

2026:PHHC:128912



-1-

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

RSA-1520-1997 (O&M)
Reserved on : 09.07.2026
Pronounced on : 10.09.2026

MOHINDER SINGH (SINCE DECEASED) THROUGH LRS

...Appellant

Versus

JAGIR SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Sandeep Khunger, Advocate
Mr. Saksham Khunger, Advocate
for the appellant.

Mr. Inderjit Sharma, Advocate
for respondents No.1 and 2.

PARMOD GOYAL, J.

Present regular second appeal has been preferred by appellant/plaintiff being aggrieved by judgment and decree dated 16.05.1997, passed by the then learned Additional District Judge, Gurdaspur, whereby judgment and decree dated 04.12.1991, passed by Senior Sub Judge, Gurdaspur vide which suit for specific performance preferred by appellant/plaintiff was decreed, was modified to the extent that appellant/plaintiff is entitled to recovery of earnest money paid to respondents/defendant instead of relief of specific performance.

2. Appellant/plaintiff in his suit for specific performance had claimed that respondent/defendant No.1 who was owner in possession of 1/15th share of land measuring 3 kanals 15 marlas out of 56 kanals 5 marlas

situated in village Pandori Bainsan had agreed to sell suit land for a total consideration of Rs.9,000/- and had executed agreement to sell dated 14.02.1983 after receipt of Rs.4,000/- as earnest money. Subsequently, another agreement dated 27.06.1983 was entered between the parties whereby balance consideration of Rs.5,000/- was also paid and respondent/defendant No.1 had agreed to execute sale deed within one month of the sanction of mutation in his favour. It was claimed that possession of land was also delivered at the time of part performance of the agreement. It was claimed that though entire consideration amount was paid, however, respondent/defendant No.1 sold the land to respondents/defendants No.2 and 3 for a total consideration of Rs.25,000/- on 30.12.1987. That respondents/defendants No.2 and 3 being residents of same village had full knowledge about the agreement to sell in favour of appellant/plaintiff and respondents/defendants No.2 and 3 had colluded with respondent/defendant No.1 to defeat the rights of appellant/plaintiff. Appellant/plaintiff had accordingly sought specific performance with possession and in alternative decree for recovery of Rs.18,000/- which included Rs.9,000/- as liquidity damages.

3. Respondent/defendant No.1 had denied the execution of agreement dated 14.02.1983 and 27.06.1993 as well as receipt of any amount from appellant/plaintiff. Respondent/defendant No.1 asserted that suit is not maintainable and is beyond limitation. Accordingly, dismissal of suit was prayed for.

4. Respondents/defendants No.2 and 3 claimed themselves to be *bonafide* purchaser for consideration. They claimed that agreement to sell

was entered on 21.12.1987 and on the basis of said agreement, sale deed was executed in their favour on 30.12.1987 for a total consideration of Rs.25,000/- and since then they are in physical possession of land.

5. From the pleadings of parties, following issues were framed :-
1. Whether the suit is not maintainable in the present form? OPD
 2. Whether the suit is bad for non-joinder of necessary parties?
OPD
 3. Whether defendant No.1 agreed to sell the suit land to the plaintiff and executed agreements to sale dated 14.2.83 and 27.6.83 and received a total sum of Rs.9,000/- as earnest money? OPP
 4. Whether the plaintiff had been ready and willing to perform his part of the contract? OPP
 5. Whether the suit is time barred? OPD
 6. Whether plaintiff is entitled to decree for possession of the suit land by means of specific performance of the agreement for sale in question? OPP
 7. Whether defendants No.2 & 3 are bonafide purchasers for value and without notice of the agreement of sale? OPD
 8. Relief.
6. Learned Court of first instance had decided issues No.1 and 2 in favour of appellant/plaintiff and against respondents/defendants and issues No.3, 4, 6 & 7 were decided in favour of appellant/plaintiff and accordingly, suit for specific performance preferred by appellant/plaintiff was decreed.
7. Learned First Appellate Court on appeal preferred by

respondents/defendants No.2 and 3 had duly accepted the findings of learned Court of first instance as regards to execution of agreement, payment of entire consideration amount of Rs.9,000/- in two installments at the time of execution of agreements to sell dated 14.02.1983 (Ex.P1) and 27.06.1983 (Ex.P2). Learned Appellate Court had also concurred with the finding of learned Court of first instance that respondents/defendants No.2 and 3 were not bonafide purchasers as they always knew about the agreement executed by respondent/defendant No.1 in favour of appellant/plaintiff, being co-villagers as made out from evidence of respondent/defendant No.1-Om Prakash (DW6). However, relief of specific performance as granted by learned Court of first instance was modified. It was held that since appellant/plaintiff could not have sold specific portion in the joint land, therefore, agreements dated 14.02.1983 (Ex.P1) and 27.06.1983 (Ex.P2) were held to be vague regarding description of property and held not enforceable by way of specific performance. Accordingly, instead of relief of specific performance, relief of recovery of amount paid as earnest money was granted by partly allowing the appeal preferred by respondents/defendants No.2 and 3.

8. Both the Courts have concurrently found that respondent/defendant No.1 had duly executed agreements dated 14.02.1983 and 27.06.1983, and had received total sale consideration of Rs.9,000/- fixed thereunder (Rs.4,000 on 14.02.1983 and remaining Rs.5,000/- on 27.06.1983). The Courts below have accepted the evidence led by appellant/plaintiff in the shape of scribe as well as witnesses of agreement and had rejected self-serving evidence of DW6 i.e. defendant No.1 who had

merely denied signature not only on agreement but also on written statement. Learned First Appellate Court had rightly held that the second agreement dated 27.06.1983 was in continuation to agreement dated 14.02.1983 and had to be read along with the contents of 14.02.1983 and, therefore, is not vague as argued by learned counsel for respondents/defendants.

9. The finding of facts arrived at by both the Courts below regarding due execution of agreements dated 14.02.1983 and 27.06.1983, cannot be held to be erroneous or perverse as same is based upon appreciation of evidence of appellant/plaintiff, witnesses to agreement and that of respondent/defendant No.1. The concurrent finding of fact as recorded by Court below is therefore upheld. It is held that agreements dated 14.02.1983 and 27.06.1993 were duly executed by respondent/defendant No.1 for a total sale consideration of Rs.9,000/- (whereby Rs.4,000/- was paid on 14.02.1983 and remaining Rs.5,000/- was paid on 27.06.1983).

10. Both the Courts have also rightly concluded that suit was within limitation and agreement was not open ended as it was agreed between the parties that respondent/defendant No.1 shall execute sale deed in favour of appellant/plaintiff within one month from the date when mutation was sanctioned in favour of respondent/defendant No.1. However, prior to sanctioning of mutation, respondent/defendant No.1 had sold the suit property to respondents/defendants No.2 and 3 vide sale deed dated 30.12.1987, therefore, suit preferred by appellant/plaintiff for specific performance on 07.01.1988 cannot be held to be beyond limitation or premature. Execution of sale deed in favour of respondents/defendants No.2

and 3 was a clear case of refusal on the part of respondent/defendant No.1 to adhere to his part of agreement which he had entered on 14.02.1983 and 27.06.1983.

11. Both the Courts have also rejected the claim of respondents/defendants No.2 and 3 that they were bonafide purchasers of suit property, not knowing about execution of agreements dated 14.02.1983 and 27.06.1983. Learned Courts below have taken in consideration evidence led by parties whereby it stood proved that appellant/plaintiff, respondent/defendant No.1 and respondents/defendants No.2 and 3 were all residents of same village. Even DW5-Nirmal Singh who was examined by respondents/defendants in his cross-examination had admitted that agreement executed by respondent/defendant No.1 in favour of appellant/plaintiff had come in knowledge of respondents/defendants No.2 and 3 when they entered into agreement to sell and got executed sale deed in their favour. DW5 had admitted that respondents/defendants No.2 and 3 had come to know about execution of agreement in favour of appellant/plaintiff on 21.12.1987. The fact that respondent/defendant No.1 had executed agreement dated 21.12.1987 in favour of respondents/defendants No.2 and 3 and had executed sale deed on 30.12.1987 for a total consideration of Rs.25,000/- in fact goes to show that sale was completed in haste within 8 days knowing well that appellant/plaintiff may raise his claim over the suit property. Learned counsel for appellant/plaintiff has also referred to jamabandi to argue that defendants were not only co-villagers but were also co-sharers. Therefore, the finding recorded by both the Courts below that respondents/defendants No.2 and 3 were aware about the agreement to sell

executed between respondent/defendant No.1 and appellant/plaintiff is based upon correct appreciation of evidence led by parties and cannot be interfered in the second appeal.

12. The main bone of contention in the present case is whether learned First Appellate Court had rightly concluded that description of property is vague and, therefore, agreement to sell is not executable, thereby denying relief of specific performance to appellant/plaintiff. Learned Appellate Court had dealt with above noted issue in the following manner :-

“10. The next argument advanced in this case is that the plaintiff entered into agreement with defendant No.1 for the purchase of land 3 kanals 15 marlas being 1/15 share of land measuring 56 kanals 5 marlas comprised in khasra No.14R/24 (2-10), 25 (5-18), 15R/1/2 (1-2), 9 (7-15), 10 (4-10), 12 (1-0), 5R/16/2 (2-7), 16/2 (2-7), 15R/21 (7-13), 17R/3 (5-19). The learned counsel has further referred me to the copy of jamabandi Ex.P3 and has contended that the perusal of this document would show that Om Parkash is owner to the extent of 1/15th share out of land 56 kanals 5 marlas. He has further contended that no other copy of jamabandi has been filed by the plaintiff/respondent to show that he is owner of any other property. The learned counsel then wanted me to compare the land mentioned in Ex.P1 with the detail of the land given in Ex.P3. He has contended that only khasra No.14/24 (2-10), 25 (5-18), 17/3 (5-19) and 4 (8-0) is also shown in copy of jamabandi Ex.P3. The area of khasra No.4 has been given only 2 kanals 12 marlas in the jamabandi. The contention of the learned counsel is that such khasra numbers mentioned in Ex.P1 are not given in Ex.P3 and there is no evidence that Om Parkash the executant of agreement Ex.P1 had also any share in land comprised in rectangle No.15, khasra No.1/2, 9, 10, 12, 5R/16/2. The learned counsel has argued that Om Parkash is not owner of any specific portion of the land shown in Ex.P3 copy of jamabandi for 1983-84. His further contention is that only 4 khasra numbers, which are mentioned in Ex.P3 are also mentioned in Ex.P1 and out of these khasra numbers the share of plaintiff could not come

to 3 kanals 15 marlas. The contention of the learned counsel is that it has been mentioned in Ex.P1 that the sale-deed would be executed by Om Parkash after the sanctioning of the mutation and that the mutation has not been sanctioned so far. The learned counsel has argued that the detail of the property is not correctly given and that the period during which the sale-deed is to be executed is also not mentioned and that as such, the agreement Ex.P1 is indefinite and vague and specific performance cannot be allowed. On the other hand, the contention of the counsel for the defendants/respondents is that there is no ambiguity in the agreement as the sale-deed is to be executed in a month's time after the sanction of mutation in favour of Om Parkash. Regarding the land, he has mentioned that Om Parkash is recorded to be in possession of land 17/3 (2-0), 17/4 (2-12) and that in case the suit is decreed, the plaintiff/respondent can take possession out of this land. I have carefully considered the arguments advanced by counsel for both the parties. The agreement cannot be said to be vague for the non-fixing of time but it is certainly vague as far as the description of the land is concerned. Though Om Parkash has been shown to be in cultivating possession of rectangle No.17, khasra No.3 (2-0), 4 (2-12) but he has got no authority to dispose of this very land and to claim the ownership of this very land. At the time of partition he may get this land or he may get possession of some other land detailed in Ex.P3. The agreement is for the purchase of 3 kanals 15 marlas of land out of total land 56 kanals 5 marlas as shown in Ex.P1 and it is not only for the land which is now in possession of Om Parkash. Since there is no evidence that khasra number other than which tally in Ex.P1 and Ex.P3 belongs to Om Parkash, he had no right to enter into any agreement for the sale of that portion of the land. Thus certainly the agreement is vague and cannot be specifically enforced."

13. On consideration, I find that the above noted conclusion as arrived by way of para No.10 of the impugned judgment is against evidence led by parties as well as against law. In agreement dated 14.02.1983 (Ex.P1) it had been clearly described that respondent/defendant No.1 had agreed to

sell land measuring 3 kanals 15 marlas being 1/15th share of land measuring 56 kanals 5 marlas comprised in khasra No.14R/24 (2-10), 25 (5-18), 15R/1/2 (1-2), 9 (7-15), 10 (4-10), 12 (1-0), 5R/16/2 (2-7), 16/2 (2-7), 15R/21 (7-13) and 17R/3 (5-19).

14. In order to prove that respondent/defendant No.1 was owner to the extent of 1/15th share out of land measuring 56 kanals 5 marlas jamabandi for the year 1983-84 was placed as Ex.P3. Ex.P3 shows that respondent/defendant No.1 was owner to the extent of 1/15th share of land measuring 56 kanals 5 marlas stated therein. This fact has been duly accepted and noticed by learned Appellate Court also, however, learned Appellate Court had noticed that out of various numbers mentioned in agreement to sell dated 14.02.1983 (Ex.P1) only four khasra numbers i.e. 14/24 (2-10), 25 (5-18), 17/3 (5-19) and 4 (8-0) are mentioned in jamabandi Ex.P3. Learned First Appellate Court had concluded that remaining khasra numbers mentioned in agreement were not shown to be in the ownership of respondent/defendant No.1 and since respondent/defendant No.1 was not owner of any specific portion of land, but was owner of 1/15th share, therefore, could not have sold specific khasra numbers which were shown to be in his favour in the revenue record. It was noted by learned First Appellate Court that respondent/defendant No.1 was in possession of land comprised in khasra Nos.17/3 (2-0) and 17/4 (2-12) which was subject to partition and share in the total land and, therefore, sale agreement was vague.

15. However, learned First Appellate Court had in fact failed to take notice of the fact that it was specific case of appellant/plaintiff that

respondent/defendant No.1 was owner in possession of joint land to the extent of 1/15th share out of total land measuring 56 kanals 5 marlas. Jamabandi for the year 1983-84 (Ex.P3) clearly describes joint land in which respondent/defendant No.1 had share to the extent of 1/15th share was land measuring 56 kanals 5 marlas. It had also come on record as made out from jamabandi (Ex.P3) that respondent/defendant No.1 was in possession of khasra Nos.17/3 (2-0) and 17/4 (2-12) that means he was in possession of 4 kanals 12 marlas which seems to be in excess of his 1/15th share, however, same was to be settled at the time of partition. Similarly, area under khasra No.17/3 in agreement and Ex.P3 jamabandi was shown to be 5 kanals 19 marlas out of which 4 kanals 12 marlas were in possession of respondent/defendant No.1. Therefore, it has been unequivocally proved that respondent/defendant No.1 was owner of 1/15th share of land measuring 56 kanals 5 marlas which comes to 3 kanals 15 marlas. This fact was duly pleaded by appellant/plaintiff in his plaint and has not been denied by respondent/defendant No.1. This admission on the part of respondent/defendant No.1 that he was owner of 3 kanals 15 marlas i.e. to the extent of 1/15th share out of 56 kanals 5 marlas which is also subject matter of agreement to sell has not been taken notice of by learned First Appellate Court.

16. Learned First Appellate Court has further failed to take notice of sale deed allegedly executed in favour of respondents/defendants No.2 and 3 which was already held to be not *bonafide*. Sale deed dated 30.12.1987 (Ex.D1) goes to show that even in sale deed it was clearly mentioned by respondent/defendant No.1 while transferring land to the

extent of 3 kanals 15 marlas that he had got share to the extent of 3 kanals 15 marlas which is also subject matter of agreement to sell.

17. Therefore, the conclusion drawn by learned First Appellate Court that sale deed was vague is totally erroneous and perverse against admission as well as evidence led by parties. It is very strange that agreement was for 3 kanals 15 marlas out of 56 kanals 5 marlas as described in jamabandi for the year 1983-84 (Ex.P3). Therefore, agreement to sell was with regards to share in the property and even if few of the khasra numbers are wrongly mentioned, the identity of property is clearly made out and it was agreed by respondent/defendant No.1 to sell 3 kanals 15 marlas which is equivalent to 1/15th share in total land measuring 56 kanals 5 marlas which was subsequently sold by respondent/defendant No.1 in favour of respondents/defendants No.2 and 3 vide sale deed dated 30.12.1987 (Ex.D1) in order to defeat agreements to sell made in favour of appellant/plaintiff.

18. In view of above discussion, the conclusion drawn by learned First Appellate Court cannot be accepted. Judgment and decree dated 16.05.1997, passed by learned First Appellate Court is therefore set aside. Since appellant/plaintiff had succeeded in proving due execution of agreement and payment of entire consideration amount and the subsequent agreement to sell made in favour of respondents/defendants No.2 and 3 was found to be *malafide* and was entered into by respondent/defendant No.1 only to defeat the rights of appellant/plaintiff in order to get out of agreement to sell, appellant/plaintiff who had already performed his part of contract by paying entire consideration amount is entitled to the relief of possession by way of specific performance.

19. Accordingly, judgment and decree passed by learned Court of first instance is restored and appeal preferred by appellant/plaintiff is allowed. Pending application(s), if any, is/are disposed of accordingly.

10.09.2026
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned : Yes
Whether Reportable : Yes