



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

RSA-1703-1998 (O&M)

Reserved on :- 12.12.2025

Date of Pronouncement:-18.12.2025

Uploaded on:-19.12.2025

Balbir Singh (since deceased) through LRs and another

... Appellants

Versus

Kabir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Rajinder Goel, Advocate
for the appellants.

Mr. Ankur Mittal, Senior Advocate with
Mr. Abhinav Sood, Advocate;
Ms. Kushaldeep Kaur, Advocate and
Mr. Sayyam Garg, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The appellants/plaintiffs, aggrieved by the judgment and decree dated 26th November, 1997 of the learned Additional District Judge, Ambala, which reversed the well-reasoned judgment and decree dated 19th February, 1988 of the learned Additional Senior Sub-Judge, Ambala Cantt., respectfully invoke the appellate jurisdiction of this Court through the present Regular Second Appeal (for short "RSA"). The appellants seek restoration of the decree rightly granted by the learned Trial Court and appropriate redress for the substantial miscarriage of justice occasioned



thereby. It is respectfully submitted that the impugned judgment and decree are vitiated by manifest perversity, serious errors of law, and a fundamentally flawed appreciation of the evidentiary record, resulting in grave injustice. The appellants therefore pray that this Court set aside the impugned judgment and decree and reinstate the lawful and well-reasoned decree of the learned Trial Court.

2. The sequence of events antecedent to, and culminating in, the present appeal may be succinctly set out as under -

“The suit was instituted seeking specific performance of the agreement to sell dated 1 July 1979 in respect of Bungalow No. 43, The Mall, Ambala Cantonment, with a consequential direction to the defendants to execute and duly register the sale deed in favour of the plaintiffs, founded upon both oral and documentary evidence on record.

The plaintiffs plead that they were tenants in occupation of the suit Bungalow prior to 1 July 1979, on which date the defendants executed an agreement to sell the property in their favour. The agreement stipulated that upon receipt of requisite permission from the Government of India through the Military Estate Officer, Ambala, the defendants would execute and procure registration of the sale deed within three months, the plaintiffs bearing all incidental expenses. Default by the plaintiffs would entail forfeiture of earnest money of ₹5,000/-, whereas default by the defendants would entitle enforcement through court. It is further averred that another sum of ₹2,000/-



was paid by cheque on 1 July 1980 towards the sale consideration, leaving a balance of ₹30,000/-. Sanction for sale was accorded on 11 April 1983. Despite statutory notices and the plaintiffs' appearance before the Sub-Registrar with requisite funds, the defendants failed to perform. The plaintiffs assert continuous readiness and willingness, necessitating the present suit."

3. Upon service of summons, the defendants appeared and filed their submissions as follows:-

"In the written statement, the defendants denied execution of the alleged agreement to sell and disputed the plaintiffs' claim of tenancy, asserting instead that the plaintiffs were in occupation as sub-tenants against whom eviction proceedings had already been initiated. The defendants further categorically denied receipt of the alleged payment of ₹2,000/- said to have been made by plaintiff No. 1 towards the sale consideration. As regards permission from the Military Estate Officer, it was pleaded that no sanction for sale was ever granted and that, by letter dated 9 June 1983, the Military Estate Officer merely required defendant No. 1 to furnish documents, if any, for consideration of sanction. It was further averred that despite reminders, no permission was accorded."

4. The plaintiffs filed a replication, refuting the defendants' contentions and reaffirming the allegations set forth in the plaint. After a careful and exhaustive review of the pleadings, documents, and submissions



of both parties, the Court framed issues for adjudication to enable a clear, accurate, and comprehensive determination of the respective claims and defenses, which are as under:-

1. *Whether the defendants entered into a valid agreement of sale on 1.7.79 in respect of the property mentioned in the head note of the plaint OPP.*
 2. *Whether the defendants received a sum of ₹5,000/- advance consideration impart performance of as contract? OPP.*
 3. *Whether the plaintiffs were and are ready and willing to perform their part of contract? OPP*
 4. *Whether the defendants committed the breach of the agreement of sale? OPP.*
 5. *Whether the defendants received a further sum of ₹2,000/- as mentioned in para no. 3 of the plaint ?OPP*
 6. *Whether the plaintiffs have no cause of action?OPD*
 7. *Whether the suit is not maintainable?OPD.*
 8. *Relief.*
5. Both parties were afforded a full and fair opportunity to adduce evidence in support of their respective claims. Upon conclusion of the trial and after hearing learned counsel for both sides, the learned Additional Senior Sub-Judge, Ambala Cantt., proceeded to decree the suit with the following observations:-

“In view of the findings recorded, the suit is decreed with costs. The defendants shall comply with the agreement by obtaining requisite permission from the Military Estate Officer within two months and thereafter execute and register the sale deed within one month upon receipt of the balance consideration, failing which the plaintiffs shall deposit the same in court.”



6. Aggrieved by the judgment and decree, the respondents/appellants filed an appeal before the learned Additional District Judge, Ambala, who allowed the appeal, observing as follows:-

“The inevitable consequence is that the appeal succeeds and is accordingly allowed. The impugned judgment and decree are set aside, and the suit is partly decreed to the extent that, while the respondents are not entitled to specific performance, they are entitled to refund of the earnest money and damages in exercise of powers under Order XLI Rule 33 of the Code of Civil Procedure. The appellant is directed to refund the earnest money of ₹7,000/- and to pay damages quantified at ₹70,000/- to the respondents within a reasonable time, failing which the appeal shall stand dismissed. There shall be no order as to costs.”

6.1. Disputing the determinations of the learned First Appellate Court, the appellants/plaintiffs filed the present appeal. Upon its admission, notices were issued, following which the respondents, through their counsel, appeared and opposed the appeal. The records of the courts below are accessible on DMS for thorough examination and adjudication.

7. I have heard learned counsel for the parties and considered their submissions in conjunction with the pleadings, evidence, and the findings recorded by the courts below. The entire record has been meticulously analyzed to determine ‘*whether the impugned judgment and decree suffer from any legal infirmity or error justifying interference by this Court?*’

8. The instant appeal raises the following ‘*quaestio juris substantialis*’ for adjudication and determination before this Court:-

“i. Whether the First Appellate Court erred in equating Letter Ex. P-2 with Letter Ex. D-1?



- ii. *Whether judicial notice was incorrectly taken of the letters dated 06.05.1994 and 17.07.1996?*
- iii. *Whether First Appellate Court records erroneous finding of fact that the contract between the parties has become impossible to perform?”*

9. Learned counsel appearing for the appellants/plaintiffs vehemently contended that the learned First Appellate Court has failed to properly appreciate the pleadings as well as the evidence available on record and has, in fact, misread the material evidence, thereby erroneously equating Letter Ex. P-2 with Letter Ex. D-1. It was submitted that the learned First Appellate Court overlooked the fundamental distinction between the two communications. While Ex. P-2 clearly evidences that the Defence Estate Officer merely conveyed the sanction duly granted by the competent authority, Ex. D-1, on the contrary, categorically records that the Defence Estate Officer itself communicated that the sanction earlier granted stood cancelled. The two documents, therefore, operate in entirely different fields and could not have been treated as analogous.

9.1. It was further contended that the learned First Appellate Court has committed a grave error in taking judicial notice of the letters dated 06.05.1994 and 17.07.1996. Learned counsel submitted that such judicial notice was wholly impermissible in law, as the said letters do not fall within the ambit of Section 57 of the Indian Evidence Act, 1872. The said communications were private correspondences exchanged between the respondents/defendants and the Army Authorities and do not constitute public documents nor are they facts of which judicial notice could lawfully be taken.



9.2. Learned counsel further assailed the finding of the learned First Appellate Court whereby it was concluded that the contract between the parties had become impossible of performance and, consequently, stood frustrated. It was argued that the said conclusion is legally unsustainable. Even assuming, without admitting, that the bungalow in question was under the process of resumption, such circumstance by itself does not render the contract impossible of performance. The contract would become incapable of performance only upon actual resumption of the bungalow by the Central Government. Mere initiation or pendency of the resumption proceedings cannot, in law, bring about frustration of the contract. The learned First Appellate Court, therefore, erred in holding that the contract stood frustrated merely on the ground that the process of resumption was underway.

10. Per contra, learned counsel appearing for the respondents/defendants submitted that the findings recorded by the learned First Appellate Court suffer from no illegality, perversity, or infirmity whatsoever. It was contended that the learned First Appellate Court has correctly appreciated the pleadings and evidence on record and has rightly arrived at the conclusion that the contract between the parties stood frustrated.

10.1. Learned counsel further submitted that the learned First Appellate Court was fully justified in equating Letters Ex. P-2 and Ex. D-1, as both documents pertain to the grant and withdrawal of sanction by the competent authority and were rightly construed in their proper perspective.

10.2. It was further contended that the learned First Appellate Court rightly took judicial notice of the letter dated 06.05.1994. During the



pendency of the appeal, the respondents/defendants had moved an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, seeking to bring the said letter on record. The said application was duly considered and allowed by the learned First Appellate Court, and consequently, the letter was taken on record and read in evidence without formal proof, as the document had come into existence subsequent to the decision of the suit and was, therefore, necessary for the just and effective adjudication of the appeal.

10.3. Learned counsel further contended that the contract between the parties stood frustrated on account of the competent authority having refused to grant the requisite permission and sanction for the sale of the property. In view of such refusal, performance of the contract had become legally impossible, and the learned First Appellate Court had rightly applied the doctrine of frustration. On these premises, learned counsel prayed that the appeal, being devoid of merit, be dismissed.

11. The material findings recorded by the learned First Appellate Court are set out in paragraphs No.10 to 14 of the impugned judgment. For the sake of clarity, completeness, and proper appreciation of the controversy involved, the said paragraphs are reproduced hereunder:-

“10. True, by virtue of rule 3, the MEO ceased to have any power to sanction or withdraw the transfer of Bungalows on sites granted under the terms of GGO 199 of 1836. But the question is how this rule helps the respondents. IF We act on this rule, both the permission and mox cancellation accorded vide letters Ex.P2 and Ex. Di have to go. It appears that the Learned counsel has failed to take notice of the fact that the sanction vide letter Ex.P2 was granted by none else but by Military Estate Officer, Andra Ambala



Cantt. We can not pick and choose but have to adopt an uniform policy in construing documents. Therefore, both the letters Ex. P2 and Ex. D1 have no value in the eyes of and must go as having not been issued by the competent authority.

11. *I agree with the Learned counsel for the respondents that the appellant can be forced to seek a fresh permission for the sale of disputed property from government. But if I do so, it is not going to change the complexion of the case. The suit property is already under resumption and it is in this backdrop, permission for sale thereof was declined. In this context, letter No. BC/9/1/A/DEO 1169 dated 6-5-1994, issued by Defence Estate Officers, Ambala Cantt. is material and is referred to below:-*

It is intimated that Bungalow No.43, The Mall Ambala Cantt. is under resumption and documents are being processed for this purpose and hence permission for sale of the subject property cannot be granted."

12. *Another letter bearing No.060/16 Land Cell dated 17th of July, 1996 addressed to the appellant is also of significance. Para 2 of this letter reads as follows:-*

The Committee has decided as per the assessment norms of the Govt. to pay you a sum of Rs.1.39.429.98 (Rupees One lakh thirty nine thousand four hundred twenty nine and paise ninety eight only) amount of compensation for your Bungalow No.43, The Mall, under resumption."

13. *Learned counsel for the respondents has, however, disputed the admissibility of aforesaid documents stating that the permission to produce them have already been declined by Shri R.K. Bishnoi, the then Addl. District Judge, Ambala vide order dated 2nd of December, 1995. But there is a fallacy in the submission of the learned counsel What was declined to produce is not the*



documents in question but were letters dated 12/11/1991 and 29-11-1991. Both the letters dated 6th of May 1994 and 17th of July, 1996 referred to above relate to subsequent events and came into existence after the passing of judgments in question. Moreover, there is nothing to bar the court from taking judicial notice of the said official letters which are above suspicion and their authenticity thereof is not open to question.

14. *The impugned agreement of sale thus becomes impossible of performance and in fact stands frustrated. No doubt, the court has got to enforce the terms of the contract and to enjoin upon the vendor to make necessary application for permission. But in the Circumstances narrated above granting of a decree for specific performance would be inequitable and unjust. At the same time, we must not forget that specific performance is by no means an absolute right, but one which rests entirely in judicial discretion depending on the facts and circumstances of a particular case. The illustration given under subsection 2 and 3 of Section 22 in which the court could refuse specific performance are not exhaustive and there may be umpteen number of cases in which the court may deny such relief to the plaintiff.”*

12. In terms of the Government of India, Ministry of Defence letter No. 18026 dated 21.08.1970, the powers earlier delegated to the Military Estates Officers (MEOs) to accord sanction for the transfer of bungalows granted under the provisions of GGO No. 179 of 1836 from one party to another were expressly withdrawn. By virtue of the said communication, the authority to grant such sanction was thereafter vested in the Director, Defence Lands and Cantonments. Relying upon this letter, the learned First



Appellate Court proceeded to hold that Letters Ex. P-2 and Ex. D-1 were devoid of any legal efficacy or binding force.

12.1. It was further noted that Letter Ex. P-2 was issued by the Military Estate Officer and addressed to K. D. Sharma. The relevant extract of the said letter is reproduced here-in-below for ready reference:-

“2. Sanction of the Director General, Defence Land and Cantonments, Government of India, Ministry of Defence, New Delhi is hereby accorded to the sale of the subject Bungalow to Sh. Balbir and Sh. Balwant Singh sons of Sh. Lashkhari Mall and mutation of the property in favour of the purchasers”

13. Thus, Ex. P-2 is a communication issued by the Military Estate Officer whereby the sanction accorded by the competent authority, namely, the Director General, Defence Lands and Cantonments, was conveyed to the respondents/defendants. The said letter does not constitute a grant of sanction by the Military Estate Officer in his own right; rather, it merely transmits and communicates the sanction already granted by the Director General, Defence Lands and Cantonments. In other words, the Military Estate Officer acted purely as a channel of communication, without exercising any independent statutory or delegated authority to grant such sanction.

13.1. In contradistinction, Ex. D-1, being the letter dated 09.06.1983, is also a communication issued by the Military Estate Officer. The relevant extract thereof is reproduced here-in-below for ready reference:-

“As the subject property now stands solely in your name a fres proposal for obtaining sanction of the competent authority for sale of the same has to be initiated. The Previous permission for sale is as such irrelevant and is cancelled.



You are therefore requested to please furnish a fresh draft sale deed solely from you to enable this office to obtain the fresh sanction”

14. Ex. D-1 unmistakably reveals that it is a communication issued by the Military Estate Officer wherein he himself asserted that the earlier permission for sale was no longer relevant and stood cancelled. However, as is evident from the Government of India communication referred to here-in-above, the delegated powers earlier vested in the Military Estate Officer to grant or cancel permission for the sale of a bungalow had already been withdrawn, and such powers stood exclusively vested in the Director General, Defence Lands and Cantonments. Consequently, the authority to revoke or cancel a sanction rested solely with the Director General, Defence Lands and Cantonments, and not with the Military Estate Officer.

14.1. In this backdrop, the Military Estate Officer was wholly incompetent and lacked jurisdiction to cancel the sanction once granted by the competent authority. The learned First Appellate Court, therefore, committed a manifest error in equating Letters Ex. P-2 and Ex. D-1 as being of equal legal effect. Whereas Ex. P-2 merely communicates the grant of sanction accorded by the competent authority for transfer of the bungalow in favour of the appellants/plaintiffs, Ex. D-1 purports to cancel such sanction by the Military Estate Officer himself an act which was clearly beyond the scope of his authority and jurisdiction.

14.2. Accordingly, the finding recorded by the learned First Appellate Court that both letters were devoid of legal value is patently erroneous and unsustainable in law and warrants interference. Ex. P-2 evidences a valid sanction granted by the competent authority, which could have been revoked only by the same authority. Admittedly, there is no communication on record



issued by the competent authority canceling the said sanction. Ex. D-1, having been issued by the Defence Estate Officer in excess of his delegated powers, is therefore *ultra vires* and cannot legally nullify the sanction conveyed through Ex. P-2.

15. Learned counsel appearing for the appellants contended that the learned First Appellate Court erred in law in taking judicial notice of the letters issued by the Military Authorities to the respondents/defendants. It was submitted that such an approach is wholly contrary to the mandate of Section 57 of the Indian Evidence Act, 1872. The said letters do not fall within any of the categories of facts of which judicial notice may be taken under the statutory scheme of Section 57, as they constitute private communications rather than public documents or matters of common or official notoriety. Consequently, the learned First Appellate Court acted beyond its jurisdiction in dispensing with proof of such documents and relying upon them by way of judicial notice.

16. Learned counsel appearing for the respondents drew the attention of the Court to an application filed under Order XLI Rule 27 of the Code of Civil Procedure, 1908, which had been moved by the respondents/defendants, who were the appellants before the First Appellate Court, during the pendency of the appeal, seeking permission to place on record the letter dated 06.05.1994. Learned counsel pointed out that, in terms of the order dated 29.07.1996, the said application was directed to be kept pending for consideration and adjudication along with the final hearing of the appeal. The relevant portion of the said order is reproduced here-in-below:-

“Shri S.M.Sharma, Advocate, states that he has 10 prepared the arguments on the application for additional evidence. The appeal is very

GAURAV SOROT
2025.12.19 14:01
I attest to the accuracy and
integrity of this document



old one. The application cannot be decided without hearing arguments on merits as well. Since the arguments on merits are not ready on behalf of the appellant, The case is adjourned to 21.8.96 for arguments on application as well as on merits. No short date is possible to heavy cause list.”

17. The Court, in its impugned judgment, proceeded to take judicial notice of the said letter, which necessarily implies that the application moved by the respondents/defendants for leading additional evidence stood impliedly allowed. As a consequence thereof, the said document was taken on record and relied upon as evidence without being subjected to formal proof in accordance with law.

18. A perusal of the relevant portions of the judgment reveals that the learned Additional District Judge has taken judicial notice of two letters, namely, the letter dated 06.05.1994 in respect of which an application for leading additional evidence had admittedly been filed and another letter dated 17.07.1996, in respect of which no application for additional evidence appears to have been moved by either party. The final judgment does not contain any reference whatsoever to the filing, consideration, or disposal of any application for additional evidence by any of the parties. Nor does the judgment record any finding or order to the effect that such application stood allowed, pursuant to which judicial notice of the communications referred to therein was being taken. In the absence of any such express adjudication, the manner in which judicial notice has been taken of the said communications suffers from a manifest procedural irregularity.

19. Had the Court allowed the application for leading additional evidence, a specific and express reference to such allowance would



necessarily have found place in the judgment, and only thereafter could judicial notice of the said letter have been lawfully taken. However, in the present case, judicial notice has been taken of two letters without any such express adjudication. Significantly, both letters of which judicial notice has been taken by the learned First Appellate Court are communications issued by the Military Authorities and addressed to the respondents/defendants. These communications constitute private correspondence between the concerned parties and do not form part of any public record or public document. Consequently, they do not fall within the purview of Section 57 of the Indian Evidence Act, 1872, and judicial notice thereof could not have been taken. The learned First Appellate Court, therefore, erred in law in relying upon such communications by dispensing with formal proof.

19.1. Even assuming, arguendo, that the said letters were rightly taken into consideration by the learned First Appellate Court, the contents thereof do not advance the case of the respondents/defendants. Both letters emanate from the Military Estate Officer and the Administrative Commandant of the Military Station. As discussed hereinabove, neither of these authorities was the competent authority to grant, refuse, or cancel permission for the sale of the bungalow. The competent authority for such purpose was exclusively the Director General, Defence Lands and Cantonments. Communications issued by subordinate or administrative authorities, therefore, cannot be construed as decisions of the competent authority so as to have any determinative legal effect.

19.2. Further, the doctrine of frustration of contract is attracted only upon satisfaction of the conditions stipulated under Section 56 of the Indian



Contract Act, 1872. The said doctrine cannot be invoked mechanically or on the basis of administrative correspondence which neither constitutes a legal prohibition nor renders performance of the contract impossible in law. In this context, reliance has been placed upon the judgment of the Hon'ble Gujarat High Court in **Najmudin I. Bharmal and Others v. Charotar Gramoddhar Sahakari Mandali Ltd. and Others**, MANU/GJ/0327/1995, wherein it has been held as under:-

“19. The following conditions are essential before Section 56 of the Contract Act Becomes applicable:

- (1) A valid and subsisting contract to meet the purpose.*
- (2) There must be some part of the contract yet to be completed after it is entered into becomes impossible to be performed.*

The doctrine of frustration comes into play when a contract becomes Impossible after it is made on account of circumstances beyond the control of the parties, or change in circumstances makes performance of the contract impossible. As such, an Impossibility and frustration are often used with inter-changeable expression, the changed circumstance makes the performance of the contract impossible.

20. The rule in Section 56, exhaustively, deals with frustration of the contract. Once the Court finds that the contract has become impossible to be performed, there cannot be a decree for specific performance of such act or action to be impossible or the performance of which is beyond the control of the party. There is a definite policy, philosophy and purpose behind the doctrine of frustration. The trial Court, in the circumstances emerging from the evidence, has, rightly, observed that, on account of the denial or refusal of the permission for conversion of suit land into



non-agricultural land, would result into frustration of contract and, therefore, there cannot be a decree for specific performance, thereof.”

20. The question that, therefore, arises for consideration is whether the contract between the parties could be said to have been frustrated merely on the ground that the bungalow was stated to be under the process of resumption. It is not the case of either party that the bungalow had, in fact, been resumed by the Central Government. On the contrary, the stand of the respondents/defendants is confined to the assertion that, according to the Military Authorities, the bungalow was under contemplation or process of resumption. Mere pendency or contemplation of resumption proceedings, however, does not, in law, *ipso facto* result in frustration of the contract.

20.1. In this context, reliance has been placed upon the letter issued by the Army Headquarters dated 21.08.1963, the relevant extract whereof is reproduced here-in-below for ready reference:-

“1) Instances have come to notice where officers Commanding the Stains do not issue no objection certificate” on the request for mutation of bellows on sites held on old grant terms for scare that either there is n resumption or rent or of hiring. The compensations payable in the event of consumption of rent payable in the event of hiring are not in any manner me whoever is the owner.

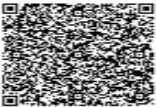
21. The said letter unequivocally demonstrates that permission for the sale of the bungalow is not liable to be refused merely on the ground that the bungalow is under resumption. It thus becomes evident that the mere pendency or contemplation of resumption proceedings does not operate as a legal embargo on the grant of sanction for sale.



21.1. Moreover, the communications relied upon by the learned First Appellate Court do not emanate from the competent authority. As discussed hereinabove, the competent authority, namely, the Director General, Defence Lands and Cantonments, had duly granted sanction for the transfer of the bungalow, as conveyed through Letter Ex. P-2. There is no material on record to establish that the said sanction was ever withdrawn or cancelled by the competent authority. In the absence of any such cancellation, the sanction so granted continued to remain valid and operative. Consequently, the reliance placed by the learned First Appellate Court on communications issued by subordinate or non-competent authorities, in disregard of a subsisting sanction accorded by the competent authority, is legally unsustainable.

22. In view of the foregoing discussion and the facts and circumstances of the case, it is evident that the learned First Appellate Court erred in holding that the contract between the parties had become impossible to perform and, consequently, could not be specifically enforced. The conclusions recorded by the learned First Appellate Court are, therefore, unsustainable in law and cannot be upheld. For the reasons stated herein, the findings of the learned First Appellate Court are set aside. Accordingly, the appeal filed by the appellants/plaintiffs is allowed, and decree passed by the learned Trial Court is restored and suit of appellant/plaintiff stands decreed.

23. Consequent upon the final adjudication of the principal matter, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, shall stand disposed of by necessary implication. In light of the conclusions reached herein, no separate or



independent orders are required in respect of such applications, as their determination has become wholly infructuous and academic.

18.12.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No