

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

121

**RSA-831-2024 (O&M)
Date of decision : 30.07.2025**

Nisar Khan (since deceased) through his LRs and others

..... Appellants

versus

Harbhajan Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

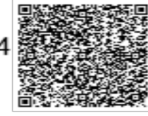
Present: Mr. Chanderhas Yadav, Advocate
for the appellants.

Mr. Rajinder Goel, Advocate
Mr. Manoj Sharma, Advocate
Mr. Tushar, Advocate and
Mr. Purusharth Dhull, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Defendants are in appeal aggrieved of the judgment and decree dated 12.12.2023 passed by Additional District Judge, Yamuna Nagar, affirming the judgment and decree dated 17.02.2017 passed by Civil Judge (Sr. Div.), Yamuna Nagar, whereby the suit filed by the plaintiff seeking decree of possession by way of specific performance has been decreed.

2. Plaintiff filed suit for possession by way of specific performance of an agreement to sell dated 07.05.2010 regarding land measuring 23 kanal 3 marlas comprised in khewat/khatauni No.153 min/212, khasra No.25//13, 14 and 18 as per jamabandi for the year 2006-07. As per the plaintiff, defendant agreed to sell the aforesaid land



in his favour for total a sale consideration of Rs.18,62,750/-. On the date the agreement to sell was executed, an amount of Rs.10,31,000/- was paid by the plaintiff to the defendant. Both the parties agreed to get the sale deed executed on or before 20.08.2010. The same was later on extended from 20.08.2010 to 19.11.2010. The writing to the said effect was made on the back page of the agreement to sell. Plaintiff claimed that on 19.11.2010, he remained present in the office of Sub-Registrar Radaur alongwith the balance sale consideration and expenses to be borne on the registered sale deed. However, defendant failed to come present to perform his part. On account of failure of defendant, plaintiff served legal notice dated 05.05.2011 calling upon the defendant to come present before Sub-Registrar, Radaur on 17.05.2011 and to execute the sale deed. Plaintiff further claims to have remained present on 17.05.2011 in the office of Sub-Registrar concerned. Defendant having failed to come present on 17.05.2011, the present suit was instituted by the plaintiff on 30.07.2011.

3. Defendant expired before the filing of the written statement. The same was filed by his legal representatives, who denied the execution of agreement to sell. They denied execution of agreement to sale propounded by the plaintiff and claimed the same to be result of forgery and fabrication.

4. The suit filed by the plaintiff was put to trial by the Court of the First Instance framing following issues:-

1. *Whether the plaintiff is entitled for possession of suit property by way of specific performance of the agreement to sell dated 07.05.2010? OPP*
2. *Whether the plaintiff was/is ready and willing to perform his part of contract? OPP*



2-A. *Whether Nissar Khan had legal necessity to sell the suit property? OPD.*

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

4. *Whether, the plaintiff has no locus standi to file the present suit? OPD.*

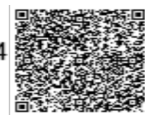
5. *Whether, the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.*

5-A. *Whether suit land is ancestral property of defendants and Nissar Khan had no right to alienate the same? OPD.*

6. *Relief.”*

5. Deciding issue No.1, 2, 2A and 5A, the Court referred to the statements made by attesting witnesses to the agreement to sell i.e. PW-5 and PW-7 and held that the execution of agreement to sell stands proved. Rejecting plea taken by the defendants regarding absence of legal necessity to sell the land Court found that neither such custom was pleaded nor proved. Even though, the Trial Court did not record any finding on issue No.2 with respect to readiness and willness. However, the Lower Appellate Court took note of affidavit Ex.P-2 and P-3 to return finding of fact that the plaintiff always remained ready and willing to perform his part. The Courts below thus decreed the suit filed by the plaintiff.

6. The findings have been assailed by Mr. Chanderhas Yadav, Advocate. He submits that the Courts below have not considered the issue of lack of legal necessity in its true perspective and further submits that there is no evidence with respect to payment of earnest money and the source thereof, as whole of the earnest money of Rs.10,31,000/- is claimed to have been paid in cash. The findings cannot be sustained being perverse.



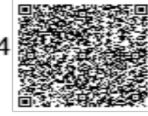
7. *Per contra*, Mr. Goel submits that the defendants are Mohammedans and there is no concept of legal necessity. The same is the concept under Hindu law and even on that account, the agreement to sell cannot be held to be invalid. Coparcenar may challenge sale.

8. He submits that a specific finding has been recorded by the Trial Court on issue No.2A as the defendant failed to plead or proved any custom that required a legal necessity for sale of agricultural land. He further refers to the statement of the plaintiff PW-8 to submit that the source of earnest money has been disclosed in the testimony.

9. I have heard counsel for the parties and have carefully gone through the records of the case.

10. In the considered opinion of this Court, lack of legal necessity to sell land cannot be a ground to invalidate agreement to sell or to hold that the same are not enforceable. The plea sans merit and is rejected.

11. So far as the issue raised by Yadav regarding lack of evidence regarding payment of earnest money is concerned, attesting witness to agreement to sell PW-7 proved that the amount was paid by the plaintiff to the defendant. Plaintiff while stepping into witness box as PW-8 fully proved the source of earnest money of Rs.10,31,000/-. He claimed that the amount was result of sale of sugarcane as well as poplar trees. At no point of time, plaintiff was asked to bring documentary evidence regarding such sale. Thus, it is too late in the day for the defendants to allege that the plaintiff could not prove the source of earnest money by leading cogent documentary evidence. Had plaintiff failed to produce documentary evidence despite being asked to



do so, it would have been a case of drawing adverse inference against him. Defendant led no evidence to rebut the testimony of PW7 regarding earnest money having been paid in his presence.

12. Pure finding of fact has been recorded by the Courts below which are based upon correct appreciation of the evidence.

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

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

30.07.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No