

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****110****RSA-15-2022 (O&M)****Date of decision: 10.12.2025****Banwari Lal and another****...Appellant(s)****Vs.****Poonam****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. K.B.Raheja Advocate for the appellants.Mr. Suresh Kumar, Mr. Yogesh Kumar Aneja, Advocates
for the respondent/caveator.Mr. Priyanshu Kamra, Advocate for the
applicant/proposed respondent No.2.

NIDHI GUPTA, J.

Defendants are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby suit filed by the plaintiff/respondent for possession by way of specific performance of Agreement to Sell dated 10.05.2017; and in the alternative for recovery of Rs.50 lacs paid as earnest money; has been decreed by both the Courts below for specific performance of the said Agreement.

2. It was the pleaded case of the plaintiff that vide Agreement to Sell dated 10.05.2017, defendant No. 1 had agreed to sell the suit land measuring 46K 17M for total sale consideration of Rs.55,04,875/- of which defendant had received Rs.25 lacs as earnest money. The target date for execution of sale deed was fixed for 21.06.2017 after receiving balance



sale consideration. It was pleaded that plaintiff had duly reached Tehsil office alongwith balance sale consideration and sundry expenses on the said date and kept waiting for the defendant to arrive. However, defendant No.1 had maliciously avoided to reach Tehsil office on 21.06.2017. On the contrary, defendant No.1 had transferred suit property in favour of his son/ defendant No.2 with a motive to dupe the plaintiff and usurp the amount of earnest money. Accordingly, present suit was filed on 05.07.2017.

3. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Civil Judge (Senior Division), Abohar vide judgment and decree dated 31.10.2019 had decreed the suit of the plaintiff directing that *“The suit of the plaintiff stands decreed with costs and further defendant the No.1 is hereby directed to execute the sale deed in respect of the suit land as fully described in the head note of the plaint within a period of three months from the date of this judgment after receiving the balance sale consideration failing which the plaintiff can get deposited the balance sale consideration in the court within further three months and can get executed the sale deed in her favour through court of law. Further, the sale deed executed by defendant No.1 in favour of defendant No.2 dated 2.6.2017 in respect of the suit land is also hereby declared as illegal, null and void and not binding upon the rights of the plaintiff. Further, defendants are permanently restrained from alienating, mortgaging and transferring the suit land in favour of any other person except the plaintiff.”*



4. The Civil Appeal filed by the defendants was dismissed by the learned District Judge, Fazilka vide judgment and decree dated 25.08.2020. Hence, present second appeal by the defendants.

5. It is *inter alia* submitted by learned counsel for the appellants that the learned Courts below were in patent error in decreeing the suit of the plaintiff for specific performance as in actual fact, there was no Agreement to Sell between the parties. The same is only a loan transaction. To substantiate his argument, Id. counsel refers to the statement of the plaintiff; wherein she has admitted that she was not present at the time of execution of the Agreement and the same was executed by her husband Mangal Chand. Learned counsel further points out that Plaintiff has also admitted in her cross-examination that even no writing was carried out at that time. It is accordingly submitted that from the evidence of the plaintiff herself, it is proven that alleged Agreement to Sell was a sham document.

6. Learned counsel for the appellants further submits that the appellants are residing in the land in dispute alongwith their families and children. The market value of the land is about Rs.30 lacs per acre. As such, no person will agree to sell the said land @ Rs.8 lacs per acre. It is contended that inadequacy of consideration alone is a ground to refuse the relief of specific performance.

7. It is further submitted that even the readiness and willingness of the plaintiff to perform the contract is not proved. It is argued that in such circumstances, relief of specific performance which is discretionary



relief could not have been granted. It is contended that relief of specific performance can be granted in favour of the plaintiff only if it does not create hardship to the opposite party.

8. It is accordingly prayed that present appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

9. *Per contra*, learned counsel for the respondent/caveator/plaintiff vehemently opposes submissions advanced on behalf of the appellants and submits that the present second appeal has been rendered infructuous as in pursuance of the judgments and decrees of the learned Courts below, the plaintiff had filed Execution Petition, which has been dismissed as withdrawn being fully satisfied by the learned Additional Civil Judge (Senior Division), Abohar vide order dated 20.11.2024. Learned counsel for the respondent also points out that in zimni order dated 16.10.2024 passed by the learned Additional Civil Judge (Senior Division), Abohar, the appellant had appeared and suffered a statement that he is ready to receive the balance amount of sale consideration. Order dated 16.10.2024 is reproduced hereunder:-

“Today respondent/JD Banwari Lal appeared and suffered a statement to the effect that he have claimed Rs.30,04,874 which is one rupees less to the amount deposited by the decree holder and he is ready to receive this less amount of Rs.30,04,874. He has been further stated that he has no objection, if the amount of Rs.28,75,309 is paid to him after deducting the cost of Rs.1,29,565 from the amount of Rs.30,04,874 as recorded in the decree sheet dated 31.10.2019.



In view of said statement, case is adjourned to 23.10.2024 for consideration."

10. Copies of both the said orders are handed over in Court today, which are taken on record.

11. At this stage, learned counsel for the appellants submits that although prayer had been made for release of amount of Rs.28,75,309/- however, the said amount has not yet been released to the appellants. Ld. Counsel for the appellant has also handed over in Court, zimni orders dated 23.10.2024 to 08.11.2024 passed by the learned Executing Court to demonstrate that the said amount has not yet been released to the appellant. It is now prayed that in view of the above admitted facts, learned Executing Court be directed to release the said amount to the appellant no.1.

12. Learned counsel for the applicant (in CM-5781-C-2022 filed under Order 1 Rule 10 of CPC for impleading the applicant as party-respondent No.2 in the present appeal) submits that vendor/appellants/defendants had agreed to sell the suit land to the applicant vide Agreement to Sell dated 20.05.2016; which agreement is prior in time to that of the respondents. The applicant had filed Civil Suit on 24.03.2022 seeking specific performance of the said Agreement to Sell dated 20.5.2016 in which the plaintiff had filed an application under Order 1 Rule 10 CPC; however, had subsequently withdrawn the said application. It is contended that Agreement to Sell dated 20.05.2016 of the applicant is prior in time to that of the plaintiff which is Agreement dated 10.05.2017. It

is accordingly submitted that the suit land could not have been sold by the



appellants to the plaintiff at the back of the applicant; and suit of the plaintiff could not have been decreed.

13. However, on a Court query, Id. counsel for the applicant admits that applicant had filed third-party objections in the Execution Petition filed by the respondent, which had been dismissed by the Id. Executing Court. It is admitted that the Civil Revision filed by the applicant against the dismissal of third-party objections has also been dismissed by this Court.

14. At this stage, learned counsel for the respondent takes strong objection to the submission of the applicant and submits that the applicant and appellants herein after conniving with each other have falsely prepared the alleged agreement dated 20.05.2016 only with sole object to cause delay and obstruct the rights of the respondent granted under lawful Decree. The applicant thus has no concern with possession or right in the suit property. Mere agreement to sell does not create any right in the said property. It is accordingly prayed that the present appeal, and the application be dismissed.

15. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions advanced on behalf of the appellants.

16. A perusal of the file reveals that the plaintiff had proved the Agreement to Sell dated 10.05.2017 Ex.P1 by examining marginal witness PW2 Om Parkash, who had proved the execution of the said Agreement. Plaintiff had also examined Mahinderpal Notary Public, who had attested the said Agreement in the presence of plaintiff, defendant No.1, and



marginal witnesses. Plaintiff had also examined stamp vendor PW5 Kundan Lal, who had also scribed the Agreement to Sell. It is also admitted and proven fact on record that the plaintiff had remitted amount of Rs.25 lacs in the account of defendant No.1 through RTGS; the entry of which was proved by plaintiff by examining PW6 Sanjay Kumar, SO, HDFC Bank. Thus, from the above facts, Agreement to Sell as well as payment of earnest money stands duly proved.

17. As regards readiness and willingness to perform the contract, plaintiff has duly marked her presence in the office of Sub-Registrar on 21.06.2017 as evident from her Affidavit of Attendance Ex.P2 in which she has categorically stated that she is in possession of balance sale consideration and registration expenses et cetera.

18. On the other hand, the malafide intent of the appellant/defendant is proved from the fact that during this time, defendant No.1 had transferred the suit property vide Sale Deed dated 02.06.2017 in favour of defendant No.2 purely with a view to defeat rights of the plaintiff.

19. Applicant/proposed respondent No.2 has admitted on Court query that he had filed 3rd party objections in the Execution Petition filed by the plaintiff which were dismissed by the learned Executing Court vide order dated 04.01.2023. Admittedly, against the order dated 04.01.2023, applicant had preferred Civil Revision Petition No. 223 of 2023, which was also disposed of by this Court vide order dated 26.07.2023. Thereafter,



applicant has filed the instant application (CM-5781-C-2022) for impleading him as party respondent.

20. The said application is not maintainable as in a suit for specific performance, third-party cannot be impleaded. In this regard, reference is made to a judgment passed by this Court in **Narinder Singh v. Tarsem Singh (Punjab and Haryana): Law Finder Doc Id # 658751**; wherein it is held that:-

“A. Civil Procedure Code, 1908, Order 1 Rule 10 - Impleadment - Specific performance - Suit for, filed by respondent 1 against respondent 2 - In instant case, however, applicant has only an agreement to sell and that agreement is stated to be executed about two months before agreement set up by respondent no. 1 - Mere agreement to sell does not create any interest in petitioner for enabling him to intrude in a suit filed by respondent no. 1 - Even if he is impleaded as party he will not be able to raise any counter claim as same is not maintainable against co-defendant - Held that in a suit for specific performance of a contract for sale of property a stranger or third party to contract, cannot be added as defendant in suit - There is no merit in instant petition and same is dismissed.”

B. Civil Procedure Code, 1908, Order 1 Rule 10 - Impleadment - Specific performance - Suit for - Third party - Impleadment of - Third party/applicant can set up a separate claim only by a suit for specific performance and could not be impleaded in a suit filed by some other person for specific performance.”

21. Reference is also made to another judgment passed by this Court in **Randhir Singh v. Karnail Singh (Punjab And Haryana) : Law Finder Doc Id # 274920** ; wherein it is held as under:-



“Civil Procedure Code, 1908, Order 1, Rule 10 - Petitioner/plaintiff who is dominus litis has filed suit for specific performance of agreement to sell allegedly executed in his favour by respondent 1/defendant, who had admitted execution of the said agreement - Respondent 2/applicant is not a party to the said agreement - Respondent 2 is claiming prior agreement to sell in his favour allegedly executed by respondent 1/defendant - Respondent 2 is not at all a necessary party to be impleaded in the present suit for specific performance of agreement to sell.”

22. Even otherwise, no right can accrue in favour of the applicant, merely on the basis of an Agreement to Sell. Even otherwise, it has undisputedly come on record that in the execution proceedings, Sale Deed has been executed in favour of the plaintiff on dated 22.09.2021; whereafter mutation No. 3424 has also been sanctioned in favour of the plaintiff. Pursuant thereto vide order dated 20.11.2024, the Execution Petition has been dismissed as withdrawn by the plaintiff, being fully satisfied. Order dated 20.11.2024 reads as under:-

“Ld. Counsel for Decree holder appeared and suffered a statement to the effect that as per the decree passed in the favour of decree holder he has get the possession of the suit property. He further stated that he has no objection, if the present execution dismissed as withdrawn being fully satisfied.

In view of it, the present execution application stands dismissed as withdrawn being fully satisfied. File be consigned to the Judicial Record Room, Abohar.”



23. Learned counsel for the appellants, and applicant, have been unable to dispute or controvert the above findings and facts noted above.
24. In view of the above noted factual and legal position, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.
25. Pending applications, if any, stand disposed of. Needless to say, amount of balance sale consideration deposited by the plaintiff before the Executing Court be released in favour of the appellant no.1 in accordance with law, if not already so released.

10.12.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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