

**RSA No. 3534 of 2011**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No. 3534 of 2011 (O&M)****Reserved on: 17.07.2025****Pronounced on: 21.07.2025****Swaran Singh****...Appellant****Versus****Rattan Singh & Ors.****...Respondents****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Argued by:-** Mr. Abhinav Jain, Advocate  
for the appellant.Mr. Sanjeev Kumar Arora,  
For the respondents.**DEEPAK GUPTA, J.**

Plaintiff of the case is before this court in the present regular second appeal against the reversal, inasmuch as suit for specific performance [CS RT N: 286/2004/2002] filed by him against defendants Rattan Singh and other (*now respondents*), was decreed by the trial court of Ld. Addl. Civil Judge (Sr. Divn.) Faridkot on 21.05.2008, but the appeal [CA RT N: 142/2008/2009] filed by defendant Rattan Singh *i.e. respondent herein*, was partly accepted by the first Appellate Court of Ld. District Judge, Faridkot vide his judgment dated 03.01.2011, whereby though the relief of refund of earnest money was granted to the plaintiff - appellant, but the relief of specific performance was declined.

2. The trial court record available on DMS has been perused with the assistance of learned counsel for both parties. For convenience, the parties are referred to by their status before the trial court.

3. **Brief Facts:** The suit was filed for specific performance of an agreement to sell dated 28.06.2001(Ex.P5) executed by defendant Rattan Singh (respondent herein), owner of 16 kanal of land (being 320/1342 share out of a total of 57 kanal 2 marla) in favour of the plaintiff. As per the plaintiff, the agreed consideration was ₹2,00,000/-, out of which ₹91,000/- was paid as earnest money. The balance ₹1,09,000/- was to be paid at the

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time of execution and registration of the sale deed, for which target date was fixed as 28.06.2002. The plaintiff claimed that he remained present before the Sub-Registrar on the scheduled date, but the defendant failed to appear. A legal notice dated 08.07.2002 was also served, but to no avail. Asserting his continuous readiness and willingness, the plaintiff sought specific performance or, in the alternative, recovery of ₹2,00,000/-.

4. Defendant No.2 – Faridkot Primary Cooperative Agriculture Development Bank – was impleaded as a proforma party, as the land in question was mortgaged with it.

5.1 Defendant No.1 denied the execution of the agreement, alleging that it was merely a security document for a loan of ₹60,000/- taken from the plaintiff, manipulated by adding interest at the rate of 24% per annum. He claimed fraud and misrepresentation.

5.2 Defendant No.2 (Bank) asserted that defendant No.1 was not competent to sell the land until the loan was discharged.

6. After framing issues and recording evidence, the trial court decreed the suit for specific performance. However, the Appellate Court reversed this finding, granting only the refund of earnest money.

**Submissions:**

7. Learned counsel for the appellant argued that the execution of the agreement and plaintiff's readiness and willingness were duly proved and even accepted by the Appellate Court. Thus, declining the equitable relief of specific performance was erroneous.

8. In response, counsel for the respondent did not dispute the execution of the agreement but supported the Appellate Court's decision, citing the land's mortgaged status and joint ownership as barriers to specific performance.

**Analysis by this court:**

9. The only point for determination is whether the plaintiff was rightly denied the discretionary relief of specific performance by the First

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Appellate Court, despite proven execution of the agreement and his readiness and willingness.

10. Execution of the agreement dated 28.06.2001 is not in dispute. Both courts found in favour of the plaintiff on this aspect. His continuous readiness and willingness were also established and remained unchallenged.

11. The First Appellate Court declined specific performance citing Section 17 of the *Specific Relief Act, 1963*, noting that the suit property was under mortgage not just by the defendant but also by his co-sharer Gurdev Singh, and was joint & undivided.

12. Section 17 of the *Specific Relief Act, 1963* reads as under:  
**“17. Contract to sell or let property by one who has no title, not specifically enforceable.**

(1) A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor--

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

(2) The provisions of sub-section (1) shall also apply, as far as may be, to contracts for the sale or hire of movable property.”

13. Section 17 bars enforcement only where the vendor knowingly lacks title or cannot convey a title, free from reasonable doubt at the time of execution.

14. In the present case, defendant No.1 was a co-sharer and had contracted to sell only his defined share (320/1342). A co-sharer can always transfer his undivided share, though not a specific demarcated portion. Thus, no defect in title existed.

15. The mere existence of a mortgage is not a legal bar to specific performance. At best, the plaintiff steps into the shoes of the mortgagor and assumes corresponding liabilities. The co-mortgagor’s involvement is irrelevant to the enforceability of defendant No.1’s obligations under the agreement.

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16. The reasons assigned by the First Appellate Court are thus misplaced and unsustainable in law. Once title of a co-sharer is not in dispute and the agreement is valid, specific performance cannot be denied merely due to mortgage or joint status of land.

**Conclusion:**

17. Consequent to the aforesaid discussion, it is held that judgment & decree dated 03.01.2011 passed by the first Appellate Court cannot be sustained. The same are hereby set aside. Trial Court had rightly decreed the suit of the plaintiff-appellant for specific performance in terms of agreement to sell dated 28.06.2001. As such, judgment & decree dated 21.05.2008 as passed by the trial Court are hereby restored.

18. Appeal is accordingly accepted, leaving the parties to bear their own costs.

**(DEEPAK GUPTA)**  
**JUDGE**

**21.07.2025**

*Jiten*

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