



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

RSA-1600-1989

Reserved on: 29.10.2025

Pronounced on: 02.12.2025

KEHAR SINGH (SINCE DECEASED) THROUGH LR

....Appellant

Versus

RAM LUBHAYA

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Avnish Mittal, Advocate
for the appellant.

None for the respondent.

Parmod Goyal, J.

Plaintiff/appellant is aggrieved by dismissal of his suit for possession by way of specific performance vide impugned order and decree dated 11.05.1987, passed by Senior Sub-Judge, Gurdaspur and also by judgment and decree dated 28.02.1989, passed by learned Additional District Judge, Gurdaspur, vide which his first appeal was also dismissed.

2. Plaintiff/appellant in his suit for possession by way of specific performance had alleged that defendant/respondent had agreed to sell 42 kanals i.e. half share in joint holding mentioned in head note of the plaint vide agreement dated 27.12.1976. The amount of Rs.4,050/- was paid as earnest money. It was agreed that in part performance sale deed qua 16 kanals 19 marlas of land would be executed. However, on 29.12.1976 for total consideration of Rs.6,000/- sale deed regarding 17 kanals 5 marla was



executed and earnest money of Rs.4,050/- which was paid at the time of executing agreement was adjusted towards said amount of Rs.6,000/- and remaining amount of Rs.1,950/- was paid before the Sub-Registrar. It was contended that parties had further agreed that sale deed qua remaining land would be executed within a period of three years. Since the land was joint, therefore, defendant/respondent approached and requested plaintiff/appellant to postpone execution of sale deed till partition is affected. Defendant/respondent also executed special power of attorney dated 14.12.1978 in favour of plaintiff/appellant for getting partition affected. It was also mentioned in general power of attorney that sale deed would be executed and registered after partition is affected. It was asserted that in view of agreement between the parties date of execution of sale deed was mutually extended. Memorandum of partition was prepared on 16.03.1983 and signed by both the parties. Plaintiff/appellant has always been ready and willing to perform his part of contract but defendant/respondent had failed to perform the same, accordingly, possession by way of specific performance was sought.

3. Defendant/respondent had contested the suit by claiming that agreement dated 29.12.1976 was duly complied with. The sale deed executed on 29.12.1976 after adjustment of earnest money paid on 27.12.1976 was in complete compliance of agreement and was not part performance thereof. It was asserted that power of attorney given to plaintiff/appellant was only for the purposes of partition and defendant/respondent had never agreed to sell the remaining land in favour



of plaintiff/appellant. Accordingly, dismissal of suit was prayed for.

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

1. Whether the defendant executed agreement dated 27.12.1976 to sell the land in dispute in favour of the plaintiff? If so, on what terms and conditions? OPP
2. Whether the plaintiff paid Rs.4,060/- as advance sale price on the basis of the agreement in dispute? OPP
3. Whether the plaintiff remained ready and willing to perform his part of the agreement? OPP
4. Whether the suit is within time? OPP
5. What amount the plaintiff is entitled to recover from the defendant? OPP
6. Relief.

5. Learned Court of first instance held that agreement dated 27.12.1976 was duly entered by defendant/respondent, however, it was further held that it cannot be concluded that agreement was executed in respect of suit land as no khasra numbers of suit land has been mentioned in the agreement. Issues No.2 and 3 were decided in favour of plaintiff/appellant. Issues No.4 and 5 were decided against plaintiff/appellant. It was held that suit is not within limitation. Accordingly suit was dismissed.

6. Learned First Appellate Court affirmed the findings recorded by learned Court of first instance and also dismissed the first appeal preferred by plaintiff/appellant. In view of specific findings of facts recorded by both the Courts below that no khasra numbers were recorded in the agreement to sell which were subject matter of agreement to sell dated 27.12.1976, learned counsel for plaintiff/appellant was asked to show as to which land



was agreed to be sold vide agreement dated 27.12.1976 and to explain as to why entire earnest money paid on 27.12.1976 was got adjusted against total sale consideration of 17 kanal 6 marlas of land for which sale deed was admittedly executed by defendant/respondent on 29.12.1976. However, nothing could be shown from pleading or evidence to dislodge findings of facts recorded by both the Courts below..

7. Learned counsel for plaintiff/appellant has only placed reliance upon Ex.P-2 power of attorney executed by defendant/respondent in favour of plaintiff/appellant to get the partition. On the basis of contents of said power of attorney, it was argued that in the power of attorney it was clearly mentioned that plaintiff/appellant would be entitled to get the sale deed executed in his favour after partition of suit land.

8. On consideration, I do not find any merit in the contentions of learned counsel for plaintiff/appellant. In the present case, admittedly khasra numbers have not been mentioned in the agreement to sell dated 27.12.1976 and entire earnest money paid on 27.12.1976 stood adjusted towards sale consideration of 17 kanals. Sale deed which was duly executed by defendant/respondent in favour of plaintiff/appellant, in fact goes to show that agreement dated 27.12.1976 stood complied with by the parties and merely one assertion made in power of attorney Ex.P-2 that plaintiff/appellant would be entitled to get the sale deed executed after securing partition without there being any reference to Ex.P-1 (agreement to sell dated 27.12.1976) would not make plaintiff/appellant entitled to specific performance of agreement dated 27.12.1976. Contents of Ex.P-1 and Ex.P-2



are totally vague. Factum of adjustment of earnest money paid on 27.12.1976 at the time of execution of agreement dated 27.12.1976 in fact goes to show that agreed sale of land stood completed on execution of sale deed qua 17 kanals in favour of plaintiff/appellant by defendant/respondent. Ex.P-2 does not make it clear that assertions made therein “Attorney would be entitled to get sale deed executed” was in reference to Ex.P-1.

9. Learned Court of first instance has further duly noticed that in notice Ex.P-5 issued on behalf of plaintiff/appellant to defendant/respondent, the year of execution of agreement to sell regarding suit land was stated to be 1978 and not 1976 as is being asserted in the present proceedings. No record has been produced by plaintiff/appellant regarding pendency of partition proceedings rather reliance has been placed upon private partition entered in 1983. It is worth noticing that mutual partition was rejected vide Ex.P-3. Land was still joint on the date of filing of suit. Therefore, the plea that on partition plaintiff would be entitled to execution of sale deed is also not established. Reliance upon judgments cited as **C. Venkata Swamy Vs. H.N. Shivanna (D) by LR & Anr., 2018 (1) RCR (Civil) 158, G. Saraswathi & Anr. Vs. Rathinammal & Ors., 2018 (2) RCR (Civil) 33, Shasidhar and Ors. Vs. Smt. Ashwini Uma Mathad & Anr., 2015 (1) RCR (Civil) 616, United Engineers and Contractors Vs. Secretary to Govt. A.P. & Ors., 2013 (3) RCR (Civil) 824, U.P.S.R.T.C. Vs. Km. Mamta & Ors., 2016 (2) RCR (Civil) 98, Panchanan Dhara & Ors. Vs. Monmatha Nath Maity (Dead) Th. LRs & Anr., 2006 (3) RCR (Civil) 212, Sukhwinder Singh & Ors. Vs. Satnam Singh & Anr., 2013 (25) RCR (Civil) 892, Bhag Singh Vs.**



Jarnail Singh & Ors., 1997 (2) CurLJ 592, *Roop Singh Vs. Shamsher Singh*, 1994 (3) RRR 263, *Bhartu Vs. Ram Sarup*, 1981 PLJ 204 and *Jaskaran Singh Vs. Gurdev Singh & Anr.*, 2017 (3) Law Herald 2333 are of no help to the case of appellant in view of factual findings recorded by Courts below based on evidence on record. Even after reappraisal of evidence no other conclusion can be drawn to accept contentions raised on behalf of appellant.

10. Concerned findings of facts recorded by Courts below cannot be faulted with. No question of law arises in present appeal. There is no merit in the appeal preferred by plaintiff/appellant and the same is dismissed. Findings of learned Courts below are affirmed.

(PARMOD GOYAL)
JUDGE

02.12.2025
chiranjeev

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