



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

RSA-3985-2011 (O&M)

Omwati

. . . . Appellant

Vs.

Khursheed and Another

. . . . Respondents

**Reserved on: 03.09.2025
Pronounced on: 15.09.2025**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Sudhir Aggarwal,
Ld. Advocate for the appellant

Mr. Rakesh Dhiman,
Ld. Advocate for the respondent.

DEEPAK GUPTA, J.

This appeal has been preferred by defendant No.2 (Smt. Omwati) against the judgment & decree dated 12.08.2011, passed by the First Appellate Court, whereby the appeal filed by plaintiff Khursheed (*respondent No.1 herein*) was allowed, reversing the judgment of the Trial Court dated 08.10.2010, and thereby decreeing the suit for specific performance of contract.

2. For convenience and to avoid confusion, the parties shall be referred to by their status before the Trial Court.

3. Plaintiff Khursheed filed a suit seeking specific performance of an agreement to sell against Defendant No.1 – Mustafa (owner of the property - (*respondent No.2 herein*); and Defendant No.2 – Smt. Omwati (*appellant herein and purchaser under subsequent sale*). As per the plaintiff, Mustafa agreed to sell the suit property to him via agreement dated 05.03.2007 for ₹2,20,000/-. An



amount of ₹20,000/- was paid as earnest money. The sale deed was to be executed and registered on or before 23.04.2007. Plaintiff claimed that he appeared before the Sub-Registrar on the agreed date with the balance amount, but Mustafa did not show up. Later, he came to know that Mustafa had sold the property to defendant No.2 (Omwati) on 28.08.2007 for ₹80,000/-. The plaintiff, therefore, sought a decree for specific performance of the agreement.

4. Defendant No.1 Mustafa did not contest the suit and was proceeded ex parte.

5. Defendant No.2 Omwati denied any agreement to sell between plaintiff and Mustafa. She alleged fraud and collusion and claimed to be a bona fide purchaser for value.

6. After framing necessary issues and taking evidence, the Trial Court held that the execution of the agreement to sell was not proved satisfactorily; and that defendant No.2 was a bona fide purchaser. Consequently, the suit was dismissed.

7. However, the appeal filed by the plaintiff was allowed, and the suit for specific performance was decreed. The Appellate Court held that the agreement to sell was validly executed and proved through attesting witnesses (PW-1, PW-2, PW-3) and its writer PW-5; that plaintiff was ready and willing to perform his part of the contract; and that defendant No.2 was not a bona fide purchaser. Consequently, the sale deed in favour of defendant No.2 was declared null and void, and she was directed to join Mustafa in execution of the sale deed in favour of the plaintiff upon payment of the balance amount of ₹2,00,000/-. Vacant possession was directed to be delivered to the plaintiff.

8. Assailing the aforesaid reversal, it is contended by learned counsel for the appellant- defendant No.2 that the Appellate Court erred in reversing the Trial Court's finding regarding the bona fide nature of Omwati's purchase;



and that the plaintiff had failed to prove his readiness and willingness to perform the contract. It is urged that Omwati had made due inquiries before the purchase and found no record of any prior agreement. Besides, Jamabandi entries showed Mustafa as owner, with no mention of any agreement to sell.

9. On the other hand, learned counsel for the respondent-plaintiff urge that Appellate Court has rightly decreed the suit for specific performance.

10. This Court has considered submissions of both the sides and have perused the record carefully.

11. On analysis of the entire record, it is found by this court that as far as execution of the Agreement to Sell (05.03.2007) is concerned, it was duly proved through testimonies of attesting witnesses PW-1, PW-2, PW-3; and PW-5 Sher Mohd., Advocate who drafted the agreement. There was no substantial reason to disbelieve these witnesses. As such, the trial Court erred in doubting the execution. The finding of the Appellate Court on this issue is upheld.

12. Coming to readiness and Willingness of the Plaintiff, Sale deed was to be executed on or before 23.04.2007. Plaintiff relied on application (Ex.P-2) submitted before the Sub-Registrar and return endorsement (Ex.P-3). However, the application was submitted at 10:00 AM and returned immediately. There is no evidence that plaintiff waited for the whole day for the vendor. Further, there is no credible evidence that plaintiff brought or held ₹2,00,000/- on that day—no cash proof, bank statement, or demand draft shown. Still further, no legal notice was served on the vendor after he failed to appear. Not only this, plaintiff waited almost 11 months before filing the suit on 27.03.2008.

13. The above facts clearly demonstrate lack of readiness and willingness on the part of plaintiff, which is mandatory under Section 16(c) of the Specific Relief Act, 1963. As such, the finding of the First Appellate Court on this point is erroneous and is therefore reversed.

14. Moving ahead, the Jamabandi entries revealed defendant Mustafa



to be owner in possession of the suit property. It has been categorically deposed by DW-2 Smt. Omwati that before purchasing the land on 28.08.2007, she had made bona fide enquiries in the village regarding any transaction. So much so, as per her testimony, she had asked vendor Mustafa about any agreement by him with anybody else or Khursheed and that he had replied in the negative. There is no evidence to the contrary. As already stated that defendant-vendor Mustafa did not contest the suit.

15. In the aforesaid facts and circumstances, there was no reason for the first Appellate Court to reverse the finding of the trial Court to the effect that defendant No.2 Smt. Omwati- appellant was the bona fide purchaser for value of the suit land. As such, finding to the contrary of the first Appellate Court in this regard is hereby reversed.

16. Consequent to the entire discussion as above, the present appeal is accepted. The judgment & decree dated 12.08.2011 passed by the first Appellate Court are hereby set aside. The judgment & decree dated 08.10.2010 of the trial Court are hereby restored, whereby the suit of the plaintiff- respondent No.1 was dismissed.

(DEEPAK GUPTA)
JUDGE

15.09.2025

Neetika Tuteja

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No