



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

RSA No.450 of 2025 (O&M)

Date of decision: 13.05.2025

Santokh Singh

....Appellant

V/s

Mohinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Ashish Nagar, Advocate, for the appellant.

VIKRAM AGGARWAL, J. (ORAL)

Plaintiff is in appeal against the judgment and decree dated 27.11.2024 passed by the Court of learned Additional District Judge, Ludhiana, dismissing the appeal against the judgment and decree dated 01.03.2018 passed by the Court of learned Civil Judge (Jr. Divn.), Ludhiana, vide which the suit of the plaintiff for specific performance was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. Plaintiff (Santokh Singh) instituted a suit for specific performance of agreement to sell dated 14.06.2000, stated to have been executed by the defendants (Mohinder Singh, Harbans Singh and Nirmal Singh) in favour of the plaintiff with regard to property measuring 2 marlas (fully described in the plaint) situated at Village Garhi Fazal, Tehsil and District Ludhiana (hereinafter referred to as the "suit property"). Consequential relief of permanent injunction restraining the defendants from alienating, transferring, gifting or mortgaging the suit property was also sought.

4. It was averred that by way of agreement to sell dated



14.06.2000, the defendants had agreed to sell the suit property to the plaintiff for a total sale consideration of Rs.16,000/- (Rs.8000/- per marla). A sum of Rs.10,000/- was paid as earnest money and possession was delivered. However, the sale deed could not be executed as the sale was to be executed as and when the defendants obtained signatures of other co-sharers/family members/mother and sisters of the defendants or upon getting their shares in the suit property transferred in their favour. It was averred that right since the date of execution of the agreement to sell, the plaintiff was in actual physical possession of the suit property and had been using the same for his domestic purposes. It was averred that the plaintiff had always been ready and willing to perform his part of the contract. However, despite repeated requests, the defendants did not get the signatures of their mother and sisters on the agreement to sell and did not come forward to execute the sale deed. Finally, a legal notice dated 30.05.2016 was served calling upon the defendants to get the sale deed registered on or before 15.06.2016. Pursuant to the same, the plaintiff remained present in the office of the Sub-Registrar, Koom Kalan, District Ludhiana on 15.06.2016, but the defendants did not turn up. As a result thereof, the suit was filed.

5. Defendants did not put in appearance despite service and were proceeded against *ex parte*.

6. Plaintiff led his *ex parte* evidence. Upon consideration of the same, the relief of specific performance was declined. However, refund of Rs.10,000/- paid as earnest money was ordered by the Court of learned Civil Judge (Jr. Divn.), Ludhiana vide judgment and decree dated 01.03.2018. An appeal was preferred but the same was dismissed by the Court of learned Addl. District Judge, Ludhiana vide judgment and decree dated 27.11.2024



leading to the filing of the present regular second appeal.

7. I have heard learned counsel for the appellant.

8. Learned counsel for the appellant has submitted that both Courts erred in declining the relief of specific performance. It has been contended that the defendants did not even bother to contest the suit and the appellant-plaintiff led cogent *ex parte* evidence which went un rebutted, but still he was non-suited. Learned counsel has referred to the oral and document evidence led by the appellant-plaintiff.

9. I have considered the submissions made by learned counsel for the appellant.

10. The agreement to sell (Ex.P1) was stated to have been executed on 14.06.2000. Admittedly, it was not signed by all co-sharers and as per the plaintiff, the mother and sisters of the defendants were to sign subsequently. It was agreed that the sale deed would be executed after obtaining the signatures of the mother and sisters of the defendants on the agreement to sell. However, the agreement to sell does not contain any recital to this effect. Further, the agreement was not registered. Still further, no date for execution of the sale deed was fixed. Even the typing in the agreement is little odd. Initially, there is too much gap between the lines which subsequently reduce showing that the agreement may have been typed on a pre-signed/thumb marked document. In fact, the agreement does not bear the names of the mother and the sisters (Bachni, Parkasho and Harbans Kaur). As regards possession, it states that possession had been handed over. No record was produced to show that the plaintiff was in possession of the suit property and, therefore, a mere recital in the agreement to sell or in the oral evidence would not be sufficient to prove the possession.



11. Though the Courts found that the suit was within limitation, it is quite strange that after agreement to sell dated 14.06.2000 having been executed, the suit was filed on 01.03.2017 i.e. more than 16 years after the execution of the agreement to sell. It is unacceptable that somebody would keep on waiting for more than 16 years for execution of the sale deed. It also came on record from the *Jamabandi* (Ex.P3) that the suit property was mortgaged with the Central Government, which was neither mentioned in the agreement to sell nor in the plaint. Once, the land was mortgaged, it is not understood as to how a sale deed could be effected. It has to be borne in mind that though the defendants did not put in appearance and only *ex parte* evidence was led by the plaintiff, it would not mean that the suit had to be decreed. The plaintiff was required to prove his case by leading cogent evidence, which, as discussed above, the plaintiff failed to do.

12. Under the circumstances, both Courts rightly non-suited the plaintiff and dismissed the suit. I do not find any illegality in the said decisions warranting interference in the second appeal. No question of law, therefore, arises for the consideration of this Court.

13. In view thereof, I do not find any merit in the present appeal and the same is accordingly dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

May 13, 2025

vchgarg

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No