellant herein through his LR*) in favour of plaintiff Kuldeep (*respondent herein*), regarding suit property for total consideration of ₹15,00,000/-, suit for specific performance was filed by the plaintiff contending that earnest money of ₹10,00,000/- had already been paid and that target date for execution of the sale deed was fixed on 26.03.2017 and that despite plaintiff having been always ready and willing to perform his part of contract, defendant had failed to do so.

2. Defendant did not deny execution of the agreement, but pleaded that it was executed merely for the security purpose regarding fake *Bahi* entry in respect of advance of some money to him and false pronotes and receipts from his son-Harender and also false pronotes, receipt and *Bahi* entry of his cousin (*paternal aunt's son*). Defendant pleaded that he did not have any reason to sell the suit property to the plaintiff and that when he came to know about the false *bahi* entries and pronotes in favour of the plaintiff, the complaint was made to the Police Station, where compromise was effected and plaintiff agreed to cancel the pronote and *Bahi* entries. However, to grab the suit land, on the basis of fabricated agreement to sell, the suit was filed.



3. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court found that agreement to sell dated 27.09.2016 was duly proved. The stand of the defendant to the effect that agreement was executed for security purpose was held to be not proved. Plaintiff was held to have proved his readiness and willingness to perform his part of contract. Accordingly, suit was decreed for specific performance of contract subject to deposit of remaining sale consideration by the defendant in the Court within 50 days.

4. Against the abovesaid judgment and decree dated 22.12.2022 passed by the trial Court, defendant filed appeal claiming that no earnest money had been paid to him. Plaintiff filed cross appeal/cross objections stating that direction had not been given by the trial Court to the defendant to execute the sale deed in his favour on payment of remaining amount and that failing which plaintiff would be entitled to get the sale deed executed through process of the Court.

5. Taking up the appeal of the defendant and cross objections of the plaintiff, it was found by the Appellate Court that agreement to sell dated 27.09.2016 was a genuine document. However, considering the fact that defendant-Rohtash, who had since died and was represented by son Harender were small farmers and except the suit land, Harender did not have anything else to succeed and in case he was divested from his small piece of land, he would have no source of livelihood, the Appellate Court thought it proper to provide an opportunity to the defendant-appellant to refund the earnest money besides the amount of ₹5,00,000/- deposited in the Court as balance sale consideration along with interest within a specified period, otherwise, appeal was directed to be dismissed.

6. It will be appropriate to reproduce the operative portion of the judgment of the First Appellate Court dated 11.12.2024, which reads as under:-

“12. In view of above discussion, the main appeal, as moved by defendant Rohtash (since died), is hereby disposed with liberty to his LR



Harender to make payment within 60 days with interest @ 15% per annum over the sum amounting rupees ten lacs w.e.f. 27.09.2016 (which was received as earnest money) and to make payment within 60 days with interest @ 15% per annum over the sum amounting rupees five lacs w.e.f. 01.02.2023 [*wrongly mentioned as 01.02.2003*] (which was deposited in court as balance sale consideration) along-with costs amounting Rs.1,03,042/- as assessed by learned trial court and with further costs amounting Rs.22,000/- being the counsel fee of the plaintiff Kuldeep paid at this appellate stage through receipt of his counsel tendered today, failing which appeal will be considered as dismissed. Cross-appeal/cross-objection filed by plaintiff Kuldeep is, however, dismissed as relief claimed therein of addition of one additional sentence in the impugned judgment & decree is otherwise always implied in every judgment & decree for specific performance of 'an agreement to sell'. Let decree-sheet be drawn separately in both the appeals."

7. It is noticed that plaintiff of the case has not approached this Court against the declining of relief for specific performance to him by the First Appellate Court and instead directing the defendant to refund the earnest money and balance sale consideration within specified period. It is only the defendant, who has approached this Court by way of present Regular Second Appeal.

8. The only contention raised by learned counsel for the appellant is that interest of 15 % per annum allowed by the Appellate Court on the earnest money and on the balance sale consideration as deposited in the Court, is on higher side and that should be reduced.

9. This Court does not find merit in the aforesaid contention.

10. The agreement to sell had been executed on 27.09.2016 i.e. more than 08 years back. As observed by the First Appellate Court, property prices have been escalating at rocket speed in recent years and in these circumstances, judicial notice is required to be taken that the value of such a piece of land must have doubled since the year, 2016, when the agreement had come into the existence. It is in order to balance the



equities that the First Appellate Court gave an opportunity to the defendant (*appellant herein*) to return the earnest money along with interest of 15% per annum; and the interest of 15% per annum on balance sale consideration as deposited by the plaintiff. In the peculiar circumstances of the case, this Court does not find said interest to be excessive. As such, finding no merit in the present appeal, the same is hereby dismissed.

**06.02.2025**

*Pry*

**(DEEPAK GUPTA)  
JUDGE**

Whether speaking/reasoned : Yes  
Whether reportable : No