

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****122****RSA-2887-2023 (O&M)****Date of decision: 20.08.2025****Birender Singh alias Virender Singh****...Appellant(s)****Vs.****Mangal Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Pritam Singh Saini, Advocate for the appellant.***********NIDHI GUPTA, J.**

Present Second Appeal has been filed by the defendant against the concurrent judgments and decrees of the Id. Courts below, whereby the suit filed by the plaintiff/respondent for possession and specific performance, has been decreed with costs by both the Courts below.

2. Brief facts as pleaded in the plaint are that an Agreement to Sell dated 07.06.2013 was entered into between the parties for sale of suit land measuring 36K 4M @ of Rs.16,00,000/- per acre. It was pleaded that the defendant had received an amount of Rs.20 lacs as earnest money in the presence of the witnesses. Possession of the suit land was also handed over to the plaintiff and target date was set for 07.09.2013. Agreement to Sell was regarding the share of the defendant as well as the other co-sharers. However, defendant was having only 6K 15M of property in his name. It was averred in the plaint that plaintiff had duly gone Tehsil



Office on 05.09.2013 as target date 07.09.2013 was holiday being Saturday. Plaintiff went to Tehsil Office even on 09.09.2013 with the remaining sale consideration amount and other expenses. However, defendant did not come present. Plaintiff also got prepared his Affidavit of presence from Tehsil Office. Plaintiff filed police complaint regarding the fraud committed by the defendant and also got legal notice served upon the defendant on 10.12.2014; whereby date of registration of Sale Deed was fixed for 18.12.2014. However again on 18.12.2014, defendant did not come present in Tehsil Office. Accordingly, plaintiff filed present suit on 16.01.2015.

3. Upon appraisal of the pleadings, and oral and documentary evidence adduced by the parties, the learned trial Court vide judgment and decree dated 03.08.2018 had partly decreed the suit of the plaintiff with costs and decree of possession through specific performance of Agreement to Sell dated 07.06.2013 was passed in favour of plaintiff and against the defendant with respect to the share of the defendant only that is 6 Kanal 15 Marla, subject to payment of balance sale consideration amount, if any. Since plaintiff had already paid Rs. 20,00,000/- as earnest money and as per the agreement the rate was decided at Rs.16,00,000 per acre. Therefore, plaintiff had paid excess amount (1 acre = 8 kanal and the share of defendant being 6 kanal 15 marla only), hence the excess amount was directed to be adjusted/refunded by the defendant at the time of registration of the sale deed. Defendant was further directed to execute the sale deed in favour of the plaintiff as per the terms of the



agreement after adjustment/refund of balance sale consideration failing which plaintiff was granted liberty to get the same executed through Court.

4. The appeal filed by the defendant was dismissed with costs by the learned Additional District Judge, Rewari vide judgment and decree dated 09.05.2023. Hence, the present second appeal by the defendant.

5. It is *inter alia* submitted by learned counsel for the appellant/defendant that the Id. Courts below failed to consider the specific points raised by the appellant that the plaintiff was not ready and willing to execute the sale deed, whereas the defendant remained present before the Sub Registrar in pursuance of the legal notice issued upon the defendant, but the plaintiff was not present though the plaintiff with the connivance of the officials of the Sub Registrar got the affidavit prepared of his presence in the Sub Registrar Office and got attested.

6. It is further submitted that the judgments and decrees passed by the Courts below are contrary to the settled principles of law, as the attesting witnesses of the Agreement to Sell have specifically admitted that an amount of Rs.20 lacs as alleged by the plaintiff was never handed over in their presence. Whereas the plaintiff in his cross examination has specifically admitted that the transaction of the amount was made in the presence of the witnesses, whereas the witnesses have specifically denied that no amount was ever paid by the plaintiff to the defendant in their presence. In actual fact, the plaintiff actually got thumb mark of the defendant on the receipt of Rs.20 lacs, but the said amount was not paid



to the defendant. The courts below have taken adverse inference against the defendant that on the last page of the agreement to sell (page number 4) it has been written by hand that the amount of Rs.20 lac was received by the defendant, which was written by Roop Singh. This question actually goes to the root of the matter, which has not at all been considered by the courts below. It may be added here that since contents of Agreement to Sell have not been found to be correct and signature and thumb mark impression of the defendant were obtained by the plaintiff, which was not in the express knowledge of the defendant. Once the contents of agreement to sell have not been found to be proved, therefore, the making of payment of Rs.20 lacs in cash was to be proved by the plaintiff. It is a settled principle of law that in a suit for specific performance it is the duty of the plaintiff to prove that the amount was available with the plaintiff, the source from where the amount was collected and how the payment was made. All these things are missing in the present case, therefore, the judgment & decree passed by the courts below, being contrary to the settled principles of law, hence liable to be set aside.

7. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

8. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in detail. I find no merit whatsoever in submissions made on behalf of the appellant.



9. It has firstly been contended by learned counsel for the appellant that payment of Rs.20 lacs as earnest money has not been proved as the attesting witnesses have admitted in their testimonies that the said amount was not paid in their presence. However, the said argument of the appellant is liable to be rejected in view of the fact that defendant in his written statement in preliminary objection No. 3 has stated that earnest money paid by the plaintiff is liable to be forfeited as plaintiff had failed to perform his part of the Agreement. Clearly therefore, defendant himself has admitted receipt of earnest money of Rs.20 lacs.

10. In this regard, it is also necessary to note that Defendant/DW1 had admitted in his deposition that Agreement bears his signature. Defendant had further stated that he has put his thumb impression as well as his signature. Defendant had admitted his signature at Mark D on the Agreement No. 1786 Ex.PW6/A; and most importantly, defendant as DW1 has admitted that on the writing "received Rs.20 lacs in cash" Thumb impression of defendant is there. The defendant in his cross-examination has again admitted that thumb impression below the writing "receipt Rs.20 lacs" is admittedly of the defendant. During his testimony, defendant had self stated that he has not written the words of "received Rs.20 lacs". However, the very admission that the said writing bears the thumb impression of the defendant, is sufficient proof that the said earnest money was received by the defendant.



11. Further, PW5 Anil Kumar Aggarwal, Advocate and Notary Public, Tehsil Compound Rewari, who had prepared the Agreement in question, had deposed that the said Agreement was prepared on the instructions of defendant. PW5 has categorically deposed in his examination-in-chief that an amount of Rs.20 lacs was paid by the plaintiff to the defendant in his presence in cash. Even otherwise in his cross-examination, defendant as DW1 has admitted that he had entered into Agreement to Sell with the plaintiff with respect to his share of 6K 15M only.

12. It has next been contended by the defendant that the plaintiff had failed to prove his readiness and willingness to perform the contract. Even the said argument of the appellant is liable to be rejected as the plaintiff had led sufficient proof on record in the form of Ex.PW1/A viz. Affidavit of presence dated 05.09.2013; and Ex.PW1/B viz. Affidavit of presence dated 18.12.2014. The readiness and willingness of the plaintiff is also proven from the evidence of DW2 Dinesh Kumar, Reader to Tehsildar Dahina, District Rewari who has stated that Affidavit No. 5464 dated 18.12.2014 given by the plaintiff regarding registry of Sale Deed was presented in their office for marking the presence which is present in Court file which is attested by their Department.

13. Thus, once the execution of Agreement and receipt of earnest money are proved on record by the plaintiff, as also the readiness and willingness of the plaintiff stand proven on record, defendant is bound to execute Sale Deed.

14. In view of the discussion above, 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**.
15. Pending applications, if any, stand disposed of.

20.08.2025

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE