



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

RSA-3547-1997

Pritam Lal

. . . . Appellant

Vs.

Mohinder Singh

. . . . Respondent

**Reserved on: 26.09.2025
Pronounced on: 30.09.2025**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Parminder Singh, Advocate
for the appellant.

Mr. Ravi Dutt Sharma, Advocate with
Mr. Amit Jangra, Advocate for
respondent No.8.

DEEPAK GUPTA, J.

This is a Regular Second Appeal by the plaintiff challenging the concurrent findings of the Courts below. The plaintiff's suit for specific performance was partly decreed, as the trial Court awarded recovery of ₹62,500 with interest but declined specific performance. The plaintiff's first appeal was dismissed.

2. Trial Court record was called. Same has been perused. To avoid confusion, parties shall be referred as per their status before the trial Court.

3. Defendant No.1 Smt. Gurnam Kaur, was allotted Plot No.1 in Scheme No.7 by the Kaithal Improvement Trust/Municipal Committee through allotment letter dated 19.06.1982 (Ex.D15) for a total price of ₹17,375/-, out of which she deposited one-fourth (₹4,375). The plot measured about 250 sq. yards approximately, subject to adjustment on actual measurement at the time



of possession, with additional charges for access area, if applicable. The allotment letter also required execution of an agreement with the Improvement Trust within one month.

4. Defendant No.1 appointed defendant No.2 Kashmiri Lal as her general power of attorney holder vide registered GPA dated 24.09.1982 (Ex.P1). Based upon this GPA, defendant No.2 Kashmiri Lal executed an agreement to sell dated 16.05.1983 (Ex.P2) in favour of the plaintiff for selling the said plot for total consideration of ₹62,500/- and received an amount of ₹5,000/- towards earnest money vide separate receipt (Ex.P3). Defendant No.2 undertook to deposit the balance instalments of the sale price and to inform the plaintiff accordingly about the same. Parties agreed that sale deed will be got registered within one month from the date so intimated. Balance price of ₹57,500/- was agreed to be paid at the time of execution of the sale deed. Usual default clauses were also stipulated in the said agreement. Later on, an amount of ₹30,000/- was paid by plaintiff to defendant No.1-allottee directly on 18.12.1983 (receipt - Ex.P4). Another amount of ₹20,000/- was paid by him to defendant No.1 on 14.05.1985 (receipt - Ex.P5). This way, an amount of ₹55,000/- was received by defendant No.1 and only an amount of ₹7,500/- was left to be paid as per the agreement. In the meantime, defendant No.1 cancelled the GPA of defendant No.2 vide registered deed dated 14.01.1984.

5. Plaintiff brought the suit on 24.07.1986 contending that he has always been ready & willing and still ready & willing to perform his part of contract. However, defendant No.1 was backing out from the agreement entered through power of attorney. It was further alleged defendant No.3 Rajpal started claiming himself to be transferee from defendant No.1 in the plot, though plaintiff denies the said fact. With this averments, plaintiff prayed for a decree of specific performance of the agreement to sell dated 16.05.1983 by directing defendant Nos.1 and 2 to execute sale deed in his favour on receipt of balance amount of ₹7,500/-. In the alternative, plaintiff prayed for recovery of ₹62,500/- with future interest.



6. Defendant No.1 i.e., allottee Gurnam Kaur neither disputed appointment of defendant No.2 as her GPA nor she denied execution of the agreement to sell. She also admitted having received an amount of ₹55,000/- out of total consideration of ₹62,500/-. However, she denied that plaintiff was ready and willing to perform his part of contract. This defendant also pleaded that though she had informed Executive Officer of the Municipal Committee, who is brother-in-law of defendant No.3 Rajpal, about the existence of the agreement dated 16.05.1983 between her and the plaintiff but still brother-in-law of defendant No.3 agreed to transfer the said plot in favour of defendant No.3 Rajpal. Defendant No.1 claimed that she does not even know said defendant No.3 nor she received any consideration from him. With these submissions, she prayed for dismissal of the suit.

7. Defendant No.2 Kashmiri Lal, the former general power of attorney of Defendant No.1, admitted the plaintiff's entire claim.

8. In contrast, Defendant No.3 Rajpal, in his written statement asserted that he was a bona fide purchaser of the suit property without notice of the prior agreement to sell between the plaintiff and Defendant No.1. He maintained that he had made full inquiries before purchasing and was therefore, protected under law. He further claimed to have incurred substantial expenditure on improvements to the property, to the knowledge of the plaintiff.

9. During the pendency of the suit, Defendant No.3, acting through his attorney Devi Dayal, sold the property to Defendants No.4 and 5 under a sale deed dated 06.04.1990 (Ex.D1) in equal share. Consequently, Defendants No.4 and 5 were impleaded, and they adopted the written statement of Defendant No.3.

10. Upon framing issues and evaluating the evidence, the trial Court held that the agreement to sell had been validly executed between the plaintiff and Defendant No.1 through her attorney, and that payments made by the plaintiff were established. The Court also found that the plaintiff was not at



fault. However, it concluded that Defendant No.3 was a bona fide purchaser, who had acquired ownership of the property. Accordingly, by judgment dated 15.09.1994, the trial Court declined the relief of specific performance but decreed recovery of ₹62,500 with interest. These findings were affirmed by the first Appellate Court while dismissing the plaintiff's appeal on 27.05.1997.

11.1 Assailing the concurrent findings of the Courts below, learned counsel for the appellant-plaintiff argues that despite proving execution of the agreement and payment of ₹55,000/- out of the total sale consideration of ₹62,500/-, and despite sufficient evidence of his readiness and willingness to perform the contract, the relief of specific performance was wrongly denied by treating defendant No.3 Rajpal as a bona fide purchaser.

11.2 It is submitted that Rajpal is the brother-in-law of the then Executive Officer of the Municipal Committee, Kaithal, who was duly informed about the agreement between the plaintiff and defendant No.1, yet he collusively transferred the plot in Rajpal's favour. Notably, Rajpal himself never entered the witness box to prove bona fides, and the statement of his attorney Devi Dayal cannot substitute such proof. Further, no sale deed was ever executed by defendant No.1 in Rajpal's favour, nor was any consideration paid to him. Thus, Rajpal having failed to establish himself as a bona fide purchaser, the plaintiff's claim for specific performance could not have been lawfully denied.

11.3 On above contentions, Ld. counsel prays for setting aside the impugned judgments & decrees and for decreeing the suit for specific performance.

12. *Per contra*, learned counsel for contesting respondent No.8 Yogesh Kumar (*defendant No.5 before the trial Court*) supports the concurrent findings, emphasizing that the suit property stood transferred to Rajpal on 18.11.1985 (Ex.D14). It is Rajpal, who not only secured site plan approval but also made substantial improvements by investing heavily in construction. Ld. Counsel further points out that by this time, nearly 40 years have passed, during which the



property's value has steeply escalated given its urban location. Relying on the judgment in *Nanjappan v. Ramasamy (2015 (3) PLR 218 [SC]*, he submits that the appellant does not deserve the equitable relief of specific performance and prays for dismissal of the appeal.

Court Analysis & Findings:

13. This Court has heard learned counsel for both sides and has carefully appraised the record and the findings recorded by the Courts below.

14. It is not in dispute that the agreement to sell dated 16.05.1983 (Ex.P2) was executed by Defendant No.1, Smt. Gurnam Kaur, through her attorney (Defendant No.2) in favour of the plaintiff for a total consideration of ₹62,500/-. The evidence further establishes that ₹5,000/- was paid at the time of execution, followed by payments of ₹50,000/- on 18.12.1983 (Ex.P4) and 14.05.1985 (Ex.P5), aggregating to ₹55,000/-. Only a sum of ₹7,500/- remained unpaid. Having discharged the bulk of the consideration, there is every justification to accept the plaintiff's assertion that he was always ready and willing to perform his part of the contract.

15. However, it is equally significant to note that when the agreement was executed, Defendant No.1 was merely an allottee of a 250 sq. yd. plot under the Improvement Trust vide allotment letter dated 19.06.1982 (Mark D15). As per the conditions of allotment, she was required to execute an agreement with the Trust within one month, and the actual measurement was to be determined at the time of delivery of possession. The record shows that on 14.11.1985 Defendant No.1 cleared the balance sale price, deposited the security (Ex.D6, Ex.D9), and also paid an additional sum of ₹11,293.75/- towards the excess area since the actual measurement was 412.41 sq. yd. (Ex.D10). Only thereafter did the Administrator, Municipal Committee, Kaithal, issue possession letter (Ex.D12) and deliver possession (Ex.D13). On 18.11.1985, the plot was transferred to Defendant No.3 Rajpal, on payment of requisite transfer fee (Ex.D7, Ex.D8), as evidenced by transfer order (Ex.D14). These documents stand



proved by DW-3 Satish Kumar, an official of the Municipal Committee. It is, therefore, clear that the transfer in favour of Defendant No.3 was effected with the consent and participation of Defendant No.1.

16. The only question requiring determination is whether Defendant No.3 Rajpal was a bona fide purchaser without notice of the prior agreement (Ex.P2). It is undisputed that the property was transferred in favour of defendant No.3 on 18.11.1985 by the then Executive Officer of the Municipal Committee, Kaithal. However, defendant No.3 never entered the witness box to affirm his bona fides, and the testimony of his attorney cannot substitute such direct evidence. Further, no sale deed was executed by defendant No.1, and no consideration was shown to have been paid to her. These circumstances raise serious doubt about the validity of the transfer and the bona fide character of defendant No.3's title. The relationship between Rajpal and the then Executive Officer, coupled with absence of cogent proof of consideration, fortifies the inference of collusion. Accordingly, defendant No.3 failed to establish his plea of being a bona fide purchaser. Finding to the contrary by the courts below, is reversed.

17. However, the relief of specific performance cannot be granted, for other reasons. The agreement (Ex.P2) was executed in respect of a tentative allotment of 250 sq. yd., whereas the actual area turned out to be 412.41 sq. yd. nearly two and a half years later. The agreement is silent on the consequences of variation in area.

18. Apart from above, specific performance being an equitable remedy is governed by principles of fairness and balance of equities. Though the plaintiff has succeeded in proving execution of the agreement and his readiness and willingness, the Court cannot remain oblivious to the subsequent developments. Moreover, the transfer to Defendant No.3 took place on 18.11.1985, i.e., almost four decades ago. In these circumstances, directing specific performance at this belated stage, when urban property prices have escalated steeply,



would be wholly inequitable and contrary to settled equitable principles governing the discretionary relief under the Specific Relief Act. The Supreme Court in ***Nanjappan v. Ramasamy (supra)*** has held that inordinate delay and escalation of value are relevant considerations for denying specific performance and instead granting alternative relief.

19. In the present case, directing specific performance after such a long lapse of time would cause grave prejudice to the transferee and disturb equities crystallised over the years. The plaintiff, however, is entitled to refund of the part consideration of ₹55,000/- along with reasonable interest, as also compensation for denial of the contracted bargain.

20. **Conclusion:** Accordingly, the appeal is partly allowed. The judgments and decrees of the Courts below, declining the relief of specific performance, are affirmed. However, it is further directed as under:

- In lieu of specific performance:
 - The plaintiff shall be entitled to recover a sum of ₹55,000/- from defendant No.1, being the amount paid as part consideration.
 - The aforesaid amount shall carry interest @ 9% per annum, payable from the date of payment till realization.
- To balance the equities, the plaintiff shall further be entitled to compensation as under:
 - A sum of ₹2,00,000/-, recoverable from defendant No.3, who in collusion with the Executive Officer, Municipal Committee, Kaithal (his brother-in-law), managed to get the property transferred despite the subsisting agreement between the plaintiff and defendant No.1.
 - A sum of ₹2,00,000/-, recoverable from defendants No.4 and 5, who purchased the suit property during the pendency of the suit.



➤ There shall be no order as to costs. Decree be drawn accordingly.

(DEEPAK GUPTA)
JUDGE

30.09.2025

Neetika Tuteja

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No