

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-3254-2023 (O&M)****Reserved on : 30.10.2025****Pronounced on : 27.11.2025****Judgment uploaded on : 27.11.2025**

Whether only the operative part of the judgment is pronounced or whether the full judgment is pronounced: Full

Kuldeep and Others

....Appellants

VERSUS

Krishan Kumar

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Dr. Vikas Rohal, Advocate for the appellants.

ALKA SARIN, J.**CM-11656-C-2023**

1. For the reasons stated in the application, the same is allowed. The delay of 26 days in re-filing the present appeal is condoned.

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2. The present appeal has had been filed by the plaintiff-appellants challenging concurrent findings returned by the Trial Court vide judgment and decree dated 02.08.2019 and the First Appellate Court vide judgment and decree dated 02.05.2023.

3. The brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for possession by way of specific performance of agreement to sell dated 05.01.2015 with consequential relief of permanent injunction. It was the case set up by the plaintiff-appellants that the defendant-respondent herein had entered into an agreement to sell dated 05.01.2015 with

them qua a plot measuring 196 sq. yards comprised in Khasra Nos.20//1, 2, 16//24/2, 25, 17//21, 22, 23, 21//4, 5 situated at village Saundhpur, Tehsil and District Panipat. Vide the agreement, it was agreed that the defendant-respondent would sell his property measuring 196 sq. yards for a total sale consideration of ₹9,50,000/- out of which ₹2,00,000/- was paid as earnest money and the balance sale consideration was to be paid at the time of execution of the sale deed i.e. 15.06.2015. The defendant-respondent was to perform his part of the contract as per the oral terms and conditions by getting the suit property demarcated. The plaintiff-appellants requested the defendant-respondent numerous times to get the land demarcated, however, since the defendant-respondent failed to do so, the plaintiff-appellants made an application for demarcation before the Tehsildar, Panipat by moving an application dated 13.05.2015 and also requested the defendant-respondent to remain present at the spot. On 21.05.2015, Rajesh Khurana, Halka Kanoongo visited the suit plot and demarcated the same, but the defendant-respondent allegedly remained absent. After the demarcation the plaintiff-appellants came to know that about 60 sq. yards out of the land measuring 196 sq. yards, which was the subject matter of the agreement, belonged to the Canal Department as it stood acquired. It was further the case set up that the plaintiff-appellants sent a legal notice dated 25.05.2015 cancelling the said agreement and asking the defendant-respondent to pay ₹4,00,000/- as double the advance payment. Reply was sent to the legal notice wherein all the averments were denied. It was further the case set up in the plaint that despite the legal notice, the plaintiff-appellants made arrangement for ₹7,52,341/- for registration of the sale deed and remained present in the Office of the Sub-Registrar, Panipat

on 15.06.2015 with the balance sale consideration and stamp charges etc. and got their presence marked, however, the defendant-respondent did not concede to the request of the plaintiff-appellants. It is further the case that the plaintiff-appellants thereafter continued their efforts to settle the matter amicably and the plaintiff-appellants also moved an application dated 21.12.2015 for demarcation by computerized GPS system to clarify the position on the spot. On 25.12.2015 intensive demarcation was got conducted. It was further averred that the defendant-respondent sold a plot comprising of the *khasra* numbers which were absolutely different from the plot at the spot. The suit was filed averring therein that the plaintiff-appellants were always ready and willing to perform their part of the contract. The defendant-respondent filed his written statement raising various preliminary objections qua maintainability, cause of action and *locus standi* . It was further the case set up that the plaintiff-appellants did not approach the Court with clean hands. It was further the stand taken that no part of the suit land was ever acquired by the Canal Department as alleged. The agreement was admitted. It was further the case that Krishan Kumar son of Hawa Singh was the owner of the suit land vide registered sale deed dated 09.03.2007 and he had not been impleaded as a party. It was further the stand that on the targeted date the defendant-respondent remained present in the office of the Sub-Registrar, however, the plaintiff-appellants did not turn up. It was further the case that no demarcation was ever conducted at the instance of the plaintiff-appellants in the presence of the defendant-respondent. Replication was not filed.

4. On the basis of pleadings of the parties, the following issues were framed :

1. Whether plaintiff is entitled to a decree for specific performance on the grounds as averred in the plaint ?

OPP

2. If issue No.1 is decided in affirmative than whether the plaintiff is entitled to a decree for permanent injunction as averred in the plaint ? OPP

3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD

4. Relief.

5. The Trial Court vide judgment and decree dated 02.08.2019 dismissed the suit. Aggrieved by the same, an appeal was preferred by the plaintiff-appellants which appeal was also dismissed vide judgment and decree dated 02.05.2023. Hence, the present regular second appeal.

6. Learned counsel for the plaintiff-appellants would contend that the suit land itself was not identifiable as such the agreement could not be executed. Learned counsel for the plaintiff-appellants has further contended that fraud has been played upon the plaintiff-appellants. It has further been contended that the plaintiff-appellants were always ready and willing to perform their part of the contract and that they remained present on the targeted date for execution of the sale deed. Learned counsel for the plaintiff-appellants has further contended that undue reliance has been placed upon the legal notice dated 25.05.2015 (Ex.P4) whereby the plaintiff-appellants had cancelled the agreement to sell to hold that the plaintiff-appellants were not ready and willing to perform their part of the contract. It has further been contended that vide legal notice dated 05.06.2015 (Ex.P9), the defendant-

respondent refused to cancel the agreement and refund the amount and therefore the plaintiff-appellants remained present in the office of Sub-Registrar for registration of the sale deed.

7. I have heard learned counsel for the plaintiff-appellants and perused the record.

8. In the present case both the Courts concurrently found that the plaintiff-appellants had issued a legal notice dated 25.05.2015 (Ex.P4) cancelling the agreement to sell. Despite having sent the legal notice it was the stand taken that since the defendant-respondent refused to accede to the demand of the plaintiff-appellants therefore the plaintiff-appellants remained present in the office of the Sub-Registrar for registration of the sale deed. The plaintiff-appellants seem to have taken different stands at different times. It was earlier the case that the land was not complete as part of the land had been acquired by the Canal Department. Thereafter the stand taken was that the agreement was cancelled. Subsequently, the stand taken was that the plot was not identifiable. Keeping in view the divergent stands taken by the plaintiff-appellants, it cannot be held that the plaintiff-appellants were ever ready and willing to perform their part of the contract. Both the Courts concurrently found that the plaintiff-appellants were not ready and willing to perform their part of the contract. Learned counsel for the plaintiff-appellants has not been able to show or explain as to why different stands were taken by the plaintiff-appellants at different times. The stand taken by the plaintiff-appellants that the land was not complete was belied by Rajesh Khurana, Kanoongo who appeared as PW5 and stated that he had conducted the demarcation and the land was complete on the spot. Further still, it has been noticed by the First

Appellate Court that DW1 Krishan Kumar (defendant-respondent herein) had stated that the land as agreed was complete and that he was ready to sell the same and that he remained present in the office of Sub-Registrar with the original owner to get the sale deed registered and he was also carried with him all the documents pertaining to the registration of the sale deed. The presence of the defendant-respondent was acknowledged by none other than the plaintiff-appellant himself in his cross examination. Learned counsel for the plaintiff-appellants has not been able to point out to any reliable and cogent evidence to show that the plaintiff-appellants were ready and willing to perform their part of the contract. In the absence of the same, no fault can be found with the judgments and decrees passed by both the Courts.

9. In view of the above, no question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

27.11.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO