



RSA-3584-2015 (O&amp;M)

-1-

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

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**RSA-3584-2015 (O&M)  
Reserved on:-15.09.2025  
Date of Decision : 17.09.2025**

Jeet Singh @ Jit Singh (since deceased) through LRs ....Appellants

VERSUS

Rattan Kumar and Another ....Respondents

**CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU**

Present: Mr. Aakash Singla and Mr. Ankush Singla, Advocates  
for the appellant.

Mr. Arihant Jain, Advocate with  
Mr. Kanish Jindal and Mr. Rishav Jain, Advocates  
for contesting respondent No.1.

Service of respondent No.2 dispensed with  
vide order dated 12.09.2025

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**MANDEEP PANNU,J.**

1. The present Regular Second Appeal has been filed by the appellant/defendant assailing the concurrent findings of the Courts below, whereby the learned Lower Appellate Court vide judgment and decree dated 10.03.2015 dismissed the appeal filed against the judgment and decree dated 29.05.2012 passed by the learned Trial Court, vide which the suit of the plaintiff for specific performance of agreement to sell dated 15.06.2004 was decreed.

**Brief facts**

2. Brief facts of the case are that the plaintiff/respondent Rattan Kumar filed a suit for specific performance of agreement to sell dated 15.06.2004 and in the alternative for recovery of ₹6,50,000/-. It is the case of the plaintiff that



**RSA-3584-2015 (O&M)**

-2-

defendant No.1 is the owner to the extent of half share out of land measuring 99 kanals 17 marlas situated at village Takipur as per Jamabandi for the year 2002–2003. On 15.06.2004, defendant No.1 entered into an agreement of sale of the land measuring 16 kanals 18 marlas, being half share out of land bearing Khewat No.56, Khasra No.125, Khasra No.2/12 as detailed in the headnote of the plaint, situated at village Takipur, Tehsil and District Sangrur, with the plaintiff at the rate of ₹1,70,000/- per killa. He received a sum of ₹3,25,000/- in cash as earnest money and executed an agreement to sell dated 15.06.2004, agreeing to execute the sale deed on or before 15.06.2006. The agreement was executed between the parties at Longowal and was witnessed. Defendant No.1 affixed his thumb impression on the agreement. All the terms and conditions were reduced into writing. The possession of the land was delivered at the time of execution of the agreement. It was agreed that in case defendant No.1 failed to get the sale deed executed and registered up to 15.06.2006, the plaintiff could get the sale deed executed through the agency of the Court, and in case the plaintiff failed to do so, the earnest money would stand forfeited. Defendant No.1 also agreed to get the land redeemed from defendant No.2 prior to execution of the sale deed. The plaintiff asserted that he always remained ready and willing to perform his part of the agreement. On 15.06.2006, after informing defendant No.1, the plaintiff went to the office of the Joint Sub Registrar, Longowal, with the balance sale consideration and expenses for stamp duty and registration, and remained present there for the whole day. Defendant No.1 did not turn up. The plaintiff got his presence marked and also obtained an attested affidavit from the Executive Magistrate to that effect. He reiterated his readiness and willingness to perform his part of the contract but as defendant No.1



**RSA-3584-2015 (O&M)**

-3-

failed to execute the sale deed despite repeated requests, the plaintiff was compelled to file the present suit.

3. Upon notice, defendant No.1 appeared and filed his written statement. It was denied that he executed any agreement to sell in favour of the plaintiff. It was denied that he ever received ₹3,25,000/- as earnest money on 15.06.2004 or executed any agreement in favour of the plaintiff. It was pleaded that the disputed agreement is not genuine and is the result of fraud and fabrication. The plaintiff, in connivance with the witnesses, has prepared the same which is not binding upon the defendant. The defendant asserted that he never put his thumb impression on the alleged agreement. He explained that he used to visit the shop of the plaintiff, who was a commission agent at Anaj Mandi, Longowal, for the sale of his crops between 1990 and 2003, and the plaintiff used to take his thumb impressions on various papers such as stamp papers, bahi, printed forms, receipts, etc. It was pleaded that the plaintiff might have misused such thumb-impressed blank papers for preparing the alleged agreement to sell. It was specifically denied that possession of the land was delivered to the plaintiff. The defendant maintained that he continued to be in possession and cultivating the suit property. He further denied that the land had been mortgaged with defendant No.2, the State Bank of India, and, therefore, the question of redeeming the land from defendant No.2 prior to execution of the sale deed did not arise.

4. Replication was filed by the plaintiff wherein the allegations in the written statement were denied and those of the plaintiff were reiterated.



5. From the pleadings of the parties, the following issues were framed:
1. whether defendant No.1 entered into an agreement to sell dated 15.06.2004 and received a sum of ₹3,25,000/- as earnest money?  
OPP.
  - 2 Whether the plaintiff always remained ready and willing to perform his part of the contract? OPP
  - 3 Whether the plaintiff is entitled to damages in the alternative, and if so, to what extent? OPP.
  - 4 Whether the plaintiff has no cause of action to file the present suit?  
OPD
  - 5 Relief.
6. In order to prove his case, the plaintiff examined PW1 Sat Pal Sharma, the scribe of the agreement, PW2 Jagjit Singh, an attesting witness to the execution and payment of consideration, PW3 Om Prakash, the Stamp Vendor, who proved that he sold the stamp papers of the agreement to defendant, PW4 Kamlesh Kaur, Clerk, who proved the affidavit through which the presence of the plaintiff was marked before the Joint Sub Registrar, PW5 Navdeep Gupta, Handwriting And Fingerprint Expert from Patiala, who opined that the thumb impression on the agreement to sell was of the defendant, and PW6 Rattan Kumar, the plaintiff himself, who reiterated the case.
7. In rebuttal, the defendant examined DW1 Buta Singh, who deposed about the defendant's possession of the suit property and that he had not heard of any agreement to sell, DW2 Vinod Kumar, Clerk, Market Committee, Cheema,



who stated that the defendant used to sell his crops up to the year 2001 at M/s Takipura Brothers, Longowal, and DW3 Jeet Singh is defendant No.1 himself.

**Findings of the trial Court**

8. The learned Trial Court, after hearing counsel for the parties and appreciating the evidence led, held that the plaintiff had duly proved execution of the agreement. PW1, the scribe, and PW2, the attesting witness, supported the plaintiff's case regarding execution and consideration. PW3 Om Prakash proved sale of stamp papers to the defendant. PW4 Kamlesh Kaur proved the affidavit showing plaintiff's presence before the Sub Registrar on 15.06.2006. PW5, the expert, established that the thumb impression on the agreement to sell was that of the defendant. PW6, the plaintiff, reiterated the pleadings. On the other hand, the defendant failed to rebut the evidence regarding the taking of thumb impressions or to substantiate his theory that the plaintiff, being a commission agent, fraudulently obtained thumb impressions on blank papers. The Trial Court observed that DW1 Buta Singh's evidence was confined to possession and he admitted he had not heard of the agreement. DW2 Vinod Kumar only proved that the defendant used to sell crops up to 2001 at the plaintiff's shop. The defendant himself could not establish how the plaintiff misused blank papers and he never filed any complaint to any authority alleging forgery. The Court observed that although the plaintiff stated possession was delivered, there was no recital in the agreement to that effect, and thus possession of plaintiff was not proved. However, it was held that the plaintiff had proved readiness and willingness to perform his part of the contract. With these findings, the suit was decreed.

**Findings of the Lower Appellate Court**

9. Feeling aggrieved by the above said judgment and decree dated 29.05.2012 passed by the learned trial Court, The defendant filed an appeal. The learned Lower Appellate Court discarded the theory of blank papers. It observed that the plea of fraud was not believable as there was no evidence to support it. With regard to the long period fixed for execution of the sale deed despite a major portion of consideration being paid, the Court found the plaintiff's explanation plausible that since the land was mortgaged with the bank, parties fixed a long date to enable redemption before execution. The Court held that this objection was meritless. Consequently, the appeal was dismissed on 10.03.2015 and the findings of the Trial Court were affirmed.

10. Feeling aggrieved by the concurrent findings of the Courts below, the present RSA has been filed by the defendant/appellant. At the time of issuing notice of motion, substantial questions of law were framed by this Court vide order dated 09.09.2015. It was observed that counsel for the appellant stated that he would be prepared to pay the amount mentioned as advance i.e. ₹3,25,000/- along with interest as the Court may determine from the date of agreement till the date of payment. It was also urged that the decree for specific performance obtained by the plaintiff was based upon use of thumb impressions on papers which the plaintiff had obtained during his transactions with the defendant as commission agent. This Court accordingly observed that the case will be considered on the following substantial questions of law:

1. Whether the Courts below failed to recognise the intrinsic material available in the case that would show that there was no



relationship as vendor/vendee between the parties, and if at all, it was only an indebtedness which was sought to be converted fraudulently by the plaintiff by using some of the thumb impressions of the defendant which the plaintiff had access to.

2. Whether the defendant's conduct in making a case of delivery of possession of the property did not amount to projecting a false case and coming to Court with unclean hands to deny the plaintiff relief of specific performance.

**Submissions of learned counsel for the appellant**

11. Learned counsel for the appellant/defendant argued that both the Courts below have wrongly and illegally decreed the suit for specific performance of the alleged agreement to sell. The present case, he submitted, is one where Section 111 of the Evidence Act operates and is one of a fiduciary/blank-paper transaction claimed by a commission agent from his client. The lower Courts have not properly considered and appreciated the fact that if the alleged agreement were genuine, execution of the sale deed could not have been postponed in the agreement for so long a period as two years, especially when out of the total sale consideration of ₹3,59,125/-, a substantial payment of ₹3,25,000/- was allegedly paid on 15.06.2004 and only an amount of ₹35,000/- remained to be paid according to the plaintiff. No prudent person, having paid such a large sum as earnest money, would agree to postpone the sale date for two years for the payment of merely ₹35,000/-. All this, learned counsel argued, shows that the transaction was not a genuine sale, rather, the alleged agreement P1 was falsely created during the course of a fiduciary relationship, plaintiff being a commission agent and the



defendant an agriculturist. The defendant used to take inputs on credit and sometimes advances, and the plaintiff used to obtain blank signed stamp papers as security. The present case, learned counsel urged, is a case of breach of trust or money-lending, not of sale. The defendant, being an agriculturist, was not likely to sell the land which was his livelihood. The approach of the lower appellate court with regard to the fixation of a long date for the sale deed, as adopted in paragraph 35 of the impugned judgment, is, counsel submitted, perverse and based on surmises and conjectures. One can free a property from encumbrance in a day by paying the loan. The encumbrance could not have been the reason for fixing a long date. Learned counsel relied upon *Tej Ram v. Patti Ram, 1997 AIR SC 2702*, where the Supreme Court denied specific performance and set aside the decrees of the Courts below because of delay and doubtful conduct of the plaintiff. He submitted that the judgment relied upon by the lower appellate court (*2011 (1) C C 504*) is distinguishable because in that case the plaintiff had served legal notice and filed suit promptly, unlike the present case where there was delay of more than one and a half years. Learned counsel argued that the postponement of the sale date for two years goes to the root of the case and disentitles the plaintiff from discretionary relief under Section 20 of the Specific Relief Act. No notice was given by the plaintiff to the defendant for executing the sale deed on 15.06.2006 (the target date) or thereafter, despite the alleged large payment of ₹3,25,000/-. This circumstance, he submitted, creates grave doubt about the genuineness of the transaction.

12. Regarding the mortgage of the land with the bank, learned counsel for the appellant pointed out that according to the Jamabandi for the year 2002–2003



(Exhibit P29) the land was encumbered with the bank for ₹2,25,000/-. Yet Exhibit P1, the alleged agreement, does not specifically refer to a mortgage with SBI and there is merely a vague clause that the encumbrance would be cleared before the sale date appears. This, he submitted, indicates that no Jamabandi was actually obtained at the time of the alleged agreement, otherwise particulars of the mortgage would have been specifically mentioned. Further, the plaintiff has not produced any Jamabandi obtained on or before the alleged agreement. Ex.P-29 was obtained in 2007. Any prudent purchaser would have obtained proof of title before entering into such a transaction, but no such proof was produced. The appellant submitted that the plaintiff misused blank signed stamp papers by taking undue advantage of a dominant fiduciary position.

13. Learned counsel for the appellant next urged that the fiduciary relationship between plaintiff and defendant of commission agent and farmer is evidenced on the file by registers and documents of the market committee under the Punjab Agricultural Produce Markets Act, namely Exhibits D2 to D13. Even the alleged attesting witness of the agreement, PW2 Jagjit Singh, in cross-examination could not deny that the plaintiff dealt in commission agency business. Rather, PW2 stated that he had not sold his crop to the plaintiff but to some other commission agent, this, appellant's counsel argued, implies that the plaintiff was indeed a commission agent. The lower appellate court did not examine this evidence properly and returned no specific finding on this pivotal issue, thereby leaving the crucial question unadjudicated.

14. Learned counsel relied upon Section 111 of the Evidence Act (with illustrations) which reads as follows:-



*“111. Proof of good faith in transactions where one party is in relation of active confidence-Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.*

*Illustrations*

*(a)The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney.*

*(b)The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.”*

15. He argued that once a fiduciary or dominant relationship is shown, the onus on the dominant party to prove the genuineness of the transaction is heavy. He relied on *Krishna Mohan Kaul v. Pratima Mittal & Ors., (2003) AIR SC 4351*, submitting that where a person in a position of active confidence is challenged on the ground of fraud, the burden lies heavily upon the dominant party to establish the validity of the document, and the plaintiff has failed to discharge this onus. Hence, learned counsel argued, the plaintiff is not entitled to discretionary relief in specific performance.

16. On the question of delivery of possession, learned counsel contended that the plaintiff’s pleading that possession was delivered was not borne out by the document and the Trial Court itself noted that possession was not proved. He



further argued that the plaintiff failed to prove his readiness and willingness to perform his part of the agreement.

17. With respect to the thumb impressions appearing on the alleged agreement P1, learned counsel pointed out that the evidence of expert PW5 is unreliable. PW5 himself admitted that impressions Q3, Q5 and Q6 (allegedly of defendant) were not clear for comparison and for that reason he could not opine positively about those impressions. There are six alleged thumb impressions on Exhibit P1; Q1 appears on the first page; Q2 (allegedly of attesting witness) and Q3 (allegedly of defendant) appearing on the second page which completes the agreement, Q4 appears on back side of 1<sup>st</sup> page of agreement to sell, Q5 appears on the back of the second page; and Q6 on the blank third page. PW5 stated that Q3, which is material for completing the sale contract, could not be identified as that of the defendant, likewise, Q5 could not be said to be of the defendant. Once the thumb impressions on the front and back of page 2 which is the most relevant page are not proved to be those of the defendant, the agreement cannot be said to be established. This, counsel argued, disentitles the plaintiff to a decree of specific performance.

18. An important circumstance, learned counsel submitted, is that the third page of Exhibit P1 is blank except for the alleged thumb impression Q6 of the defendant. This, he urged, supports the blank-paper theory arising out of the fiduciary relationship: had there been a genuine transaction, the third page would not be blank and bearing thumb impressions, instead the document would have been completed in full. The presence of a blank page with a thumb impression indicates that thumb impressions may have been taken earlier on blank papers and



later used to fabricate Exhibit P1. This aspect, counsel argued, has been ignored by both Courts below. Further, nothing proves that the said impressions were taken after the writing of the document. Moreover, the absence of the vendor's signature on the back of the stamp papers, which PW3 Om Prakash sold, indicates suspicious origin of the document. PW3's cross-examination revealed many irregularities in his register (Exhibit D1), including entries not signed by purchasers, and the plaintiff withheld comparison of thumb impression at relevant entry with the vendor register (Exhibit P2), which invites adverse inference.

19. Learned counsel for the appellant thus pressed the substantial question that whether the Courts below failed to recognise intrinsic material showing there was no vendor-vendee relationship but rather a commission-farmer relationship misused to convert an indebtedness and the related question whether the defendant's conduct of asserting delivery of possession amounts to coming to Court with unclean hands.

**Submissions of learned counsel for the respondent**

20. Learned counsel for the respondent/plaintiff, on the other hand, argued that there is no illegality in the judgments passed by the Courts below. They rightly held that execution of the agreement to sell stands proved on the record, and once execution is proved by the presence of thumb impressions of the defendant appearing on the first page and on other pages of the agreement, the contract is established. Even if some impressions on the second page or on the backs of pages were heavily inked and not comparable, this would not amount to proof of fraud, non-comparability of some impressions does not negate the comparability and proof of other impressions. It was further argued that the defendant failed to prove



that there was no vendor-vendee relationship or that the true relationship was that of commission agent and farmer. Even if a commission-agent relationship existed, a commission agent is not precluded from entering into a contract of sale. It was pointed out that in the written statement the defendant admitted that the plaintiff might have used some thumb-impressed blank papers, and such an admission, learned counsel submitted, is binding and outweighs the expert's inconclusive report.

### **Findings**

21. I have considered the rival contentions and perused the record carefully.

22. For the reasons set out below, this Court is of the view that the concurrent judgments/decrees impugned in this Regular Second Appeal cannot be sustained and that substantial doubt has been cast upon the genuineness of Exhibit P-1 such as to disentitle the plaintiff to the discretionary relief of specific performance.

23. First, the evidence on the record establishes a relationship of active confidence and dominance between the parties, the plaintiff functioning as a commission-agent and the defendant as an agriculturist/client and that relationship is manifest from the market registers and related documents on the file (Exhibits D-2 to D-13). The lower Courts below have singularly failed to grapple with this central factual matrix. Neither has any meaningful finding been recorded negating the existence of commission-agent transactions nor has any satisfactory explanation been given for the many entries and documents produced by the defendant that point to frequent commercial dealings between the parties. Once



such a fiduciary/dominant relationship is shown, the legal position is clear, as per Section 111 of the Evidence Act that the evidentiary burden upon the party asserting the instrument (here, the plaintiff asserting Exhibit P-1) becomes correspondingly heavier and he must prove, by cogent and unimpeachable material, that the document was executed freely and knowingly and not fabricated or misused in consequence of the dominant position.

24. Second, the “blank-paper” theory advanced by the defendant is, on the record, believable and supported by a constellation of circumstances which the Courts below have not adequately examined. The expert evidence on the thumb impressions (PW-5) is far from conclusive. The expert himself admits that crucial impressions marked Q2, Q3 and Q5 on 2<sup>nd</sup> page of Ex.P-1, the agreement concludes and on the back-side of 2<sup>nd</sup> page of agreement Ex.P-1 are not amenable to comparison and therefore cannot be positively attributed to the defendant, and other impressions are also non-comparable. It is a matter of prime significance that the third page of Exhibit P-1 is essentially blank save for a thumb-mark (Q6). That circumstance i.e a blank sheet bearing a thumb-impression later incorporated into a multipart instrument is, in ordinary commercial practice, highly suspicious and at the least calls for explanation. Equally disquieting is the absence of regular vendor signatures or corroborative entries on the back of the individual stamp papers sold by PW-3 (the stamp vendor) and the unexplained failure of the plaintiff to procure and place before Court the comparative entries from the vendor’s register (Exhibit P-2/D-1 register) which, if produced, might have assisted or discredited the expert’s comparison. The deliberate or negligent withholding of such material invites a strong adverse inference against the plaintiff. In short, the



pattern of impressions, the lacunae in the vendor's documentation and the expert's inability to identify the essential impressions combine to make the hypothesis of earlier thumb-marks on blank papers subsequently used to fabricate Exhibit P-1 a realistic and credible explanation.

25. Third, the plaintiff's own conduct and the documentary omissions deepen the doubt. The agreement contains no specific recital of delivery of possession. The Trial Court itself recorded that possession was not proved. The plaintiff's allegation of delivery is unsupported by cogent evidence.

26. The long postponement of the sale-date for two years despite a substantial payment of ₹3,25,000 being alleged to have been made is inherently improbable and unexplained. A prudent purchaser, having paid such a substantial sum as earnest money, would not pass immediate possession or agree to a protracted deferment without contemporaneous documentary proof of title or clear disclosure of encumbrances. Although the Jamabandi produced on the file Ex.P-29 shows encumbrance with the bank, it was obtained much later in the year 2007 and Exhibit P-1 itself contains only a vague clause about clearing encumbrances rather than a specific reference to the very mortgage shown in the Jamabandi, this omission is material and inconsistent with the case of an honest buyer who has examined title prior to entering into a sale transaction. The lower appellate Court's reliance upon conjecture that the long date must have been fixed to enable redemption from the bank is not supported by contemporaneous documentary proof and amounts to speculation and such surmise cannot sustain the grant of equitable relief.



27. Support is also derived from the judgment of Co-ordinate Bench of this Court in the case of ***Suresh Singla Vs. Smt. Phool Pati and Another, 2013(1) RCR (Civil) 503***. In para No.14 of the same, it was held as under:-

*“In case the intention of parties was actually to execute agreement in that case after paying 90% of the consideration the sale deed would not have been postponed for such a long period. As per Section 20 of the Act, the Court is not bound to grant the discretionary relief of specific performance. No doubt the discretion in withholding the said relief should not be arbitrary and should be based upon sound principles but on the facts of the present case both the Courts below have judiciously exercised the jurisdiction by invoking the provisions of Section 20 of the Act in withholding the relief of specific performance. There is nothing on file that Courts below have misread and misinterpreted the testimony of witnesses and documentary evidence.*

Further, it was also held that *the defendant is an illiterate lady and has taken a stand that she has been duped. No doubt the Courts below held that agreement was executed between the parties but the finding that the said agreement was to secure a loan is based upon the circumstantial evidence and the other evidence available on file and cannot be interfered.*

28. The ratio of above mentioned judgment is fully applicable to the facts of the present case. In the case in hand also, 90% of the sale consideration was already paid and for remaining of 10% of the sale consideration long date of two



years was fixed for execution of sale deed which shows intention of the parties that it was only a loan transaction.

29. Fourth, applying accepted principles of evidence and equity, the cumulative effect of (a) the proved fiduciary/commission-agent relationship, (b) the expert's inconclusive comparisons of the material thumb-marks, (c) the presence of a blank, thumb-marked page in Exhibit P-1, (d) the absence or non-production of decisive vendor-register comparisons, and (e) the failure to prove delivery of possession (f) failure to explain the long deferment of the sale-date, is to draw a strong inference that Exhibit P-1 may well be a document manufactured or perfected by using earlier thumb-marks taken in the course of the fiduciary relationship. In that factual matrix the plaintiff has not borne the heavy onus incumbent upon him. Accordingly he cannot ask or the Courts to exercise the equitable jurisdiction in his favour.

30. For these reasons, this Court is satisfied that the concurrent findings upholding the execution and genuineness of Ex.P-1 are vitiated by material non-consideration of critical evidence and by unsafe inferences. The substantial questions of law framed by this Court are, therefore, answered in favour of the appellant. The record contains intrinsic material indicating that the parties' relationship was that of commission-agent and farmer and that what is alleged as a sale may be only a conversion of indebtedness by improper use of thumb-marks and the defendant's assertion of delivery of possession, as recorded, does not furnish a sound basis for specific performance but rather discloses conduct which disentitles the plaintiff to equitable relief.

**RSA-3584-2015 (O&M)**

-18-

31. Accordingly, the Regular Second Appeal is allowed. The judgment and decree of the Lower Appellate Court dated 10.03.2015 and the judgment and decree of the trial Court dated 29.05.2012, insofar as they decree specific performance on Ex.P-1, are set aside. The plaintiff's suit for specific performance is dismissed. However, in the alternative, the plaintiff shall be entitled to recover the earnest money amount of ₹3,25,000/- along with interest. The plaintiff shall be entitled to interest at the rate of 9% per annum from the date of execution of the agreement i.e. 15.06.2004 till the date of filing of the suit, and thereafter at the rate of 6% per annum from the date of institution of the suit till actual realization of the decretal amount.

32. Pending application(s), if any, also stands disposed of.

September 17, 2025  
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**(MANDEEP PANNU)**  
**JUDGE**

Whether speaking/non-speaking : Speaking  
Whether reportable : Yes/No.