2025:PHHC:154012

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

**RSA-1718-2000 (O&M)
RESERVED ON: 30.10.2025
PRONOUNCED ON: 07.11.2025**

SAWINDER SINGH

.....APPELLANT

VERSUS

**RAGHBIR SINGH (SINCE DECEASED) THROUGH
LRS. AND ANR. .....RESPONDENTS**

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Vijay Kumar Jindal, Sr. Advocate assisted by
Mr. Abhishek Shukla and Ms. Amyia Malhotra, Advocates
for the appellant.

Mr. Shiv Kumar, Advocate
for respondent No.1.

Respondent No.2 proceeded against ex parte
v.o.d. 21.08.2025.

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MANDEEP PANNU, J (ORAL)

1. This Regular Second Appeal has been preferred by the appellant–defendant No.2 against the judgment and decree dated 21.02.2000 passed by the learned District Judge, Amritsar, whereby the judgment and decree passed by the learned Civil Judge (Senior Division), Tarn Taran, dated 02.02.1998, were set aside and the suit of the plaintiff–respondent for possession by way of specific performance of the agreement to sell dated 10.05.1992 was decreed.

Brief facts

2. The brief facts giving rise to the present appeal are that the plaintiff Raghbir Singh filed a suit for specific performance of an agreement to sell dated 10.05.1992, allegedly executed by defendant No.1 Gurmej Singh in his favour, in respect of land measuring 7 kanals 12 marlas comprised in Khasra No. 10/20, Khata No. 11/31, as per Jamabandi for the year 1991–92, situated in village Nathoke, Tehsil Tarn Taran. The total sale consideration was ₹80,750/–, out of which ₹15,000/– was paid as earnest money at the time of execution of the agreement. It was agreed that the sale deed would be executed on or before 15 Katak 2049 and 30 Katak 2050, upon payment of the balance sale price. The plaintiff alleged that he was always ready and willing to perform his part of the contract and had even filed a suit for permanent injunction on 27.09.1993 when defendant No.1 threatened to alienate the suit property to another person. Despite the pendency of the said proceedings and knowledge of the agreement, defendant No.1 executed a sale deed dated 30.09.1993 in favour of defendant No.2, Swinder Singh, which according to the plaintiff was without consideration and collusive. Hence, the present suit was filed for specific performance, or in the alternative, for recovery of ₹30,000/– being double the amount of earnest money as stipulated in the agreement.

3. Defendant No.1 Gurmej Singh, in his written statement, admitted execution of certain sale deeds in favour of defendant No.2 and pleaded that he had never executed any agreement to sell the suit land in favour of the plaintiff. He further averred that he had executed an agreement to sell dated 16.02.1992 in favour of defendant No.2 for a consideration of ₹49,000/–, out of which ₹6,000/– was received in cash, ₹23,000/– was

adjusted towards a prior mortgage, and the balance along with the cost of stamp papers was paid later.

4. Defendant No.2, in his separate written statement, supported this version, pleaded that the suit was bad for misjoinder of parties, and asserted that he was a *bona fide* purchaser for valuable consideration without notice of any prior agreement, being protected under Section 41 of the Transfer of Property Act, 1882.

5. The plaintiff filed replication denying all the preliminary objections and reiterating the averments made in the plaint.

6. Upon completion of pleadings, the learned trial court framed the following issues:

(i). Whether the defendants had executed an agreement to sell dated 10.05.1992 in favour of the plaintiff as alleged in the plaint? OPP

(ii). If issue No.1 is proved, whether the plaintiff was ready and willing and still ready and willing to perform his part of the contract? OPP

(iii). Whether the plaintiff is entitled to a decree for specific performance of the contract dated 10.05.1992 and in the alternative, a decree for recovery of ₹30,000/–? OPP

(iv). Whether the suit is bad for misjoinder of necessary parties? OPD

(v). Whether defendant No.1 had executed an agreement to sell dated 16.02.1992 in favour of defendant No.2, as alleged? OPD (vi). Whether defendant No.2 is a bona fide purchaser for valuable consideration without notice and the sale deed dated 30.09.1993 is protected under Section 41 of the Transfer of Property Act? OPD

(vii). Relief.

7. In order to substantiate his case, the plaintiff examined PW1 Buta Singh, PW2 Solakhan Singh, PW3 Yashpal Singh (Deed Writer), PW4 Manjit Singh (Clerk), PW5 Charan Singh (Naib Tehsildar), and PW6 Raghbir Singh (plaintiff himself), and closed his evidence.

8. In rebuttal, the defendants examined Bahadur Singh as DW1, Gurbachan Singh as DW2, Harnam Singh as DW3, and Swinder Singh (defendant No.2) as DW4 and closed their evidence.

9. The plaintiff also examined several witnesses in rebuttal, including PW7 Rajinder Kumar Kakkar, PW8 Joginder Singh, PW9 Parminder Singh, PW10 Kulwant Singh, PW11 Ramdas Singh, PW12 Gulzari Lal, PW13 Ramesh Pal Sharma (HRC Deputy Commissioner Office, Amritsar), PW14 Harbhajan Singh, and PW15 Kulwant Singh (Registration Clerk).

Findings of the trial Court

10. After appreciating the oral and documentary evidence, the learned trial court held that the plaintiff had been able to prove the execution of the agreement to sell dated 10.05.1992 (Ex.P1) in his favour by defendant No.1 Gurmej Singh and that the plaintiff had always been ready and willing to perform his part of the contract. However, it was further held that defendant No.1 had also executed a prior agreement to sell dated 16.02.1992 (Ex.D1) in favour of defendant No.2 Swinder Singh and that the said

agreement was duly proved by the defendants through the depositions of Bahadur Singh and Gurbachan Singh, the attesting witnesses. The trial court observed that the plaintiff's attempt to challenge the genuineness of the said agreement through stamp vendors and revenue officials did not successfully disprove its execution. It was thus found that defendant No.2 was a bona fide purchaser for valuable consideration without notice of the plaintiff's prior agreement and was therefore entitled to the protection of Section 41 of the Transfer of Property Act. Consequently, the relief of specific performance was denied to the plaintiff.

11. Nevertheless, the trial court held that since there was breach of the agreement on the part of defendant No.1, the plaintiff was entitled to alternative relief of compensation in the form of recovery of ₹30,000/–, being double the earnest money, along with interest at the bank rate till realization from defendant No.1. The suit was accordingly decreed partly in favour of the plaintiff and against defendant No.1, while defendant No.2 was held to be a bona fide purchaser protected under law. The parties were left to bear their own costs.

<u>Findings of the Lower Appellate Court</u>

12. Feeling dissatisfied with the judgment and decree dated 02.02.1998 passed by the learned Additional Civil Judge (Senior Division), Tarn Taran, whereby the plaintiff's suit for specific performance was partly decreed only for recovery of ₹30,000/–, the plaintiff Raghbir Singh preferred an appeal before the learned District Judge, Amritsar. The appeal was contested by the defendants. The Lower Appellate Court, after hearing learned counsel for the parties and examining the record, found that the trial court had erred in appreciating the documentary and oral evidence and in

wrongly extending the benefit of Section 41 of the Transfer of Property Act to defendant No.2.

13. The learned Appellate Court observed that the agreement to sell dated 10.05.1992 (Ex.P1) stood duly proved by the plaintiff through the testimony of the attesting witnesses as well as the scribe. The payment of ₹15,000/– as earnest money was admitted, and the terms of the agreement clearly stipulated that the sale deed was to be executed by 15.11.1993. Gurmej Singh, the vendor (defendant No.1), did not step into the witness box to deny execution of the agreement, and his failure to do so lent strong corroboration to the plaintiff's version. The Court further noted that the sale deeds Ex.P2 and Ex.P3 executed by Gurmej Singh in favour of the plaintiff earlier were also in pursuance of the same agreement, thereby affirming the genuineness of Ex.P1.

14. The Lower Appellate Court differed from the trial court on two crucial points. Firstly, it held that the alleged prior agreement to sell dated 16.02.1992 Ex.D1, in favour of defendant No.2, was surrounded by suspicious circumstances. The stamp papers were proved to have not been issued by the alleged stamp vendor, and the evidence of scribe and witnesses was found unreliable. The Court observed that defendant No.1's failure to enter the witness box to substantiate this agreement further weakened its authenticity. It was thus concluded that Ex.D1 was a forged and fabricated document, created subsequently to defeat the plaintiff's claim.

15. Secondly, the Appellate Court rejected the trial court's finding that defendant No.2 was a bona fide purchaser for valuable consideration without notice. It found that the evidence on record, particularly the orders of the Joint Sub Registrar, Khadur Sahib i.e Ex.P4 and Ex.P5, showed that

both defendants were aware of the earlier agreement Ex.P1 and of the pendency of injunction proceedings at the time of execution of the sale deed dated 30.09.1993. In view of this, defendant No.2 could not claim protection under Section 41 of the Transfer of Property Act.

16. The Lower Appellate Court also observed that the question of time being of the essence did not arise, as the sale deed in favour of defendant No.2 had been executed well before the stipulated date under Ex.P1, thus frustrating the plaintiff's lawful right. The Court, therefore, held that the plaintiff was entitled to a decree for possession by way of specific performance of the agreement to sell dated 10.05.1992.

17. Accordingly, the judgment and decree of the trial court were set aside. The appeal was allowed with costs, and the suit of the plaintiff was decreed for specific performance of the agreement to sell dated 10.05.1992. The Appellate Court directed that both defendants shall join in executing the sale deed in favour of the plaintiff upon receipt of the balance sale consideration of ₹65,750/–, out of which ₹49,000/– (the consideration mentioned in the subsequent sale deed) was to be paid to defendant No.2. The plaintiff was directed to deposit the balance consideration within one month, and on failure of the defendants to execute the sale deed, the plaintiff was granted liberty to get the same executed through the process of the Court.

18. Feeling aggrieved by the judgment and decree dated 21.02.2000 passed by the learned District Judge, Amritsar, whereby the appeal of the plaintiff–Raghbir Singh was allowed and the decree of the trial Court dated 02.02.1998 was reversed, the present Regular Second Appeal has been preferred by defendant No.2–Sawinder Singh. The appeal is contested by

respondent No.1–plaintiff, whereas defendant No.1–respondent No.2 was proceeded against ex parte.

Submissions of learned counsel for the appellant

19. It is argued by learned counsel for the appellant that the learned trial court had rightly decreed the suit of the plaintiff only for recovery of ₹30,000/– as an alternative relief, being double the amount of earnest money as per the terms of the agreement to sell dated 10.05.1992. The said agreement itself contained a specific stipulation that in case the vendor, Gurmej Singh, failed to execute the sale deed, he would be liable to refund double the earnest money, whereas if the vendee refused to get the sale deed executed, he would not be entitled to refund of the earnest money. The learned counsel contended that the Lower Appellate Court has ignored these specific terms and conditions and has reversed the judgment of the trial court contrary to the express contractual stipulations, thereby rendering its judgment without jurisdiction and contrary to settled principles of law.

20. It is further contended that the plaintiff has made incorrect averments in the plaint in order to mislead the Court. In paragraph 1, clause (ii) of the plaint, it is wrongly stated that in case defendant No.1 failed to execute the sale deed, he would be bound not only to pay double the earnest money but also to execute and complete the sale deed in favour of the plaintiff. This, according to the learned counsel, is a deliberate insertion, since the original agreement to sell Ex.P1 does not contain any such condition. The plaintiff thus obtained a decree for specific performance on the basis of false pleadings and in clear deviation from the terms of the written contract.

21. It was also argued that the agreement to sell dated 10.05.1992 (Ex.P1) is a forged and fabricated document created to grab valuable property of defendant No.1. The execution of two sale deeds dated 13.07.1992 (Ex.P2) and 20.07.1992 (Ex.P3), allegedly in compliance of Ex.P1, does not make reference to the said agreement anywhere, which clearly demonstrates that Ex.P1 was not in existence at the time of execution of these sale deeds. Even PW2 Sulakhan Singh, the scribe of the sale deeds, deposed that the agreement to sell was never shown to him at the time of drafting the sale deeds and that, had it been produced, he would have made a reference to it in the documents.

22. The learned counsel further submitted that the consideration recited in the sale deeds is ₹40,000/– per acre, whereas the agreement to sell mentions the rate of ₹85,000/– per acre, which makes the alleged agreement highly doubtful. Moreover, as per the agreement, one sale deed was to be executed on 15 Katak 2049 and another on 30 Katak 2050, but in fact both sale deeds were executed within a few days in July 1992. This deviation from the stipulated schedule further establishes that no such agreement to sell was in existence.

23. It was further contended that the suit land was already under mortgage with the appellant for a sum of ₹23,000/– vide registered mortgage deed dated 29.04.1991 (Ex.D3), and he was in possession of the same. However, the alleged agreement to sell is completely silent about the mortgage or its redemption, which is unnatural and renders the document suspect.

24. The learned counsel for the appellant also pointed out several material irregularities in the preparation of the document. Yashpal, PW2,

who is alleged to be the deed writer of the agreement, admitted that he was not a licensed deed writer and that his register was neither certified nor maintained in a regular course of business. There is overwriting on the serial number of the stamp vendor, changing “866” to “865,” and the register pages are not serially numbered. This irregularity, coupled with the absence of proof of the stamp paper vendor or the source of purchase, indicates interpolation and manipulation, making the document inadmissible and unreliable. It was argued that the writing style of Ex.P1 also departs from the conventional form of agreements to sell executed in Punjab, as it does not mention the ownership particulars or reference to the relevant Jamabandi, further showing that it was prepared subsequently to create a false claim.

25. It was next argued that only one attesting witness, PW1 Buta Singh, has been examined, who neither belongs to the plaintiff’s village nor has any connection with him. His testimony is inconsistent with the terms of the agreement, and the Lower Appellate Court has erroneously observed that both attesting witnesses and the scribe have proved the agreement, whereas in fact, only one such witness was examined.

26. The learned counsel further submitted that the plaintiff has not proved his readiness and willingness to perform his part of the contract, as required under Section 16(c) of the Specific Relief Act, 1963. The sale deeds were executed in parts, indicating that the plaintiff was not in a position to pay the balance consideration and lacked financial capacity to complete the transaction. There is not even a single word in the judgment of the lower Appellate Court discussing readiness and willingness or the plaintiff’s financial means.

27. In support of his submissions, learned counsel for the appellant relied upon the judgment of this Court in ***Jarnail Singh v. Jagir Singh (RSA No. 6357 of 2017 (O&M), decided on 28.11.2019)***, wherein it was held that specific performance is a discretionary relief and that even where the execution of an agreement is proved, the court is not bound to grant specific performance if surrounding circumstances indicate otherwise. Reliance was also placed upon ***Jamal v. Naresh Kumar, 2023 (1) RCR (Civil) 364***, where it was held that mere oral statements are insufficient to prove readiness and willingness or financial capacity, which must be established through documentary evidence such as account statements or income records. Further reliance was placed on ***Jagmohan Bhargo v. Ajit Singh and others, 2025 NCPHHC 138964***, to contend that a suit for specific performance based on the same cause of action after withdrawal of an earlier suit without liberty is barred under Order II Rule 2 of the Code of Civil Procedure, 1908. Learned counsel also cited the judgment of the Hon'ble Supreme Court in ***Mohan Singh and others v. Prem Aggarwal (Civil Appeal Nos. 4647–4648 of 2025, decided on 01.04.2025)***, holding that a second suit for specific performance is barred under Order II Rule 2 CPC and that in such circumstances, compensation in lieu of specific performance is an appropriate remedy.

28. Based on these submissions, the learned counsel for the appellant argued that the plaintiff's earlier suit for permanent injunction having been withdrawn without seeking permission to file a fresh suit, the present suit is barred under Order II Rule 2 CPC. The learned counsel, therefore, urged that the impugned judgment and decree of the Lower

Appellate Court be set aside and that of the trial court restoring the decree for recovery of ₹30,000/– in terms of the agreement to sell be maintained.

Submission of learned counsel for the respondent No.1

29. Learned counsel for the respondent–plaintiff, on the other hand, has argued that the agreement to sell dated 10.05.1992 (Ex.P1) has been duly proved on record and that the same pertains not merely to 16 kanals but to 23 kanals 12 marlas of land. It was explained that though the sale deeds were executed in parts, it was only because the remaining portion of the land was mortgaged with the appellant. Hence, the execution of the agreement to sell in respect of the entire land stands established, and the partial execution of sale deeds cannot be taken as non-performance of the contract.

30. It was contended that defendant No.1 Gurmej Singh had himself admitted the execution of the agreement to sell, and the only plea raised was that the sale was to be limited to 16 kanals. Such plea, however, is contrary to the evidence on record and the recitals contained in the document. The plaintiff had examined the attesting witness and the scribe, who have supported the execution of Ex.P1 in all material particulars. The fact of payment of ₹15,000/– as earnest money has not been disputed by the defendant.

31. Regarding the earlier suit for permanent injunction filed on 27.09.1993, learned counsel submitted that the same was filed because defendant No.1 had threatened to alienate the land in violation of the agreement. An injunction order dated 29.09.1993 had been passed restraining Gurmej Singh from alienating the property. During the pendency of that injunction, Gurmej Singh hurriedly executed a sale deed dated 30.09.1993 in favour of defendant No.2 Sawinder Singh. In these

circumstances, the filing of the earlier injunction suit was fully justified. The subsequent withdrawal of that suit does not attract the bar under Order II Rule 2 CPC, as it had become infructuous after the execution of the impugned sale deed and was based on a different cause of action.

32. It was also submitted that the plaintiff had filed an application before the Joint Sub Registrar, Khadur Sahib, on 27.09.1993 (Ex.P7), requesting that the registration of any sale deed be stayed in view of the subsisting stay order, and the Sub Registrar had accordingly passed orders (Ex.P4 and Ex.P5). Despite such notice and orders, defendant No.1 went ahead and executed the sale deed in favour of the appellant. This conduct, according to the learned counsel, clearly shows mala fide intention on part of the defendants.

33. The learned counsel further argued that the plea of the appellant regarding absence of the stamp vendor's examination and the alleged defects in the writing of the agreement are immaterial, as the execution has been otherwise proved by the attesting witnesses and the scribe. The plaintiff in his examination-in-chief has categorically stated about his readiness and willingness to perform his part of the contract, and his evidence in this respect has remained unshaken. The suit for permanent injunction having become infructuous on 11.11.1993 was rightly withdrawn, and therefore, there is no question of bar under Order II Rule 2 CPC.

34. In support of his contentions, learned counsel for the respondent–plaintiff has placed reliance upon ***Rathnavathi and another vs. Kavita Ganashamdas, 2014 (4) RCR (Civil) 904*** – wherein the Hon'ble Supreme Court held that a subsequent suit for specific performance of an agreement to sell is not barred by Order II Rule 2 CPC if the earlier suit for

injunction was based on a distinct cause of action, namely the threat of dispossession, ***Vijay A. Mittal & Ors. vs. Kulwant Rai (Dead) through LRs & Anr., 2019 (2) RCR (Civil) 1*** – where it was held that once the finding regarding readiness and willingness of the plaintiff has been recorded in his favour by the trial court, and the defendants did not challenge the same by way of cross-objection, such finding attains finality, ***Aniglase Yohannan vs. Ramlatha & Others, 2005 (4) RCR (Civil) 563*** – holding that the requirement under Section 16(c) of the Specific Relief Act does not require a mechanical or mathematical recital of readiness and willingness; if the pleadings and evidence read as a whole show that the plaintiff was ready and willing to perform his part, the relief cannot be denied, ***R. Muthusamy & Others vs. V.K. Palanisamy & Others, (A.S. No.608 of 2011, Madras High Court),*** wherein it was held that the plaintiffs cannot be denied specific performance merely because of non-survey or other minor irregularities, particularly when they are found ready and willing to perform their part of the agreement.

35. Learned counsel argued that in the present case, two sale deeds i.e. Ex.P2 and Ex.P3 had already been executed by defendant No.1 Gurmej Singh in favour of the respondent–plaintiff Raghbir Singh in pursuance of the same agreement, and therefore, the plea that the agreement to sell dated 10.05.1992 was forged or fabricated is baseless. It was further submitted that the alleged earlier agreement dated 16.02.1992 set up by the appellant is false and suspicious, as found by the Lower Appellate Court in paragraphs 56–57 of the paper book, where it was observed that the said document is doubtful and not worthy of reliance.

36. Accordingly, learned counsel for the respondent–plaintiff argued for dismissal of the present appeal, maintaining the judgment and decree of the learned District Judge, Amritsar dated 21.02.2000, which rightly decreed the suit for specific performance in favour of the plaintiff.

Findings of this Court

37. I have considered the respective contentions of learned counsel for the parties and have gone through the record of the case file.

38. The appellant's primary contention was that because Ex.P1 contains a clause prescribing payment of double the earnest money on vendor's default, the trial court was right to confine relief to that contractual remedy and the Appellate Court erred in granting specific performance. The Court finds this contention untenable. The Lower Appellate Court recorded that Ex.P1 was proved, that earnest money of ₹15,000/- was paid, and that despite notice and interim orders i.e. Ex.P4/Ex.P5/Ex.P7, the vendor effected a sale to the appellant in breach of the subsisting equitable right. The legal propositions relied on by the appellant that specific performance is discretionary and that courts may, in appropriate circumstances, award compensation instead are not in dispute. Those propositions were canvassed through *Jarnail Singh's case (supra)* and *Jamal's case (supra)* as placed before this Court. These authorities are fact-sensitive and do not mandate that a contractual stipulation for liquidated compensation must be mechanically enforced to the exclusion of specific performance where the vendor's conduct and other equitable considerations justify full enforcement of the contract. The Appellate Court evaluated those equitable considerations including part performance by the plaintiff i.e. registered sale-deeds Ex.P2/Ex.P3, payment of earnest money and the vendor's clandestine sale

despite notice and exercised its discretion to decree specific performance. On the record, the Court did not usurp contractual terms. It applied equitable principles to secure the proved substantive right. Accordingly the appellant's submission that the remedy in the written clause is exclusive must fail in the present factual matrix.

39. The appellant's contention that the plaint contains a wrongful averment stating a right to both double earnest money and specific performance and that such pleading impropriety vitiates the decree is devoid of any force. This Court rejects this point on the evidence. The Appellate Court proceeded on proved facts and the contemporaneous acts of the parties, not on a mere pleading recital. The cases cited for the proposition that strict pleadings matter do not assist the appellant here because once a Court finds on admissible evidence that a contract was executed and that the plaintiff performed or was ready and willing, a mismatch between a paragraph in the plaint and the documentary proof is not fatal. The Appellate Court has specifically addressed proof and found Ex.P1 genuine, therefore the incidental inaccuracy in a pleading paragraph cannot be allowed to nullify the proved substantive right.

40. The appellant contends that Ex.P1 is a forged fabrication pointing to the absence of reference in Ex.P2/Ex.P3, differences in consideration, and non-compliance with stipulated dates and argues that those facts impeach authenticity. On a careful review of the record the Appellate Court has discredited Ex.D1 (16.02.1992) as surrounded by suspicious circumstances and has accepted the attesting witness and scribe evidence for Ex.P1. The appellant's reliance on *Mohan Singh's case (supra)* and *Jagmohan Bhargo's case (supra)* to suggest limits on successive suits or

on credibility where documents are inconsistent is misplaced because those authorities deal with different factual patterns for example, second suits after withdrawal without liberty, or the consequences of prior judgments and do not establish a rule that every temporal or numerical discrepancy defeats proof. The trial and Appellate Courts found sufficient corroboration in the form of earnest money payment, part-execution by registered deeds in favour of the plaintiff, and the testimony of the scribe and attesting witness. Those facts, as accepted by the Appellate Court, outweigh the appellant's argument based on absence of express reference in Ex.P2/Ex.P3 or the timing of performance. This Court, therefore, upholds the Appellate Court's finding that Ex.P1 is genuine.

41. The appellant's contention that overwriting of stamp vendor number, uncertified register of the deed-writer and non-production of the stamp vendor render Ex.P1 inadmissible is also devoid of any force. The Lower Appellate Court examined these contentions and, while noting such formal imperfections, concluded on the totality of evidence that the rival document Ex.D1 was suspicious and that Ex.P1 was otherwise proved by credible testimony and acts. The authorities relied upon by the appellant emphasize the probative value of regular formalities, but they do not prescribe automatic exclusion where primary evidence i.e. direct witnesses, part performance and contemporaneous acts firmly establishes execution. The respondent's reliance on *Rathnavathi's case (supra)* and *Aniglase Yohannan's case (supra)* and the principle that Courts should look to substance over mere formalities when readiness and performance are shown is persuasive here. Trifling irregularities in ancillary registers do not

obliterate the proved transaction. Consequently, the formal defects do not justify overturning the Appellate Court's finding of authenticity.

42. The appellant's contention that the plaintiff was not "ready and willing" under Section 16(c) of the Specific Relief Act, 1963 and lacked financial capacity because sale-deeds were executed in parts is without any merits. The record shows earnest money paid, part-executions in registered form, an injunction suit filed on 27.09.1993 and prompt prosecution of the specific performance claim. These facts were found by the Courts below to constitute readiness and willingness. The appellant's authorities stressing documentary proof of funds do not negate the common law principle reflected in *Vijay A. Mittal's case (supra)* and the respondent's cited precedents that readiness and willingness is a matter of substance established by the pleadings, conduct and testimony. In the present case, the Appellate Court has recorded readiness and willingness after evaluating both documentary and oral evidence. In the absence of any positive finding that the plaintiff could not have performed, this Court will not disturb that concurrent finding.

43. Regarding the appellant's contention that defendant No.2 was a bona fide purchaser entitled to Section 41 protection, this Court finds against the appellant. The Appellate Court carefully considered the registration-stage documents i.e. Ex.P4/Ex.P5 and the application to the Joint Sub Registrar (Ex.P7) and found that notice of the earlier agreement and injunction was present prior to registration. The appellant urges the general principle that a purchaser for valuable consideration without notice is protected and that principle is sound. But on the record the trial and Appellate Courts

concluded that the appellant had notice actual or constructive and, therefore could not take advantage of Section 41.

44. The appellant briefly urges that the earlier injunction suit and its withdrawal bar the present suit under Order II Rule 2 CPC. The Appellate Court examined this contention and distinguished the authorities the appellant relied upon including *Jagmohan Bhargo's case (supra)* and *Mohan Singh's case (supra)* on the basis that those cases involved suits founded on the same cause of action and where withdrawal was without liberty to file afresh. Here, the injunction suit filed on 27.09.1993 was for a distinct remedial object to prevent alienation and became infructuous only after the clandestine sale. The plaintiff's application to the Joint Sub Registrar and the interim orders show that the earlier suit had a different thrust and did not render subsequent specific performance proceedings impermissible. The respondent's reliance on *Rathnavathi's case (supra)* is apt when the prior suit is for a distinct cause and the equities support a fresh suit, Order II Rule 2 does not operate to defeat substantive rights. On the facts recorded and accepted by the Appellate Court, the bar under Order II Rule 2 is not attracted.

45. The appellant's next short point is that the consideration recitals and rate per acre in the documents are inconsistent i.e. ₹40,000/acre in sale-deeds whereas ₹85,000/acre in Ex.P1 and this disparity casts doubt on Ex.P1. The Appellate Court addressed this disparity and placed it in the factual context of part-execution, mortgage encumbrances over portions of the land, and adjustments made in subsequent dealings. Such commercial variances, without more, are not decisive where the direct evidence i.e. attesting witness, scribe and acts of the parties indicates a meeting of minds.

The appellant's argument that rate inconsistency proves fabrication is therefore rejected because the courts below found credible explanations and corroboration. Thus, *Rathnavathi's case (supra) and Aniglase Yohannan's case (supra)* relied upon by the respondent supports the notion that the substance and performance matter more than formal dissonance.

46. The appellant also contends succinctly that the mortgage Ex.D3 and its omission from Ex.P1 render the agreement artificial. The Appellate Court considered the mortgage evidence and held that the partial mortgaging of the land and subsequent adjustments were consistent with the parties' transactions and did not vitiate Ex.P1. The appellant's submission that silence on redemption is fatal is not supported on these facts. The respondent's evidence demonstrated how part-execution and mortgage adjustment occurred in practice and the Appellate Court accepted that explanation as coherent and credible.

47. Finally, the appellant points to the deed-writer's lack of licence and deficiencies in his register as undermining the scribe's credibility. The Appellate Court, however, evaluated the scribe's oral testimony together with attesting witness evidence and contemporaneous acts and found the overall proof of Ex.P1 satisfactory. While the appellant's cited authorities caution Courts to weigh such defects, they do not mandate rejection of primary testimony where corroborated by independent acts. The respondent's reliance on authorities emphasizing the credibility of direct attestation and part performance is therefore apposite.

48. On the whole, after considering each contention of the appellant briefly stated above, the findings of the courts below, the authorities relied upon by both sides and the distinct factual matrix of this case, this Court

concludes that the Appellate Court properly appreciated the evidence, distinguished the rival document Ex.D1 and reasonably refused to extend the protection of Section 41 to the appellant.

49. For these reasons I am of the view that this Regular Second Appeal is liable to be dismissed.

50. All pending miscellaneous application(s), if any, stands disposed of.

(MANDEEP PANNU)
JUDGE

07.11.2025
Poonam Negi

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*