



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

**RSA-2950-1999(O&M)**

**Reserved on 21.05.2025**

**Date of decision:02.06.2025**

Jasbinder Kaur

..Appellant

Versus

Ms. Seema Khullar and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Saurabh Dalal, Advocate  
for the appellant (through VC)

Mr. Amit Jain, Sr. Advocate with  
Mr. Chetan Slathia, Advocate for respondent no.2 to 5

**ANIL KSHETARPAL, J. (Oral)**

**I. Brief facts of the case:-**

1. The plaintiff assails the correctness of the concurrent findings of fact arrived at by the courts below while dismissing her suit for the possession by way of specific performance of the agreement to sell.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The disputed constructed house H.No.HL-94 Phase I, SAS Nagar, Mohali, was allotted to late Sh. Ashwani Kumar by the Punjab Housing Development Board. Ms. Seema Khullar (defendant no.1) is sister's daughter of Sh. Ashwani Kumar, who is alleged to have executed an agreement to sell, Will dated 30.12.1982, in favour



of his niece (sister's daughter). On 05.01.1983 Sh. Ashwani Kumar also executed a registered General Power of Attorney in favour of Ms. Seema Khullar authorising her to deal with the house in any manner. He also attested an affidavit acknowledging that Ms. Seema Khullar is the owner of the house, which was also registered on 05.01.1983. The price of the house was payable in instalments, which was paid by Ms. Seema Khullar or her mother Smt. Shakuntla Khullar. Jashinder Kaur, the plaintiff claimed that Ms. Seema Khullar executed an agreement to sell with respect to the house in dispute in her favour on 13.12.1986 agreeing to sell the house for Rs.65,000/- out of which Rs.45,000/- was received as earnest money. On 16.12.1989, plaintiff (Jashinder Kaur) filed the present suit. Ms. Seema Khullar admitted execution of the agreement to sell dated 13.12.1986 on receipt of Rs.45,000/- as earnest money. Sh. Ashwani Kumar died on 14.08.1984. His daughter Ravi Kiran (defendant no.3) also admitted the plaintiff's case whereas defendant no.2, 4 and 5 denied the execution of the agreement to sell by Sh. Ashwani Kumar in favour of Ms. Seema Khullar. It was also claimed that on 05.06.1989 an agreement to sell was executed in favour of Darshan Singh Saini on receipt of the total sale consideration of Rs.1,45,000/-.

## **II. Issues framed by the trial court:-**

4. The following issues were framed by the Civil Judge on 18.04.1991:-

*"1. Whether Sh. Ashwani Kumar entered into a valid agreement with defendant No.1 on 30.12.82? OPP.*



2. *Whether Sh. Ashwani Kumar also executed a valid Will on 30.12.1982 in favour of defendant No.1? If so, its effect? OPP*

3. *Whether Sh. Ashwani Kumar executed a general power of attorney also on 5.1.83 in favour of defendant No.1? If so, its effect ?OPP*

4. *Whether agreement dated 30.12.86 was executed by defendant No.1 in favour of the plaintiff? OPP*

5. *Whether the plaintiffs are entitled to the property through the specific performance ? OPP*

6. *Whether the plaintiffs are entitled to the injunction prayed for? OPP*

7. *Whether defendnat No.2 executed an agreement to sell with Darshan Singh Saini on 5.6.89? If so, its effect? OPD*

8. *Whether defendant No.2 executed a power of attorney, Will and affidavit in favour of Darshan Singh Saini and if so, its effect? OPD*

9. *Whether signature of Sh. Ashwani Kumar were obtained by misrepresentation and if so, its effect? OPD*

10. *Whether affidavit of defendants No.2 and 3 were obtained by defendant No.1 by playing fraud? OPD 2& 5.*

11. *Relief.”*

### **III Evidence adduced:-**

5. The plaintiff, in order to prove her case, produced voluminous documentary evidence. She produced documents Ex.P1 to P81, PY.

6. On the other hand, defendants produced an agreement to sell, General Power of Attorney, Will and affidavit purportedly executed by Darshna Devi in favour of Darshan Singh Saini on 05.06.1989.

7. In oral evidence, the plaintiff examined PW1 Shakuntla Khullar PW2 Jaswinder Kaur, PW3 Sh.B.S.Chaudhary, Advocate, attesting witness of the Will and PW4 Sunil Kumar.



8. On the other hand, defendants examined DW1 Surinder Mohan Sharma, DW2 Sukhwinder Singh, DW3 Darshan Singh Attorney of Darshana Devi, DW4 Ms. Seema Khullar.

**IV Reasons recorded by the courts below:-**

9. Both the courts dismissed the suit on account of the following reasons:-

i) the amount of consideration pursuant to the agreement to sell executed on 31.12.1982 is neither specified in the agreement nor its payment is proved.

ii) Title of Sh. Ashwani Kumar was not perfect. Hence, he could not transfer better title than what he possessed.

iii) The registered Will Ex.P28, executed by Sh. Ashwani Kumar in favour of Ms. Seema Khullar is suspicious because various documents were executed by Sh. Ashwani Kumar and there is no recital with regard to the natural heirs.

iv) General Power of Attorney executed by Sh. Ashwani Kumar cannot give benefit to Ms. Seema Khullar because the agreement to sell was without consideration.

**V. Arguments addressed:-**

10. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook alongwith the scanned copy of the record of the courts below.

11. On 21.05.2025, arguments of the learned counsel representing the parties were heard while granting them liberty to file their respective synopsis containing the gist of their arguments.



Learned counsel representing the respondents has filed the synopsis however, the learned counsel representing the appellant has failed to submit the same.

**VI. Analysis and Discussion:-**

12. It is evident that Sh. Ashwani Kumar was maternal uncle of Ms. Seema Khullar, who was minor at that time. Smt. Shakuntla Khullar claims that Sh. Ashwani Kumar was working as a Class IV employee and used to reside with his family in the house of Smt. Shakuntla Khullar. Sh. Ashwani Kumar was allotted the suit property. He executed as many as four documents including agreement to sell, registered Will, General Power of Attorney and affidavit. The Will, General Power of Attorney and affidavit are registered with the office of the Registrar. The General Power of Attorney and the affidavit are registered on 05.01.1983. From careful perusal of the documents Ex.P1 to P80, it is proved that all the instalments towards the price of the house were paid either by Smt. Shakuntla or her daughter Ms. Seema Khullar. All the property documents including the allotment letter were in possession of the plaintiff, who produced the same including the agreement to sell dated 30.12.1982 (Ex.P5). Ms. Seema Khullar, while appearing in evidence, admitted the plaintiff's case, apart from admitting his case in her written statement. Ravi Kiran, daughter of Sh. Ashwani Kumar also admits the correctness of plaintiff's case. The execution of the Will has been proved by deposition of attesting witness PW3 B.S.Chaudhary. PW1 Smt.



Shakuntla Khullar also corroborated the statement of Sh. B.S.Chaudhary.

13. The courts have erred in declaring the agreement void because the amount of consideration is not specified therein. The courts below have overlooked that Smt. Shakuntla Khullar has specifically stated that she paid the amount of application money though it was applied in the name of her brother Sh.Ashwani Kumar who alongwith his family used to reside in the house of Smt. Shakuntla Khullar. The aforesaid deposition of Smt. Shakuntla Khullar has not been rebutted by the defendants because they never entered the witness box. It was for them to prove that the amount was not paid by Smt. Shakuntla Khullar. Past consideration is as good as present consideration. The word '*consideration*' has been defined in Section 2 (d) of the Indian Contract Act, 1872 which has a wider connotation and includes within its sweep not only the monetary consideration but even promises including promise to render future personal service. It is also the case of Smt. Shakuntla Khullar, who appeared as PW1 that Sh.Ashwani Kumar was only a Class IV employee and on her request and on her behalf he applied for the house in his name. Hence, the courts have erred in recording that the agreement to sell is void. Moreover, it has been proved that Ms.Seema Khullar or Smt. Shakuntla Khullar paid all instalments, which is established from voluminous record produced by the plaintiff. The courts have also erred in invoking the provisions of Benami Transactions (Prohibition) Act, 1988. In this case,



Sh.Ashwani Kumar executed an agreement to sell, General Power of Attorney, registered Will and an affidavit. Hence, Benami Transactions (Prohibition) Act, 1988 could not be invoked.

14. The courts have also erred in observing that when Sh.Ashwani Kumar executed an agreement to sell in favour of Ms.Seema Khullar, his title was not perfect. Hence, he was not competent to transfer title better than what he possessed. The ownership of Sh.Ashwani Kumar was subject to payment of amount which was paid. Hence, even if there was any defect in his ownership, the same stood rectified on payment of instalment. Section 13 of the Specific Relief Act, 1963 enables the purchaser to claim specific performance against person with no title or imperfect title. Clause (a) of Section 13 (1) provides that if the vendor has subsequent to any contract acquired any interest in the property, the purchaser may compel him to make good the contract out of such interest. Both the courts have overlooked Section 13 of the Specific Relief Act, 1963.

15. Moreover, the Will is not surrounded by suspicious circumstances because of various documents executed by Sh.Ashwani Kumar including agreement to sell, General Power of Attorney, affidavit, apart from the Will. Smt. Darshna Rani and Ravi Kiran jointly executed affidavit Ex.P79, while admitting the correctness of the Will executed by Sh.Ashwani Kumar in favour of Ms.Seema Khullar.



16. The execution of the Will has been proved by examining both the attesting witnesses namely PW1 Smt. Shakuntla Khullar and PW3 B.S.Chaudhary. Despite lengthy cross examination, the counsel representing the defendants failed to impeach their credibility.

17. Additionally adverse inference is required to be drawn against Darshna Devi and her two daughters i.e. defendant no.4 and 5 as they failed to enter into witness box. Darshan Singh Saini appeared as attorney of Darshna. He admits that Darshna is hail and hearty. Hence, adverse inference was required to be drawn against her.

18. Moreover, it is also evident that after the death of Sh.Ashwani Kumar on 14.08.1984, his widow and children never made any attempt to pay the instalments. All instalments were paid by Ms.Seema Khullar or her mother Smt. Shakuntla Khullar. All the documents of the property have been produced by the plaintiff. Hence, it is proved that there was sale of the house in favour of Ms. Seema Khullar by Ashwani Kumar.

19. Learned senior counsel has contended that the agreement is void for lack of payment of consideration, which has already been analysed. Similarly, the Will is not surrounded by suspicious circumstances because of various documents executed by Sh.Ashwani Kumar on 30.12.1982 and 05.01.1983 including registered Will and General Power of Attorney and affidavit.

20. Likewise, the General Power of Attorney will not cease to have effect because Ms.Seema Khullar has interest in the property in view of accompanying agreement and Will. Hence, the present case



falls under Section 202 and not 201 of the Indian Contract Act, 1872.

Reliance can be placed on RSA-2819-2007 titled as '**Parkash Devi vs. Rajinder Kumar and others**' decided on 05.07.2022 and RSA-799-2019 titled as '**Pardeep Chaudhary and another vs. Birwati and others**' decided on 04.07.2022.

21. Ms. Seema Khullar also became the owner of the property by virtue of a registered Will dated 30.12.1982 executed by Sh. Ashwani Kumar in her favour. The moment Sh. Ashwani Kumar died on 14.08.1984, Ms. Seema Khullar became exclusive owner of the property. Hence, she executed the agreement to sell in favour of appellant (plaintiff) on 13.12.1986 after becoming an owner.

22. It has come on record that the plaintiff has also paid additional amount of Rs.10,000/- apart from Rs.45,000/-. Hence, there will be conditional decree of possession by way of specific performance of the agreement to sell, on payment of balance sale consideration of Rs.10,000/- alongwith interest to defendants no. 1, within a period of two months. If defendant no.1 refuses to accept the amount, the plaintiff shall deposit the balance sale consideration within next one month before the Trial Court. Darshan Singh Saini admits that he is in possession of First Floor whereas the ground floor of the house is in possession of the plaintiff. Darshan Singh is representative of Darshna Rani. Hence, he is bound by the decree.

23. Darshan Singh Saini claims an agreement to sell executed by Smt. Darshna in his favour who never became the owner. It is significant to note here that even if the Will in favour of Ms. Seema



Khullar is excluded from consideration still Smt. Darshna will inherit only 1/4<sup>th</sup> share of the property, hence, she will never become an exclusive owner.

**V. Decision:-**

24. Consequently, the judgements passed by both the courts below are set aside while allowing the present Regular Second Appeal.

25. All the pending miscellaneous applications, if any, are also disposed of.

**(ANIL KSHETARPAL)**  
**JUDGE**

**02.06.2025**

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No