



117 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2508-2016 (O&M)

Date of decision : 04.08.2025

Smt. Kaushal

..... Appellant

Versus

Narain Dutt Sharma

.... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Sushil Jain, Advocate
for the appellant.

Mr. Parveen Kumar Rohilla, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

1 Appellant-Defendant is in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the appellant as defendant and respondent as plaintiff.

2 Plaintiff filed suit seeking decree of specific performance of agreement to sell dated 22.07.2004. As per the plaintiff, defendant agreed to sell property comprising of a residential house admeasuring 130 square yards in his favour by way of a written agreement to sell dated 22.07.2004 for a total sale consideration of ₹1,40,000/-. The entire sale consideration was paid at the time of execution of agreement to sell. Possession of the property was delivered to the plaintiff. Since on 22.07.2004 the registration of sale deeds was prohibited by orders of Government, the same could not be executed. Plaintiff claims that he always remained ready and willing to



perform his part of agreement dated 22.07.2004. On 08.09.2008 defendant was contacted and was requested to execute the sale deed. She kept on evading execution on one pretext or another and thereafter refused to perform her part. Legal notice dated 25.09.2008 was served on the defendant by plaintiff through his counsel by way of registered A.D. post. The same was received by the defendant. By way of said notice she was asked to come present in the office of Sub-Registrar, Panipat on 03.10.2008 to perform her part of the contract. Defendant failed to appear before the Sub-Registrar on 03.10.2008 present suit was filed on 12.11.2008.

3 Suit was contested by the defendant. Execution of agreement to sell propounded by the plaintiff was denied. Defendant claimed that she borrowed some amounts from the plaintiff on different occasion in the year 2001-2002. Plaintiff obtained her signatures on blank papers as security. The total borrowed amount was ₹60,000/-. Plaintiff became dishonest and misused blank signed papers of the defendant for fabricating agreement to sell. Defendant refuted the claim of the plaintiff of being in possession of the suit property and claimed that it is she who is in possession of the same. She further claimed that at the time of execution of agreement to sell dated 22.07.2004 the market value of the suit property was more than ₹15,00,000/- and there was no reason for her to sell her residential house for a meager amount of ₹1,40,000/-.

4 Suit filed by the plaintiff was put to trial framing following issues :-

1. *Whether the plaintiff is entitled to relief of specific performance of agreement to sell dated 22.07.2004, as prayed for? OPP*



2. In case issue no. 1 is decided in favour of plaintiff, then whether the plaintiff is entitled for relief of permanent injunction as prayed for? OPP

3. Whether the suit is not maintainable in the present form? OPD

3A. Whether specific performance of agreement even if proved cannot be allowed in view of objection taken in preliminary objection no. 6 of the written statement? OPD

4. Relief.”

5 Plaintiff in order to prove his case appeared himself as PW-1. Stamp vendor Naresh Durga was examined as PW-3. The Scribe of the agreement to sell Anil Gulati was examined as PW-5. One of the attesting witnesses to the document Parmod Rohila was examined as PW-2. In order to prove his presence before Sub Registrar on 03.10.2008 plaintiff examined a Registry Clerk, Narender Singh as PW-4. Defendant appeared in support of her defense as DW1 and examined two more witnesses.

6 While answering issues No.1 & 2, the Court of the First Instance found that the defendant having admitted her signatures was required to prove that the same were obtained on blank papers and that the plaintiff forged agreement to sell. She failed to lead any evidence to prove the same. The plaintiff having fully proved execution of the agreement to sell by examining attesting witness, stamp vendor and scribe has successfully proved execution of agreement to sell. Issue No.4 was answered against defendant and in favour of the plaintiff holding that the entire sale consideration having been paid by the plaintiff, it is he who will face hardship.

7 Trial Court accordingly decreed the suit filed by the plaintiff. The aforesaid findings stand affirmed by the Lower Appellate Court.



8 Learned counsel for the appellant while assailing the findings recorded by the Courts below submits that the Courts below have completely misdirected themselves in decreeing the suit filed by the plaintiff. He submits that as per plaintiff, an agreement to sell was executed on 22.07.2004 and the entire sale consideration was paid by the plaintiff to the defendant. Surprisingly despite having paid full and final payment, plaintiff waited for more than four years to institute the present suit. It has been contended that there is no signature of the scribe on the agreement to sell. Anil Gulati, PW-5 though has been examined as Scribe, but his name nowhere figures on the document propounded by the plaintiff. Counsel further submits that it is highly improbable that a property worth ₹15,00,000/- will be sold at a throw-away price of ₹1,40,000/- that too without any legal necessity. The suit instituted after 4 years is patently barred by time. No finding has been returned by the Courts below qua possession over the suit property. He submits that a specific issue was framed with respect to hardship. The only residential house of the defendant has been decreed in favour of the plaintiff by way of specific performance which is a cause of extreme hardship to the defendant.

9 *Per contra*, learned counsel for the plaintiff submits that the pleaded defense of the defendant is that she was made to sign blank papers. Thus, so far as signatures on the document are concerned, the same stand admitted. Attesting witness to the agreement to sell was examined by the plaintiff who fully proved execution thereof. Legal notice was served upon the defendant. The same was admittedly received by her, yet she opted not



to respond to the same. It has been contended that though plaintiff claims herself to be still in possession of the suit property but could not even spell out boundaries thereof. He thus submits that both the Courts below having rightly exercised their discretion after returning concurrent finding with respect to execution of agreement to sell, the present appeal deserves to be dismissed.

10 I have heard learned counsel for the parties and have gone through records of the case.

11 In the suit for specific performance plaintiff is required to prove :-

- i. *Execution of agreement to sell;*
- ii. *Readiness and willingness in terms of Section 16(c) of the Specific Relief Act, 1963;*
- iii. *That he has approached Court with clear hands and*
- iv. *That the suit was filed within prescribed period of limitation.*

12 In the present case plaintiff has propounded agreement to sell dated 22.07.2004. The agreement to sell has been tendered in evidence. In order to prove the execution thereof plaintiff examined attesting witness to the same, i.e. Parmod Rohila as PW-2. Stamp Vendor was examined as PW-3. Thus the plaintiff having tendered primary evidence and examined attesting witness to the same in terms of Section 68 of the Indian Evidence Act, 1872 discharged initial onus to prove execution of the agreement to sell.

13 Defendant in her defense claimed that her signatures were obtained on blank papers. Meaning thereby so far as signatures on the document are concerned the same are not disputed. It has been claimed that



the signatures were obtained in the year 2001-2002 during the course of alleged monetary transaction between the parties. However, the stamp paper bears an endorsement on the back side. The same has been proved by the stamp vendor. The endorsement is dated 22.07.2004 i.e. the date of the execution of the agreement to sell. Not only this, agreement to sell also bears photographs of the vendor and vendee. Defendant has not been able to explain as to how a stamp paper purchased on 22.07.2004 can be signed in the year 2001-2002.

14 It has been admitted by the defendant in her cross examination that she received legal notice dated 25.09.2008 Ex.P2 sent on behalf of the plaintiff. Despite having received the same she opted not to respond. It is clearly mentioned in the legal notice that there is an agreement to sell dated 22.07.2004 executed by defendant in favour of plaintiff. She made no effort to complain regarding her blank signed papers being used for execution of agreement to sell. This makes her conduct unnatural.

15 In view of above, this Court finds that the Courts below have rightly concluded that the plaintiff successfully proved execution of agreement to sell.

16 So far as issue regarding readiness and willingness is concerned, the entire consideration having already been paid at the time of execution of agreement to sell, plaintiff cannot be held to be not ready or willing to perform his part.



17 The agreement to sell in the present case was an open-ended agreement. No date was stipulated for the execution of sale deed. Article 54 of the Limitation Act, 1963 governs limitation which reads as under :-

	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
54.	<i>For specific performance of a contract.</i>	<i>Three years.</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.</i>

18 Plaintiff approached defendant for execution of the sale deed on 08.09.2008. She was evasive. Plaintiff served legal notice dated 25.09.2008 through registered A.D. post calling upon the defendant to come present in the office of Sub Registrar, Panipat on 03.10.2008 to execute the sale deed. On 03.10.2008 plaintiff remained present in the office of the Sub Registrar, Panipat as is evident from Ex.P-3. After defendant failed to come present despite having received legal notice, present suit was promptly filed on 12.11.2008. In view of the aforesaid circumstances, this Court finds no reason to interfere in the well-reasoned findings recorded by the Courts below granting main relief of specific performance to the plaintiff.

19 Finding no merits in the present appeal, the same is ordered to be dismissed.

20 Pending miscellaneous application, if any, also stands disposed off.

04.08.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No