



RSA No.57 of 2025 (O&M)

S. No.135

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

RSA No.57 of 2025 (O&M)

Date of Decision:26.03.2025

Birbal

.....Appellant

Vs.

Suresh Kumar

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Raj Kapoor Malik, Advocate
for the appellant.

DEEPAK GUPTA, J. (Oral)

Suit for specific performance, based upon an agreement to sell dated 08.08.2016 filed by the plaintiff – Suresh Kumar (*respondent herein*) was dismissed by the trial Court on 17.08.2022. However, the appeal filed by the plaintiff was accepted by learned District Judge, Kaithal vide judgment dated 01.10.2024. Against this reversal, defendant of the case i.e. appellant herein has approached this Court.

2. It is contended by learned counsel that well-reasoned judgment of the trial Court has been wrongly reversed by the First Appellate Court, by mis-appreciating the evidence on record.

3. The contention of learned counsel for the appellant has been considered and paper book perused.

4. It was claimed by the plaintiff that defendant had agreed to sell the suit property to him for consideration of ₹2 lakhs vide an agreement to sell dated 08.08.2016. The entire sale consideration was received by the defendant on the same date and a separate receipt was executed. Possession of the suit property was delivered to the plaintiff on the same date and it was specifically mentioned in the agreement that the plaintiff will be at liberty to use the suit land in the manner of his choice and was even authorised to raise construction

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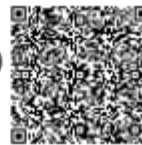
on the same. However, no target date for execution of the sale deed was fixed and plaintiff was given liberty to get the sale deed executed and registered either in his own name or in the name of person of his choice. Plaintiff later on served a legal notice dated 24.05.2018 upon the defendant to execute the sale deed and get it registered, which was duly received by the defendant but on the date as mentioned in the legal notice, defendant did not appear before the Office of Sub Registrar. Plaintiff further claimed that defendant was threatening to alienate the suit property. Plaintiff further stated that he was always ready and willing and still ready and willing to perform his part of contract and, as such, he prayed for grant of specific performance.

5. It is revealed further that despite being served, defendant (*appellant herein*) did not appear before the trial Court and was proceeded against ex parte.

6. After taking ex parte evidence, the trial Court dismissed the suit by observing that despite payment of the entire sale consideration, why the plaintiff had not got the sale deed executed, which raised a serious doubt and besides attesting witness to the agreement had not been examined. With these observations, the suit was dismissed on 17.08.2022.

7. The First Appellate Court reversed the above-said findings of the trial Court, in the appeal filed by the plaintiff- respondent after observing that it was not the requirement of law that at least one of the attesting witnesses to the agreement to sell must be examined. It was further noticed that neither the ownership of the defendant regarding the property in dispute was in dispute; nor the execution of the agreement and receipt had been disputed and as such, there was no reason for declining the relief of specific performance, simply for the reason that no target date had been fixed for execution of the sale deed. As such, learned First Appellate Court set aside the judgment of the trial Court and decreed the suit.

8. Learned counsel for the appellant- defendant before this Court has failed to convince this Court regarding any illegality or perversity in the findings recorded by the First Appellate Court. The only submission made by learned counsel is that though the first page of the agreement to sell bears the signature



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of attesting witness Rakesh, but on the second page of the agreement to sell, the signature of said attesting witness Rakesh does not appear.

9. There is absolutely no merit in the contention, particularly when both pages of the agreement dated 08.08.2016 bears the signatures of defendant- appellant and he has not disputed either his signatures on the agreement to sell & receipt or the due execution of the said agreement & receipt. As has already been noticed that despite being served of the notice of the suit, defendant- appellant had preferred not to contest the suit and so was proceeded against ex parte. Once it is found that defendant- appellant had not disputed the execution of the agreement to sell and receipt in question, it was immaterial that attesting witness to the agreement was not examined or that he had signed only on one page of the agreement.

10. Learned First Appellate Court has also rightly observed that there was no legal requirement that there must be a target date fixed for execution of the sale deed. Since the entire sale consideration had been received by the defendant- appellant and he had also delivered the possession of the suit property to the plaintiff- respondent, it is probably for this reason that no target date was fixed for execution of the sale deed. For this reason, relief of specific performance could not have been declined to the plaintiff, as has been rightly observed by the First Appellate Court.

11. On account of the afore-said discussion, this Court does not find any merit in the present appeal, in the absence of any illegality or perversity in the findings as recorded by the First Appellate Court, which are based upon proper appreciation of the factual and legal position. No merits. Dismissed.

March 26, 2025
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No