



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

(130)

(1)

RSA-2241-2025 (O&M)

KARNAIL SINGH AND OTHERS

... Appellants

Versus

JASWINDER SINGH AND OTHERS

... Respondents

(131)

(2)

RSA-2788-2025 (O&M)

RANJIT SINGH (SINCE DECEASED) THROUGH HIS LRS

... Appellants

Versus

JASWINDER SINGH AND OTHERS

... Respondents

Date of Decision: **19.08.2025**

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr.Sanjeev Gupta, Advocate, for the appellants,
in RSA-2241-2025.

Mr. Prateek Gupta, Advocate, for the appellants,
in RSA-2788-2025.

VIRINDER AGGARWAL, J. (Oral)

1. These two appeals have been filed by appellants/defendants against the judgment and decree passed by learned Additional District Judge, Bathinda, vide which, the respondents/plaintiffs were granted relief of recovery of earnest money along with interest.

2. Briefly, the suit for specific performance of agreement to sell was filed by the respondents/plaintiffs against appellants/defendants with regard to suit land and it was admitted fact that agreement to sell was executed and earnest money of Rs.1,20,00,000/- was paid by the respondents/plaintiffs to



appellants/defendants and on the stipulated date, sale deed could not be executed. Both the parties have alleged that they remained ready and willing to perform their part of the contract and the other party was not ready and willing to perform its part. Suit was dismissed by the learned Civil Judge by recording a finding that the respondents/plaintiffs were not ready and willing to perform their part of the contract, as such, they are not entitled to any relief. Their earnest money was ordered to be forfeited. Respondents/plaintiffs preferred an appeal before the learned Additional District Judge, Bathinda and learned Additional District Judge allowed the appeal and granted alternative relief of refund of earnest money along with interest.

3. Aggrieved, the present appeals have been preferred by the appellants/defendants. The judgment of the First Appellate Court has been assailed on the grounds that the learned First Appellate Court has not bothered that respondents/plaintiffs were not ready to perform their part of the contract and the liability has been fastened upon appellants/defendants only on account of the admission of the defendants in written statements qua the ownership of 1/12th share in the suit land of Hardeep Kaur and Veerpal Kaur. It is not the case of the respondents/plaintiffs that they were not aware about the ownership of the suit land of Hardeep Kaur and Veerpal Kaur. The share of Hardeep Kaur and Veerpal Kaur is a meager share and they are mother and sister of appellants/defendants Amarjeet Singh. The learned Lower Appellate Court has ignored the settled position of law that buyer had to be vigilant and has to exercise the due diligence and vendee was under obligation to make inquiries as to the exclusive title of the vendor and relied upon the law laid down by Hon'ble Apex Court in ***Rajesh Kumar versus Anand Kumar and others, 2024 SCC Online SC 981*** on account of plaintiffs conduct.



4. Learned counsel for the appellants argued that the learned First Appellate Court has not taken into consideration that suit was filed by the respondents/plaintiffs on the last date of limitation and in such circumstances, the relief ought not to be granted on account of plaintiffs conduct.

5. I have gone through the file carefully.

6. It is not denied that the appellants/defendants were not owners of the entire property. Annexure A1-Agreement to Sell of land, which is copy of Exhibit P1 clearly show that Karnail Singh, Ajaib Singh, Ranjit Singh and Amarjeet Singh has claimed themselves to be the owners in possession of suit land without any encumbrance and free from all disputes and litigations, so it has not been stated in the agreement to sell that Veerpal Kaur and Hardeep Kaur are also owners of the suit land to the extent of 1/12th share. There is no undertaking on behalf of the appellants/defendants to get the sale deed executed of their share in favour of respondents/plaintiffs. So, it is clear that agreement to sell was not capable of being performed specifically by the appellants/defendants due to defect in their title with regard to the suit property. Learned First Appellate Court has rightly observed that when the agreement to sell could not be specifically performed by the appellants/defendants, there is no question of taking into consideration as to if respondents/plaintiffs were ready and willing to perform their part of the contract.

7. Learned counsel for the appellant has placed reliance upon ***Rajesh Kumar versus Anand Kumar and others, 2024 SCC Online SC 981***. The perusal of that judgment clearly shows that the same would not help the appellants in any manner. Para 6 and 7 of the judgment of Hon'ble Apex Court is reproduced as under:-

“6. Admittedly, the initial agreement dated 26.09.1995 was executed by Defendant no. 1-Gajay Bahadur Bakshi. It is the case of the



appellant/plaintiff that Gajay Bahadur Bakshi was the Power of Attorney Holder of Defendant nos. 2 to 11, the other co-owners/coparceners of the suit property. However, the agreement itself no where states that Gajay Bahadur Bakshi has executed the agreement as Attorney Holder of Defendant nos. 2 to 11. On the contrary, it is mentioned in the agreement that Gajay Bahadur Bakshi would be responsible for getting the sale deed executed and registered by all the co-owners or co-khatedars at the time of registration. Neither the names of all the co-owners/coparceners/co-khatedars are mentioned in the agreement, thus, the High Court is right in finding that all the co-owners have not signed the agreement. The subsequent endorsement of receipt of additional amount of Rs. 40,000/- is also not signed by all the co-parceners. The same is the condition with the 3rd agreement dated 26.12.1996 and the extension endorsement dated 27.03.1997 and 23.04.1997. Significantly, the so-called power of attorney pleaded in the plaint through which the defendant nos. 2 to 11 authorised defendant no. 1 to execute the agreement, have not been produced and proved in the Trial Court. Thus, neither in the agreement nor in course of trial the power of attorney is proved by tendering the same in evidence. Hence, in the absence of evidence, the High Court rightly held that the agreement is not signed by all the co-owners.

7. In the matter of [Shanmughasundaram & Ors. Vs. Diravia Nadar](#) (dead) by Lrs. & Anr.1, this Court has held that in the event all the co-sharers of the property have not executed the sale agreement, a suit for specific performance cannot be decreed. The following is held in paras 29,30 & 31:

“29. The facts in present case are distinguishable. Admittedly, the property has been jointly inherited by two brothers and three sisters. As heirs under the [Hindu Succession Act](#), they inherited the property as co-owners. In the absence of partition between them, the two brothers together had undivided share in the property, and they could not have agreed for sale of the entire property. They were competent to execute agreement to the extent only of their undivided share in the property. In the event of sale of such undivided share,



the vendee would be required to file a suit for partition to work out his right in the property. The left out three sisters as co-owners having undivided share in the whole property, the two brothers are incompetent to abide by the award.

30. Learned counsel makes a reference to [Section 12](#) of the Specific Relief Act, 1963 and submits that the arbitration agreement and consequent award should be allowed to be enforced to the extent of share of two brothers leaving the vendee to work out his right, if necessary, in case the sisters object to the sale, by a suit in accordance with [Section 12](#) of the Specific Relief Act.

31. [Section 12](#) of the Specific Relief Act, in our considered opinion, would be of no assistance in the situation obtaining here. In the absence of sisters being parties to the agreement, the vendee can at best obtain undivided interest of two brothers in the property. [Section 12](#) of the Specific Relief Act cannot be invoked by the vendee to obtain sale of undivided share of the two brothers with a right to force partition on the sisters who were not parties to the agreement of sale. Such a relief under [Section 12](#) cannot be obtained by a vendee, on purchase of an undivided share of the property of some of the co-owners, against other co-owners who were not parties to the sale agreement.”

8. It is very clear that when the appellants/plaintiffs were not sole owners of the property agreed to be sold by them, the agreement in question was rightly held to be not executable in *toto* and relief under Section 12 cannot be obtained by vendee on purchase of an undivided share of property of some of the co-owners against other co-owners, who are not parties to the sale agreement. When such is a position, then respondents/plaintiffs filing the suit on the last date of limitation also would not help the appellants/defendants. Furthermore, now there is amendment in Section 20 of Specific Relief Act, 1963 and once, it is proved on record that there is a valid agreement to sell and the plaintiff remained ready and willing to perform his part of the contract, then



Court has to grant the relief of specific performance and the relief cannot be declined on the ground that the suit has been filed on the last date of limitation or on account of any other hardship.

9. Once, it is proved on record that agreement to sell executed by appellants/defendants was incapable of being specifically performed on account of appellants/defendants being not exclusive owners of the suit property, then, the equity is definitely in favour of respondents/plaintiffs and appellants/defendants cannot be allowed to retain the earnest money amounting to Rs.1,20,00,000/-. There is no illegality or infirmity in the findings recorded by learned First Appellate Court, as such, the appeals have no merit and deserve to be dismissed.

10. Ordered accordingly.

11. A photocopy of this order be placed on the file of connected case.

19.08.2025
S. Pathania

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No