



RSA-2706-2018 (O&M)

Sr.No.118

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

**CM No.7081-C of 2018 in/and
RSA No.2706 of 2018 (O&M)
Decided on : 07.05.2025**

Gurjeev Singh Gill

...Appellant

Versus

Santosh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Munish Bhardwaj, Advocate
for the applicant/appellant.

PANKAJ JAIN, J. (ORAL)

CM No.7081-C-2018

This is an application for condonation of delay of 357 days in filing the appeal.

For the reasons stated in application, this Court is satisfied that the applicant/appellant has shown sufficient cause to condone delay in filing the appeal. Application stands allowed. Delay of 357 days in filing the appeal is condoned.



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Defendant No.1 is in appeal. For convenience, the parties are being referred to by their original position in the suit i.e. the appellant as plaintiff and respondents as defendants.

2. Plaintiff filed a suit for possession by way of specific performance of agreement to sell dated 23.06.2006, claimed to have been executed by Rajesh Sharma son of Sh. Sham Sunder, deceased husband of defendant No.2 and attorney-holder of defendant No.1, with regard to suit property as detailed out in the headnote of the plaint.

2.1. As per the plaintiff, defendant No.1 executed General Power of Attorney dated 23.07.1996 bearing document No.3442 in favour of Rajesh Sharma, husband of defendant No.2, who entered into an agreement to sell *qua* a plot measuring 15.6x40=120 sq. ft. i.e. 3 marlas (each marla 207 sq. ft.), as detailed out in the headnote of the plaint, with plaintiff for a total sale consideration of R.75,000/-. On 23.06.2006, the plaintiff claimed that entire sale consideration of Rs.75,000/- was paid to Rajesh Sharma. The agreement was an open ended contract as the plaintiff paid the entire sale consideration and Rajesh Sharma handed over possession to him. Plaintiff claimed that he always remained ready and willing to perform his part of contract and he also approached Rajesh Sharma for execution and registration of sale deed, but he put off the matter on one pretext or the other. Rajesh Sharma died on 18.02.2007. After his death, the plaintiff served a legal notice dated 02.09.2008 upon defendants requesting them to execute the sale deed as per agreement to sell. On the date, when plaintiff remained present in the

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office of Sub-Registrar, Jalandhar with expenses to be borne for execution and registration of sale deed, the defendants did not turn up to perform their part of the contract. Thereafter, the plaintiff got executed an affidavit duly attested by the Executive Magistrate, Jalandhar in order to mark his presence to prove his readiness.

2.2. The suit was contested by both the defendants separately. Defendant No.2 filed a separate written statement. Defendant No.2 denied execution of agreement to sell by her husband as claimed by plaintiff. However, it was admitted that defendant No.1, owner of the suit property, appointed Rajesh Sharma as her attorney. As per defendant No.2, the defendant No.1 sold the plot in question to one Vinod Kumar son of Sh. Bhagwan Dass, resident of Preet Nagar, Sodal Road, Jalandhar vide sale deed dated 11.12.2003. Possession of the plaintiff over the suit property was also denied.

2.3. On the basis of pleadings, the Trial Court framed following issues:-

1. *Whether the plaintiff is entitled to the relief of possession as prayed for? OPP*
2. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
3. *Whether suit filed by plaintiff is not maintainable in the present form? OPP*
4. *Whether plaintiff has no cause of action to file the present suit? OPD*
5. *Whether suit of the plaintiff is bad for mis-joinder and non-joinder of the necessary parties? OPD*

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

7. *Relief.*

2.4. Defendant No.1 opted not to file written statement and her defense was struck off vide order dated 20.01.2010.

2.5. Trial Court held that plaintiff successfully proved the execution of agreement to sell and the power of attorney in favour of Rajesh Kumar by defendant No.1 was not in dispute. Trial Court answered all issues in favour of plaintiff and decreed the suit filed by plaintiff. In appeal preferred by defendant No.1, the Lower Appellate Court has affirmed the findings recorded by the Trial Court.

3. Counsel for the appellant while assailing findings recorded by the Courts below claim that plaintiff under the garb of the present suit is now raising claim over a property which is different from one which was agreed to be sold to him. He submits that the plot *qua* which the suit had been filed was in fact sold in favour of one Vinod Kumar vide sale deed dated 11.12.2003. The precise issue has been dealt by both the Courts below. It has come on record and the Courts below have returned the concurrent finding of fact that the plot owned by Vinod Kumar is a plot different from the suit property. It has been admitted by witness of defendants DW6 Harwinder Sharma that Vinod Kumar is well aware of the present *lis* and yet opted not to become a party. DW2 Dalip Singh, Draftsman, admitted in his cross-examination that the plot owned by Vinod Kumar is a plot adjacent to the present one. Site plan Ex.P1 has been proved. The Courts below found from the cross-examination



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of DW2 Dalip Singh, Draftsman, who proved on record the site plan as Ex. DW2/A, that the same was prepared on the asking of the party and by not visiting the spot.

3.1. Counsel for the appellant further submits that apart from the site plan Ex.DW2/A, there is no other evidence to support the contention raised by him before this Court.

4. Site plan Ex.DW2/A having been held to be not reliable from the testimony of its creator i.e. DW2, Draftsman, this Court does not find any reason to entertain the plea raised by appellant.

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

6. Pending application(s), if any, shall also stand disposed off.

**(PANKAJ JAIN)
JUDGE**

May 07, 2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No