

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****125****RSA-3055-2023****Date of Decision: 22.04.2025****BIRO DEVI****.....APPELLANT****Vs.****SURESH RATHI THROUGH LRS****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA****Present: Mr. Rahul Yadav, Advocate
for the appellant.*************DEEPAK GUPTA, J.**

Suit for specific performance filed by the plaintiff-Suresh Rathi (*respondent through her LRs herein*), based upon an agreement to sell dated 10.09.2011, was decreed by the trial Court on 24.05.2018. The appeal filed by the defendant (*appellant herein*) was dismissed by the First Appellate Court on 03.08.2023.

2. Assailing the aforesaid concurrent findings, the present appeal has been filed by the defendants.

3. The only plea raised by learned counsel for the appellant is that agreement to sell in question was unregistered document and since the agreement purported to deliver possession of the property in dispute to the vendee-defendant, therefore it was required to be registered.

4. There is no merit in the aforesaid contention.

5. As per the agreement in question total sale consideration was ₹1,50,000/-. The possession was delivered to the defendant. Entire sale consideration amount had been paid. It had been agreed that vendor-defendant shall execute the sale deed and get it registered as and when requested by the plaintiff.



6. The Courts below have found that agreement to sell in question was duly proved. It will be relevant to reproduce the observations made by the First Appellate Court in this regard, which are as under:-

‘12. Ex.P-1 is the agreement dated 10.09.2011 which reveals that the appellant agreed to sell the suit property measuring 105 square yards to the respondent for a sale consideration of Rs.1,50,000/- and that she received the said amount from the respondent. The execution of the agreement, Ex.P-1, is sufficiently proved by the respondent. The respondent appeared in the witness box as PW-1 and he examined the attesting witnesses of the agreement, Rohtash as PW-2 and Amit son of Balbir as PW-3. All the witnesses categorically stated that the appellant agreed to sell the suit property to the respondent and received a sale consideration of Rs.1,50,000/- from him. PW-1 to PW-3 were cross examined at length but nothing could come to impeach their testimony. Rather, the due execution of agreement by appellant as well as payment of sale consideration is proved in their testimony. Therefore, the due execution of agreement, Ex.P-1, by the appellant in favour of deceased respondent is duly proved.

13. It is argued by learned advocate for the appellant that agreement, Ex.P-1, is a forged and fabricated document and the same was never got executed by the appellant. This argument of learned advocate for the appellant has no ground to stand upon. It is very much evident that the appellant has miserably failed to prove any sufficient or cogent evidence from which it could be proved that agreement, Ex.P-1, is a false and fabricated document. Rather, while cross examining respondent Suresh Rathi, the learned advocate for appellant gave him a suggestion that agreement Ex.P-1 was got executed by him from the appellant by way of security as amount of Rs.50,000/- was taken as loan by the appellant from the respondent. This suggestion and story came in the light for the first time when PW-1 was being cross examined and this defence was never taken by the appellant in her pleadings. Moreover, the defence taken by the appellant during cross examination clearly reveals that she herself admitted the execution of agreement Ex.P-1. Therefore, it cannot be said that the agreement, Ex.P-1, is a result of fraud and misrepresentation.



14. In the light of above discussion, this Court is of the considered view that the agreement dated 10.9.2011, Ex.P-1, by the appellant in favour of respondent Suresh Rathi is sufficiently proved. The respondent is entitled to possession of the suit property by way of specific performance of agreement dated 10.09.2011 and the appellant has no right to alienate the suit property to anybody else other than the respondent. The findings of the learned trial Court on issues no.1 to 4 are legal and justified and do not require any interference. The Point for Determination is, accordingly, decided against the appellant.

7. In the light of aforesaid observations, when the execution of agreement to sell is duly proved, the suit for specific performance as filed by the plaintiff was duly maintainable. Suit was filed on 4.9.2013 i.e., within limitation period. Simply because the agreement in question was unregistered and possession had been delivered, could not be a reason to decline the relief of specific performance, as is contended by learned counsel for the appellant.

8. Consequently, this Court does not find any reason to disturb concurrent findings of the fact as recorded by the Courts below. As such, holding the present revision to be devoid of any merit, the same is hereby dismissed.

22.04.2025

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(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	Yes