

CNR No: PHHC011099872019

2026:PHHC:127930



-1-

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

RSA-634-2021 (O&M)

Date of Decision: 10.09.2026

SANTOSH

...Appellant

Versus

SURESH

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Sandeep K. Sharma, Advocate
Mr. Svamin Sharma, Advocate
Mr. Lakshya Saini, Advocate
Mr. Utsav Sharma, Advocate
for the appellant.

PARMOD GOYAL, J. (ORAL)

Present regular second appeal has been preferred by appellant/plaintiff being aggrieved by dismissal of her suit for possession by way of specific performance of agreement to sell dated 07.06.2011. Vide impugned judgment and decree dated 29.07.2017, passed by learned Civil Judge (Junior Division), Rohtak as well as by judgment and decree dated 02.05.2019, passed by learned District Judge, Rohtak, suit as well as first appeal preferred by appellant/plaintiff were dismissed.

2. Both suit as well as first appeal were dismissed on the ground that though appellant/plaintiff had succeeded in proving due execution of agreement to sell dated 07.06.2011, but has failed to prove her readiness and willingness to perform her part of the agreement.

3. In her suit for possession by way of specific performance of agreement to sell, appellant/plaintiff had asserted that respondent/defendant had agreed to sell the suit property i.e. House measuring 200 sq yards

situated within Lal Dora of Village Ladhot, Tehsil and District Rohtak for a total consideration of Rs.2,50,000/- in favour of appellant-plaintiff by executing agreement to sell dated 07.06.2011. That an amount of Rs.1,00,000/- was paid as earnest money at the time of execution of agreement and sale was to be concluded by 06.06.2012. The remaining consideration was payable at the time of registration of sale deed. It was claimed that despite agreement, respondent/defendant had failed to execute the sale deed within the stipulated period by 06.06.2012. It was also claimed that appellant/plaintiff has always been ready and willing to perform her part of agreement and had approached respondent/defendant on many occasions i.e. from 07.06.2011 to 06.06.2012, but respondent/defendant had always avoided to execute the sale deed. In order to avoid execution of sale deed, respondent/defendant got a suit for injunction against himself in collusion with his son, wherein son of appellant/plaintiff had claimed to be owner in possession of the suit property. It was further asserted that thereafter, appellant/plaintiff had duly served notice dated 16.04.2015 for execution of sale deed on or before 04.05.2015 and on failure to execute the sale deed, appellant/plaintiff had preferred suit for specific performance.

4. Respondent/defendant by way of his written statement had denied execution of agreement dated 07.06.2011 as well as having received Rs.1,00,000/- as earnest money. Dismissal of suit was prayed for.

5. From the pleadings of parties, following issues were framed :-

1. Whether the plaintiff is entitled for the decree of possession by way of specific performance, on the grounds as prayed for?
OPP
2. Whether the suit of the plaintiff is not maintainable in the

present form? OPP

3. Whether the plaintiff has no cause of action to file the present suit? OPD
4. Whether the plaintiff has not come to the court with clean hands and suppressed the material? OPD
5. Relief.
6. Issue No.1 was decided in favour of appellant/plaintiff whereby it was held that respondent/defendant had duly executed agreement to sell dated 07.06.2011 after receiving earnest money of Rs.1,00,000/-. However, both the Courts below had concluded that though appellant/plaintiff had succeeded in proving execution of agreement to sell, but has failed to show her readiness and willingness to perform her part of the agreement and, therefore, appellant/plaintiff was not entitled to the relief of specific performance.
7. Learned counsel for appellant/plaintiff has argued that once respondent/defendant had denied the execution of agreement to sell which stands proved, it was not open to assert that appellant/plaintiff was not ready and willing to perform her part of agreement. The learned Trial Court ought to have accepted the case of appellant/plaintiff and suit for specific performance ought to have been decreed.
8. On consideration of evidence on record as well as findings recorded by both the Courts below, I do not find any error in the appreciation of evidence by both the Courts below. The conclusion drawn thereupon that appellant/plaintiff had succeeded in proving due execution of agreement dated 07.06.2011 (Ex.P1), but had failed to prove her readiness and willingness to perform her part of the agreement is only conclusion

which could be drawn from evidence of appellant/plaintiff.

9. In order to succeed in a suit for specific performance, it is incumbent upon appellant/plaintiff to prove due execution of agreement and his willingness to perform his part of agreement. Unless these two facts are established, appellant/plaintiff cannot succeed in getting specific performance of agreement.

10. Initial onus to prove above noted two basic ingredients for success in suit for specific performance is always upon plaintiff and it is after said onus is discharged by plaintiff, same can be rebutted by defendant by leading evidence contrary to evidence led by plaintiff or from the evidence of plaintiff. However, the initial onus can never be shifted upon defendant or can be exempted merely on proving execution of agreement to sell. Even if in a case where defendant/seller chooses not to contest the suit and is proceeded against *ex parte* or where execution of agreement to sell is admitted by respondent/defendant, it is still incumbent upon plaintiff/purchaser to prove his readiness and willingness before he can succeed in a suit for specific performance. Readiness and willingness is essential requirement to succeed in such a suit.

11. In the present case, on appreciation of evidence, it is clearly made out that appellant/plaintiff has failed to discharge initial onus to prove her readiness and willingness to perform her part of agreement. Admittedly, last date agreed under the agreement to execute the sale deed was 06.06.2012. Though appellant/plaintiff had claimed that she remained present in the office of Sub Registrar along with sale consideration and miscellaneous charges, however, the said facts pleaded by appellant/plaintiff

were not supported by any oral or documentary evidence except for her own self-serving statement. Learned Courts below have rightly concluded that pleadings cannot substitute evidence. No affidavit or proof that appellant/plaintiff remained present before Sub Registrar on 06.06.2012 for execution of sale deed has been proved on record. Even financial capacity as on 06.06.2012 to make balance consideration of Rs.1,50,000/- and to foot the bill of registration has not been shown or proved by appellant/plaintiff. Rather appellant/plaintiff had relied upon Ex.P5 dated 04.05.2015 to claim that she had remained present on 04.05.2015 in pursuance of her legal notice Ex.P3. Furthermore, both the Courts below have duly noticed that no evidence was placed on record by appellant/plaintiff that she was ready and willing to perform her part of agreement w.e.f. 06.06.2012 to 16.04.2015, when she had issued legal notice dated 16.04.2015 Ex.P3 to the respondent/defendant for execution of sale deed. The fact that appellant/plaintiff had remained quiet for three years and had unilaterally selected a date for execution of sale deed after three years in fact goes to show that she was not ready and willing to perform her part of agreement on the day fixed for its execution as she has failed to establish her financial capacity to pay remaining earnest money.

12. Therefore, the findings recorded by the Courts below is based upon correct appreciation of evidence and cannot be interfered by this Court in regular second appeal and is accordingly upheld.

13. Since appellant/plaintiff had failed to prove that she was ready and willing to perform her part of agreement, therefore, she is not entitled to discretionary relief of specific performance. However, I am in agreement

with learned counsel for appellant/plaintiff that the Courts below ought to have allowed lesser relief to appellant/plaintiff by allowing recovery of earnest money.

14. In the present case, admittedly, time was not essence of contract. At no stage, respondent/defendant had claimed that he had cancelled the agreement and forfeited the earnest money. Rather the claim of respondent/defendant was that no agreement was executed which was found to be incorrect and both the Courts have found that agreement dated 07.06.2011 was duly executed by respondent/defendant. Once execution of agreement is proved and agreement has never been cancelled, in such a situation, where purchaser is not found entitled to relief of specific performance, he would always be entitled to lesser relief or recovery of amount of earnest money which he had paid to seller/defendant. Therefore, in the present case, it is held that appellant/plaintiff though is not entitled to specific performance of agreement, but is entitled to recovery of Rs.1,00,000/- which she had paid as earnest money and which stands proved before both the Courts below having been paid to respondent/defendant along with 6% interest per annum from the date of payment till realization.

15. Appeal is partly allowed in above terms. Pending application(s), if any, is/are disposed of accordingly.

10.09.2026
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes
Whether Reportable	:	Yes/No