



RSA No. 2957 of 1996

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2957 of 1996(O&M)

Sunder Lal & Ors

...Appellants

Versus

Cholar Ram

...Respondent

Reserved on: 07.11.2025

Pronounced on: 20.11.2025

Uploaded on : 20.11.2025

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate,
Mr. Japjit Singh Johal, Advocate and
Ms. Sukriti Jain, Advocate
for the appellants.
Mr. Akshay Jindal, Senior Advocate with
Mr. Tushar Kush, Advocate,
Mr. Bhavya Vats, Advocate and
Ms. Amyia Malhotra, Advocate
for the respondent.

DEEPAK GUPTA, J.

This Regular Second Appeal is directed against the concurrent findings recorded by both the Courts below, whereby the suit for possession by way of specific performance filed by the plaintiff–respondent Cholar Ram was decreed by the learned trial Court vide judgment dated 30.11.1995, and the appeal preferred by the defendant–appellant Kuda Ram was dismissed by the learned First Appellate Court on 08.10.1996.

2. To avoid any confusion, the parties are being referred to as per their status before the trial Court. The record of the Courts below (*available on DMS*) has been perused with the able assistance of learned counsel for both sides.

3.1 ***Plaintiff's Case*** :The case of the plaintiff is that defendant No.1 – Kuda Ram, by virtue of an agreement to sell dated 28.05.1990 (Ex.P1), agreed to

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sell his ½ share out of agricultural land measuring 48 Kanal 8 Marla situated in village Koer, Tehsil and District Karnal, as described in para 2 of the plaint, for a total sale consideration of ₹1,92,540/-. An amount of ₹25,000/- was paid as earnest money vide receipt (Ex.P2) at the time of execution. It was stipulated that the sale deed would be executed and registered on or before 28.12.1990 upon payment of the balance sale consideration, and that possession would also be delivered on that day. Since part of the land measuring 8 Kanal was under mortgage with one Jado Ram, it was agreed that the defendant would get the same redeemed before execution of the sale deed.

3.2 The plaintiff averred that he was and continued to remain ready and willing to perform his part of the contract. However, despite repeated requests, defendant No.1 failed to perform his part and ultimately refused to execute the sale deed. Consequently, the plaintiff filed Civil Suit No. 745 of 1990 for permanent injunction to restrain the defendant from alienating the property or suffering any collusive decree. In that earlier suit, the defendant appeared and filed written statement admitting the execution of the agreement to sell, but took the objection that a suit for injunction was not maintainable, and that the plaintiff should have filed a suit for specific performance.

3.3 Subsequently, the plaintiff discovered that defendant No.1 had suffered a consent decree dated 20.11.1990 in Civil Suit No.1599 of 1990 in favour of his sons—defendant Nos.2 to 4, purporting to transfer the suit land to them. The plaintiff alleged the said decree to be collusive, null and void, and prayed for a decree of specific performance of the agreement dated 28.05.1990 along with a declaration that the judgment and decree dated 20.11.1990 was illegal and not binding on his rights.

4. **Stand of the Defendants :** The defendants filed written statement resisting the claim. They asserted that the property in question was ancestral and joint Hindu family property, of which defendant No.1 was only the Karta, and thus had no authority to alienate it. The execution of the alleged agreement to sell or receipt of earnest money was categorically denied. It was contended

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that since there was no valid agreement between the parties, the question of readiness and willingness on the part of the plaintiff did not arise. The defendants also denied that defendant No.1 had admitted execution of any such agreement in the earlier injunction suit. They maintained that the decree dated 20.11.1990 was based on a valid family settlement, and not a sham transaction. With these submissions, dismissal of the suit was prayed for.

5. **Rejoinder** : In his rejoinder, the plaintiff reiterated the averments made in the plaint and denied the defence set up by the defendants.

6. **Findings of the trial Court** :After framing necessary issues and upon consideration of the pleadings and evidence led by both parties, the learned **trial Court**, vide judgment dated 30.11.1995, held that the agreement to sell dated 28.05.1990 had been duly executed by defendant No.1 in favour of the plaintiff for valid consideration of ₹1,92,540/-, and that ₹25,000/- had indeed been paid as earnest money. The Court further held that the plaintiff had proved his continuous readiness and willingness to perform his part of the contract. The decree dated 20.11.1990 suffered by defendant No.1 in Civil Suit No.1599 of 1990 in favour of defendant Nos.2 to 4 was declared null, void and non-binding upon the plaintiff. On these findings, the suit was decreed in entirety.

7. **Findings of the First Appellate Court**, upon re-appraisal of the entire evidence, learned District Judge, Karnal affirmed the findings of fact and law recorded by the trial Court and dismissed the appeal filed by defendant No.1 vide judgment dated 08.10.1996.

8.1 **Submissions by Appellant – Defendant** : Assailing the concurrent findings of the courts below, it is argued by Ld. Senior Advocate for the appellant – defendant that the agreement to sell (Ex. P-1) does not bear the name or signature of any scribe or typist. The plaintiff, however, introduced Balwant Singh (PW-1) as the alleged typist, who claimed to have prepared the document at the instance of the defendant. In cross-examination, PW-1 admitted that he was not a licensed deed writer and had not entered the document in any

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register. On the contrary, PW-2 Desa Ram, projected as an attesting witness, stated that after typing, he had entered the agreement in his register, which both parties signed. These contradictory statements, it is urged, render PW-1 an introduced and unreliable witness, and since the actual scribe has not been examined, the remaining evidence is hearsay.

8.2 It is argued that as per the plaint, the agreement was executed at Nilokheri, but PWs 1 and 2 deposed that it was typed at Karnal. The plaintiff later sought to reconcile this inconsistency by saying that the stamp paper was purchased at Nilokheri but due to non-availability of a deed writer, the parties went to Karnal for typing. It is argued that this improvement undermines the credibility of the plaintiff's case. It is urged that the introduction of a false or doubtful witness itself, disentitles the plaintiff to the discretionary relief of specific performance. Besides, no handwriting or expert witness was produced to establish that the signatures on Ex. P-1 are those of the defendant.

8.3 Still further, it is argued that out of the total sale consideration of ₹1,92,540/-, only ₹25,000/- was paid. The plaintiff has failed to produce any credible evidence of financial capacity to pay the balance amount or of arranging funds for the same. Hence, he cannot be said to have been ready and willing to perform his part of the contract. Not only this, no notice is proved to have been served upon the defendant calling him to appear before the Sub-Registrar on the target date. Although the plaintiff claims to have issued a notice, the same was neither pleaded nor proved. Moreover, the plaintiff himself did not appear before the Sub-Registrar on 28.12.1990, thereby negating his readiness and willingness.

8.4 Pleading the bar under Order II Rule 2 CPC, it is argued that the agreement is dated 28.05.1990 with the target date as 28.12.1990. The plaintiff, however, filed the first suit for injunction on 21.11.1990 alleging refusal by the defendant to execute the sale deed, and during its pendency, instituted the second suit (Civil Suit No. 1037 of 1990) for specific performance on 03.12.1990 without obtaining permission to withdraw the earlier suit. This, it is urged,

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attracts the bar of Order II Rule 2 CPC, as the earlier suit could have included the relief of specific performance. It is pointed out that the earlier injunction suit was dismissed as withdrawn on 14.12.1990, wherein the trial Court observed that the subsequent suit for specific performance would remain maintainable. Learned counsel contends that such an observation was unwarranted, particularly when the defendant's counsel was not present, and so, cannot confer jurisdiction or validate the later suit.

8.5 It is next contended that even if the agreement was proved, the plaintiff must still establish the readiness and willingness. Not only this, clause in the agreement itself provides that on default of the vendor, the vendee may claim double the earnest money, which the plaintiff has also sought as an alternative relief. In such circumstances, the Court ought to have granted the alternative relief rather than decreeing specific performance.

8.6 Finally, it is contended that although the findings are concurrent, the High Court may interfere where the Courts below have mis-appreciated evidence or drawn perverse inferences. According to learned counsel, the present case squarely falls within that category, warranting interference and setting aside of the decrees.

9.1 ***Submissions by Respondent-Plaintiff*** : In reply, learned Senior Counsel for the respondent-plaintiff has supported the concurrent judgments, submitting that both Courts below have meticulously examined the evidence and recorded concurrent findings that the agreement to sell was duly executed by the defendant for valid consideration. Minor discrepancies regarding the scribe or place of typing are immaterial and do not outweigh the categorical evidence on record. Attention is drawn to the written statement filed by the defendant in the earlier injunction suit, wherein he specifically admitted the execution of the agreement to sell. His subsequent denial in the present proceedings amounts to an afterthought. During cross-examination in the present suit, the defendant even denied his signatures on that earlier written statement, which further erodes his credibility.

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9.2 It is argued further that the earlier injunction suit was dismissed as withdrawn on 14.12.1990. The Court while permitting withdrawal expressly observed that such withdrawal would not affect maintainability of the subsequent suit for specific performance. Even if that observation was irregular, the appellant never challenged it and cannot now derive any advantage from his own inaction.

9.3 It is submitted that the findings of both Courts are based on proper appreciation of oral and documentary evidence. No perversity or mis-reading of evidence is shown so as to justify interference under Section 100 CPC or Section 41 of the Punjab Courts Act. Accordingly, it is urged that the appeal lacks merit and deserves dismissal.

10. This Court has considered the rival submissions of learned Senior Counsel for both parties and carefully re-appraised the record of the Courts below.

11. ***Findings on the Execution and Genuineness of Agreement (Ex. P-1)*** : The principal contention raised by learned Senior Counsel for the appellant relates to the genuineness and due execution of the agreement to sell (Ex. P-1). It is argued that the document was not prepared by a regular deed writer; that PW-1 Balwant Singh, the alleged typist, did not sign it and was later introduced as a witness; that there exists inconsistency between PW-1 and PW-2 regarding the place of execution; and that one of the attesting witnesses, namely Singh Ram, was not examined.

12. These contentions, though elaborately urged before this Court, stand fully considered and rejected by the learned First Appellate Court on a careful re-appraisal of the evidence. The Appellate Court recorded detailed findings in paras 7 to 10 of its judgment, to the effect that the agreement was duly executed by defendant No. 1 – Kura Ram in favour of the plaintiff for a valid consideration, and that the defendant's subsequent denial was false and an afterthought.

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13. The reasoning of the First Appellate Court, with which this Court finds itself in full agreement, may be summarized as under :

- The agreement (Ex. P-1) is a typed document prepared by Balwant Singh (PW-1), who categorically deposed that he typed the document at the instance of both parties and witnessed their signatures thereon. The document was also attested by Desa Ram (PW-2) and Singh Ram, the latter having since died.
- PW-1's failure to sign the document does not discredit his testimony because, as a typist, he was neither expected nor required to append his signature. The absence of his register entry likewise does not negate the fact of his document preparation, particularly when his deposition remained consistent and unrebutted.
- PW-2 Desa Ram, an attesting witness, corroborated that the agreement was typed in the Courts Complex at Karnal in his presence and in the presence of both parties. The minor discrepancy as to whether an entry was made in any register is inconsequential. His testimony regarding the payment of earnest money of ₹ 25,000/- and execution of the document by defendant No. 1 remained firm and credible.
- The plaintiff himself (PW-4) supported the due execution of the agreement and the payment of earnest money, besides affirming his continued readiness and willingness to perform his part of the contract.

14. This cumulative evidence, both direct and circumstantial, fully satisfies the requirement under Section 67 of the Evidence Act, which mandates that a document must be proved by primary evidence and by persons acquainted with its execution.

15. Still further, it is most particularly significant to note that in the earlier suit for injunction filed by the plaintiff in respect of the same transaction, the defendant filed written statement (Ex.P-5) expressly admitting that "an agreement to sell was entered into between the parties." Though he later sought to evade this admission by alleging forgery of his signatures, his own

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advocate Shri P.R. Nagpal (PW-3) testified that the written statement was prepared under the defendant's instructions, read over and explained to him, and duly signed and verified by him.

16. Matter does not rest here. In the present case, testimony of Shri P.R. Nagpal (PW-3) to the effect that the written statement was prepared under the defendant's instructions, read over and explained to him, and duly signed and verified by him, remained unchallenged, as he was not cross-examined at all, indicating that defendant does not dispute the statement of PW3.

17. Such categorical admission of execution in prior proceedings constitutes a relevant fact under Section 21 of the Evidence Act, and the attempt to retract from it during cross-examination, by even denying signatures on the written statement filed in the present case, only exposes the falsity of the defendant's stand. The Courts below were, therefore, justified in treating this conduct as a deliberate attempt to mislead the Court and defeat the plaintiff's contractual rights.

18. The alleged inconsistency regarding whether the agreement was executed at Nilokheri or Karnal is, at best, a trivial variation incapable of affecting the core issue. The defendant has not alleged the existence of any other agreement. Once the factum of execution, payment of earnest money, and signatures of the defendant are proved, such minor discrepancies are immaterial. The law is well settled that minor contradictions or lapses in recollection cannot outweigh credible evidence of execution, particularly when the document itself bears the signatures of the executant and stands corroborated by independent witnesses.

19. In light of the above discussion, this Court finds no illegality, infirmity, or perversity in the concurrent findings of both the Courts below holding that the agreement to sell (Ex. P-1) was duly executed by defendant No. 1 in favour of the plaintiff for valid consideration and that the payment of earnest money was proved. The appreciation of evidence by the First Appellate

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Court is consistent with the principles laid down under the Indian Evidence Act and Section 10 of the Specific Relief Act, 1963. Accordingly, the finding regarding the due execution of the agreement to sell (Ex. P-1) is affirmed.

20. ***Findings on Readiness and Willingness*** : The next contention advanced by learned Senior Counsel for the appellant pertains to the plaintiff's readiness and willingness to perform his part of the contract. It is argued that there is no evidence of the plaintiff having appeared before the Sub-Registrar on 28.12.1990, the date fixed for execution of the sale deed; that no prior notice was served upon the defendant calling upon him to execute the sale deed; and that the plaintiff failed to prove his financial capacity to pay the balance sale consideration and meet the incidental expenses of stamp and registration.

21. At the outset, it may be observed that the finding of the trial Court on the issue of readiness and willingness was never challenged before the First Appellate Court. The appellant, therefore, cannot be permitted to raise this contention for the first time in second appeal, particularly when it involves a pure question of fact. Nonetheless, since the argument has been pressed, this Court has examined the record to satisfy itself on the merits of the plea.

22. The trial Court had found that prior to the target date of 28.12.1990, defendant No. 1 Kuda Ram, had already suffered a consent decree dated 20.11.1990 in favour of his sons (defendants 2 to 4) in Civil Suit No. 1599 of 1990, thereby rendering it impossible for him to perform his part of the contract. The plaintiff's act of filing an earlier suit for permanent injunction to restrain the defendant from alienating the suit property clearly demonstrates his anxious intention and continuous readiness to secure specific performance.

23. Subsequently, upon learning of the collusive decree, the plaintiff promptly instituted the present suit for specific performance on 03.12.1990, even before the target date, since the defendant had already repudiated the agreement. In such a situation, the non-appearance of the plaintiff before the Sub-Registrar, or his failure to serve a prior legal notice becomes wholly

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immaterial, as the defendant had already made performance impossible by his own conduct. The law does not compel a party to perform a futile act.

24. Further, Ld. trial Court, while assessing the evidence of PW-4 Cholar Ram, noted his categorical statement that he had repeatedly requested the defendant to execute the sale deed and was ready and willing to do so even at the time of deposition. In cross-examination, he further deposed that he was ready with ₹ 1,70,000/- as balance sale consideration and ₹ 30,000/- for registration expenses. This unshaken testimony, in the absence of any contrary evidence, sufficiently establishes his financial readiness.

25. The trial Court rightly relied on the Division Bench judgment of this Court in ***Gurdial Singh & others v. Darshan Singh & another*, 1995 PLJ 401**, which holds that where the plaintiff specifically pleads and proves continuous readiness and willingness, the requirement of Form 47 of Appendix A CPC stands satisfied. The Division Bench further observed that once execution of the agreement is proved, specific performance should ordinarily follow, unless the case falls within the exceptions of Section 10 of the Specific Relief Act, which is not the situation here.

26. It is equally significant to note that the defendant, despite having admitted the execution of the agreement in the earlier injunction suit, subsequently denied not only that admission but even his own signatures on the written statements in both suits. Such conduct reflects a deliberate attempt to evade his contractual obligations and to mislead the Court. A party, who adopts inconsistent and false stands, cannot be permitted to question the bona fides of the opposite party. The defendant's evasive conduct, therefore, fortifies rather than weakens the plaintiff's case on readiness and willingness.

27. Under Section 16(c) of the Specific Relief Act, 1963, the plaintiff must aver and prove that he has performed, or has always been ready and willing to perform his part of the contract. The requirement is to establish readiness in mind and willingness in conduct, not necessarily to produce

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documentary proof of cash in hand. The Supreme Court in ***Syed Dastagir v. T.R. Gopalakrishna Setty* (AIR 1999 SC 3029)** and ***Azhar Sultana v. B. Rajamani* (2009 4 SCC 305)** has clarified that the plaintiff's consistent conduct and credible oral testimony are sufficient to satisfy this statutory requirement. The plea of "readiness and willingness" to perform a contract can be inferred from the facts and circumstances of the case, even if the exact words are not used in the pleading.

28. In the present case, the plaintiff's contemporaneous actions i.e., repeated requests to the defendant, filing of the injunction suit, and immediate institution of the present suit upon learning of the collusive decree, constitute unimpeachable evidence of continuous readiness and willingness.

29. Accordingly, this Court finds no infirmity or perversity in the finding of the trial Court that the plaintiff had proved his readiness and willingness to perform his part of the contract. The contention of the appellant to the contrary is devoid of any merit and stands rejected.

30. ***Plea under Order II Rule 2 CPC*** : Ld. Senior Counsel for the appellant has further argued that the plaintiff's present suit for specific performance was barred by Order II Rule 2 of the Code of Civil Procedure, as the earlier suit filed on 21.11.1990 for permanent injunction was based on the same cause of action arising out of the same agreement to sell dated 28.05.1990. It is urged that since the plaintiff had alleged refusal on the part of the defendant to execute the sale deed in the earlier suit, he was obliged to claim the relief of specific performance in the earlier suit itself; that the subsequent suit filed on 03.12.1990 was not maintainable; and that withdrawal of the earlier suit without permission under Order XXIII Rule 1(3) CPC could not cure this defect.

31.1 To support his contention, Ld. Counsel relies on ***Mohan Singh vs. Prem Aggarwal, Law Finder Doc Id # 2736711 (decided on 01.04.2025)***, wherein Hon'ble Supreme Court held that Order 2 Rule 2 CPC mandates that a plaintiff must claim all reliefs arising from the same cause of action in one suit. If a relief

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that ought to have been claimed is omitted, a subsequent suit claiming that relief is barred unless leave of the Court was obtained at the time of filing the earlier suit.

31.2 In above case, second suit filed on 11.06.1990 for specific performance was held to be barred under Order 2 Rule 2 CPC, as the cause of action in the earlier suit for permanent injunction was found to be identical arising from the appellants' alleged refusal to honour the agreement dated 12.06.1989. It was held that the respondent-plaintiff, having consciously omitted to claim specific performance in the earlier suit despite being aware of the breach, could not be permitted to raise the same cause in a subsequent suit.

32. Further reliance is placed on **Jagmohan Bhargo vs Ajit Singh Law Finder Doc Id # 2787926**; and **M/s Virgo Industries vs M/s Venturetech Solutions Pvt. Ltd. 2013 (1) SCC 625**, wherein first suit was withdrawn after filing of the second suit. Hon'ble Supreme Court held that Order 2 Rule 2 will apply in such situation as well.

33. Order II Rule 2 CPC is intended to prevent multiplicity of suits and to compel a plaintiff to claim all reliefs arising from the same cause of action in one proceeding. In **Alka Gupta v. Narender Kumar Gupta (2010) 10 SCC 141**, it has been held by Hon'ble Supreme Court that :

"The object of Order 2 Rule 2 of the Code is two-fold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2 Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action."

34. However, the said bar applies only where both suits are based on the same cause of action; the earlier suit was decided on merits or withdrawn

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without liberty to file afresh; and the relief claimed in the later suit could have been claimed in the earlier one. The Constitution Bench of Hon'ble Supreme Court, in ***Gurbux Singh v. Bhooralal*, AIR 1964 SC 1810** while considering the scope and applicability of Order 2 Rule 2 of the Code of Civil Procedure, has held as under:

“In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.”

35. In the instant matter, the record reveals that the plaintiff filed the earlier suit for permanent injunction on 21.11.1990 only against the defendant Kura Ram to restrain him from alienating the suit property, or suffering any collusive decree. At that stage, though the target date under the agreement was 28.12.1990, the defendant had already exhibited conduct suggesting his intention to defeat the contract. The relief then sought was preventive and emergent, intended to preserve the subject matter of the contract pending performance. However, as the plaintiff later on came to know that said defendant had suffered a consent decree on 20.11.1990 in favour of his sons (defendants 2 to 4), effectively repudiating the agreement to sell, therefore, this act gave rise to a fresh and distinct cause of action to him (plaintiff), not only to seek specific performance but also the declaration that consent decree dated 20.11.1990 in favour of defendants 2 to 4 was null & void and not binding on his rights. Thus, the subsequent suit instituted on 03.12.1990 was not based on the same cause of action as the earlier one but on a new set of facts, which arose later.

36. Further, the earlier suit was formally dismissed as withdrawn on 14.12.1990, with the trial Court specifically observing that such withdrawal

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would not affect the maintainability of the later suit for specific performance. Although Ld. Senior Advocate for the appellant contends that such an observation was beyond the Court's jurisdiction, the fact remains that the order of withdrawal has attained finality, and was never challenged by the defendant before any superior forum.

37. In the aforesaid facts and circumstances, reliance on *M/s Virgo Industries vs M/s Venturetech Solutions Pvt. Ltd. (supra)*, *Jagmohan Bhargo's case (supra)* and *Mohan Singh vs. Prem Aggarwal (supra)*, is misplaced.

38. Even otherwise, the absence of express leave under Order XXIII Rule 1(3) CPC would not, in the facts of the present case, operate as a bar because the subsequent suit is founded on new circumstances i.e., the consent decree + refusal of performance; and thus, the reliefs claimed in both suits are distinct.

39. Moreover, the defendant's own conduct in suffering a collusive decree in favour of his sons and repeatedly shifting his stand regarding execution of the agreement to sell, debars him from taking technical pleas to defeat substantive justice.

40. In view of the above, this Court finds that the bar under Order II Rule 2 CPC is not attracted. The subsequent suit for specific performance was based on a fresh cause of action arising out of the defendant's repudiation of the agreement by suffering a collusive decree. The withdrawal of the earlier injunction suit does not render the present suit incompetent, particularly when the trial court specifically held in its order 14.12.1990 that such withdrawal would not affect the maintainability of the later suit for specific performance.

41. Accordingly, the finding of maintainability recorded by the Courts below calls for no interference and is hereby affirmed.

42. ***Findings on exercise of discretion*** :A further submission advanced on behalf of the appellant-defendant is that, even if the execution of the agreement to sell (Ex. P-1) is proved, the trial Court ought not to have decreed

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specific performance and should instead have granted the alternative relief of recovery of double the earnest money, as mentioned in the agreement itself and also claimed by the plaintiff in the alternative.

43. It is well settled that specific performance is an equitable and discretionary relief, governed by Section 20 of the Specific Relief Act, 1963 (unamended). The Court is not bound to grant such relief merely because it is lawful to do so. However, once the contract is proved to be valid and enforceable, and the plaintiff demonstrates continuous readiness and willingness under Section 16(c), the normal rule is to enforce performance unless special circumstances exist rendering it inequitable to do so. The Supreme Court in ***K. Nanjappa v. R.A. Hameed*, (2016) 1 SCC 762**, and ***P. D'Souza v. Shondrilo Naidu*, (2004) 6 SCC 649**, held that discretion must be exercised judicially and not arbitrarily, and that mere availability of an alternative clause for damages does not, by itself, dis-entitles the plaintiff from a decree for specific performance.

44. The clause in the agreement stating that in case of default by the vendor, the vendee may recover double the earnest money is only a protective stipulation, inserted to secure the buyer's rights in case he chooses to seek damages instead of performance. It does not amount to an exclusion clause ousting the right to specific performance. The law is well settled that unless the contract expressly provides that payment of double earnest money shall be the sole remedy, the Court cannot infer that specific performance is barred.

45. In the present case, there is no indication that the parties intended to make the payment of double earnest money the exclusive remedy. On the contrary, the plaintiff specifically pleaded that he was always ready and willing to perform his part of the contract and sought specific performance as the principal relief. The alternative prayer was made only by way of abundant caution.

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46. There is nothing on record to suggest that the plaintiff has acted inequitably or that enforcement of the contract would cause undue hardship to the defendant. Rather, the defendant's conduct in suffering a collusive decree in favour of his own sons to defeat the plaintiff's legitimate contractual right, dis entitles him from invoking equity in his favour.

47. As observed by the Supreme Court in ***A.C. Arulappan v. Ahalya Naik, (2001) 6 SCC 600***, the relief of specific performance should not be denied, where the defendant's own conduct is blameworthy or obstructive, since equity aids the vigilant and not those who defraud. In ***Bal Krishna v. Bhagwan Das, (2008) 12 SCC 464***, it has been held that when the defendant's conduct is unconscionable and the plaintiff has come to Court with clean hands, the discretion of the Court must be exercised in favour of performance rather than compensation.

48. Further, the plaintiff has continuously pursued his remedy since 1990, and both Courts below concurrently held that the contract was genuine, enforceable, and fairly priced.

49. Both the trial Court and the First Appellate Court exercised judicial discretion in decreeing specific performance. Once it was found that the contract was validly executed; that the plaintiff was ready and willing to perform his part; and the defendant's refusal was deliberate and dishonest, there was no legal justification to substitute the equitable relief with damages.

50. To conclude this point, the contention that only double earnest money should have been awarded is devoid of substance because, this Court finds that the clause for refund of double earnest money does not bar specific performance; the plaintiff proved his readiness, willingness, and good faith; and the defendant's conduct justifies equitable enforcement of the contract. Therefore, the decree for specific performance of the agreement to sell dated 28.05.1990 passed by the trial Court and affirmed by the First Appellate Court represents a proper and judicious exercise of discretion under the *Specific Relief*

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Act, 1963. As such, the argument to substitute the relief with monetary compensation is rejected.

51. **Conclusion** : Upon a comprehensive consideration of the record and the submissions advanced by learned Senior Counsel for both sides, this Court is of the view that the concurrent findings recorded by the learned trial Court and the learned First Appellate Court are well founded, supported by evidence, and in accordance with settled principles of law.

52. The material conclusions emerging from the foregoing discussion may be summarised thus:

- The agreement to sell dated 28.05.1990 (Ex. P-1) stands duly proved to have been executed by defendant No. 1 – Kuda Ram in favour of the plaintiff for valid consideration. The testimony of PW-1 Balwant Singh (typist), PW-2 Desa Ram (attesting witness), and PW-4 Cholar Ram (plaintiff) is credible and consistent, and the defendant's subsequent denial of his own signatures is false and self-contradictory.
- The admission of execution made by the defendant in the earlier injunction suit (Ex. P-3) and proved through his own counsel Sh. P.R. Nagpal further corroborates the plaintiff's case. The concurrent finding of due execution is neither illegal nor perverse and is hereby affirmed.
- The plaintiff has proved his continuous readiness and willingness to perform his part of the contract as required under Section 16(c) of the *Specific Relief Act, 1963*. His conduct in filing the earlier injunction suit and, immediately thereafter, the present suit on 03.12.1990 upon learning of the collusive decree dated 20.11.1990 clearly manifests bona fide intention to complete the transaction. Non-appearance before the Sub-Registrar, or absence of a prior notice is inconsequential, when the defendant himself had made performance impossible.
- The objection under Order II Rule 2 CPC is misconceived. The earlier suit for injunction and the present suit for specific performance arise out of distinct causes of action, the latter having emerged after the defendant's



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repudiation of the agreement by suffering a collusive decree in favour of his sons. The withdrawal of the earlier suit on 14.12.1990 with specific liberty left the present suit unaffected. Hence, no procedural bar exists.

- The plea that the plaintiff should be confined to double earnest money, or that the decree causes hardship due to rise in land prices is devoid of any merit. The clause for refund is merely ancillary and does not exclude specific performance. Price escalation over the years is a natural consequence of time and cannot defeat a lawful contract, particularly when the delay stems from the defendant's own conduct. No genuine hardship or inequity has been established.
- Both the Courts below have rightly exercised their equitable discretion under *Section 20 of the Specific Relief Act (pre-amendment)* in decreeing specific performance, as the plaintiff acted fairly and the defendant's conduct was demonstrably mala fide.

53. **Result :** For the reasons recorded hereinabove, this Court finds no illegality, infirmity, or perversity in the concurrent judgments and decrees of the Courts below warranting interference by this court. The findings being purely factual and based on proper appreciation of evidence, do not warrant interference, as no substantial question of law arises for determination. Accordingly, appeal stands dismissed on merits.

54. However, before parting with the matter, this Court cannot ignore the extraordinary time lag between the execution of the agreement to sell and the stage at which the decree is now to be enforced. The agreement to sell in question was executed in May, 1990 for a total sale consideration of ₹1,92,500/- out of which an amount of ₹25,000/- was paid as earnest money. The suit was filed in 1990; decreed by the trial Court in 1995; and the first appeal was dismissed in 1996. The present Regular Second Appeal, filed in 1996, has remained pending thereafter. As of today, almost three and a half decades have elapsed since the date of the agreement.

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55. There can be no doubt that during this long interregnum, the market value of agricultural land in and around District Karnal has increased manifold, on account of inflation, development and expansion in the area. If the decree for specific performance is enforced strictly at the original contractual price, the plaintiff–respondent would obtain valuable agricultural property at a rate, which has become completely out of tune with present-day realities, resulting in what would virtually amount to a windfall gain for him and a corresponding unjust impoverishment of the defendant–appellant and his legal representatives.

56. At the same time, however, this Court is equally conscious that the delay is not attributable to any laches on the part of the plaintiff. On the contrary, he has been vigilant throughout, as he first filed a suit for injunction; then promptly instituted the present suit for specific performance upon coming to know of the collusive decree dated 20.11.1990; succeeded before the trial Court and the First Appellate Court; and has been contesting the matter ever since. The protraction of the litigation is substantially the result of the defendant’s own conduct, suffering a consent decree in favour of his sons, setting up mutually inconsistent defences, and pursuing appeals. The defendant, therefore, cannot be permitted to take advantage of his own default and say that, because of the delay caused by his own resistance, the decree for specific performance should now be refused.

57. In all such circumstances, the equitable answer does not lie either in denying specific performance altogether, or in enforcing the contract mechanically at the 1990 price. Hon’ble Supreme Court, in ***K.S. Vidyarnadam v. Vairavan* (1997) 3 SCC 1**; ***K. Narendra v. Riviera Apartments (P) Ltd.* (1999) 5 SCC 77**; and ***Nirmala Anand v. Advent Corporation (P) Ltd.* (2002) 5 SCC 481**, has recognised that where there is a long passage of time and substantial rise in prices, the Court, while upholding the decree for specific performance, may mould the relief by directing the purchaser to pay an enhanced amount so that the enforcement of the contract does not operate harshly against the vendor

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nor confer an unfair bonanza upon the purchaser. The discretion under Section 20 of the Specific Relief Act, 1963 (pre-amendment) is meant precisely to address such situations and to secure what is substantive justice between the parties.

58. Keeping in mind the above factors i.e., (i) the time gap of more than three decades, (ii) the undisputed escalation in land values, (iii) the plaintiff's consistent diligence, and (iv) the defendant's blameworthy conduct in repudiating a valid agreement, this Court is of the considered view that the equities between the parties would be appropriately balanced, if the decree for specific performance is maintained, but the plaintiff–respondent is required to pay a substantially enhanced consideration as a condition for obtaining the sale deed.

59. **Directions:** Consequently, without disturbing the concurrent findings on execution of the agreement, and readiness and willingness of the plaintiff but simultaneously exercising the equitable jurisdiction of this Court under Section 20 of the Specific Relief Act, 1963 (as applicable), the decree is modified with the following directions:

- The decree for specific performance of the agreement to sell dated 28.05.1990 (Ex. P-1) passed by the trial Court and affirmed by the First Appellate Court is upheld, subject to the following condition:
 - The plaintiff–respondent shall deposit, before the Executing Court, an amount equal to seventy times (double the time gap between date of agreement and this order) balance sale consideration under the agreement.
 - The balance as per the agreement was ₹1,67,540/- (₹1,92,540/- minus earnest money of ₹25,000/-).
 - Seventy times this balance amount comes to **₹1,17,27,800/-** (Rupees One Crore, Seventeen Lacs, Twenty Seven thousand and Eight hundred only).



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- The said sum of **₹1,17,27,800/-** shall be deposited by the plaintiff–respondent within a period of three months from the date of this judgment.
- Upon such deposit being made within the stipulated time, the defendant–appellant and/or his legal representatives, from the date of being informed about the deposit, shall execute and get registered the sale deed in respect of the suit land in favour of the plaintiff–respondent within a further period of two months thereafter, on the basis of the agreement to sell dated 28.05.1990, failing which the plaintiff–respondent shall be entitled to have the sale deed executed through the process of the Court.
- In case the plaintiff–respondent fails to deposit the aforesaid amount of **₹1,17,27,800/-** within the time stipulated, the decree for specific performance shall stand vacated and in that event, the suit of the plaintiff shall be deemed to have been decreed only for the alternative relief of refund of double the earnest money, i.e. ₹50,000/-, together with interest @ 9% per annum from the date of the agreement till realisation, which the defendant–appellant or his legal representatives shall be liable to pay.

60. Subject to the above modification in the terms of enforcement, the Regular Second Appeal stands dismissed, and the findings of the Courts below on all issues, are affirmed. Decree be drawn accordingly.

20.11.2025
Jiten

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No