



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

RSA-2138-2013 (O&M)

Judgment reserved on:28.10.2025

Judgment pronounced on 02.12.2025

Rakesh Kumar

...Appellant

Versus

Surinder Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate,
Mr. Akshay Laller, Advocate,
Mr. Khushwant Saharan, Advocate and
Ms. Nancy Antwal, Advocate
for appellant.

Mr. Shailendra Jain, Senior Advocate with
Mr. Munish Kumar, Advocate
for respondent.

PARMOD GOYAL, J.

1. Appellant-defendant is aggrieved by judgment and decree dated 08.12.2009 passed by Civil Judge (Senior Division), Chandigarh vide which suit for specific performance of agreement dated 30.01.1990 filled by respondent-plaintiff was decreed and also by judgment and decree dated 15.02.2013 passed by District Judge Chandigarh, whereby first appeal preferred by appellant-defendant was dismissed.

2. The plaintiff-respondent in his suit for specific performance, sought specific performance of agreement dated 30.01.1990 executed in respect of residential cum diary site No.793 situated in Sub-Urban, Sector 2, Milk Colony, Dhanas, U.T., Chandigarh. Respondent-plaintiff had asserted that appellant-defendant was allotted one residential-cum-diary plot measuring 10



marlas in Milk Colony Dhanas on leasehold basis for a period of 30 years vide allotment letter dated 21.10.1987. Payment of initial amount was duly made by appellant-defendant to Estate Office, Chandigarh, however, possession was not delivered to him on account of illegal possession of some other person. Appellant-defendant wanted to sell the plot and, therefore, had entered into agreement dated 30.01.1990 for total consideration of Rs.40,000/- which was paid by respondent-plaintiff and received by appellant-defendant vide receipt dated 30.01.1990. Appellant-defendant accordingly executed general power of attorney in favour of nominee of respondent-plaintiff i.e. Smt. Promila Bala and a will was executed in favour of respondent-plaintiff. Affidavit admitting the sale of property was also executed. All the documents of title, in original, with symbolic possession were handed over. However, appellant-defendant had not disclosed the fact that possession of property was not delivered to him by Estate Officer on account of unauthorized possession of another person. This fact was disclosed only after execution of agreement to sell and receipt of money when respondent-plaintiff wanted to take physical possession. Therefore, only symbolic possession was delivered.

3. It is the case of respondent-plaintiff that appellant-defendant had promised to deliver the possession as and when he get the possession from Estate Officer. Accordingly, appellant-defendant had filed writ petition No.17533 of 1991 against Estate officer, which was disposed of by this Court vide its order dated 25.02.1992 directing respondents therein to deliver possession of suit property as per terms and conditions of allotment letter. That Mrs. Irshad Illahi was in illegal possession of suit property. The Estate Officer



initiated proceedings against her for possession. However, suit proceedings continued and accordingly, appellant-defendant again filed Civil Writ Petition No.2758 of 2002 before this Court, however, during pendency of said writ petition, possession was delivered to appellant-defendant in the year 2002. It was the case of respondent-plaintiff that after receipt of possession, appellant-defendant became dishonest and instead of delivering physical possession started delaying the matter on one pretext or other. Legal notice dated 18.08.2002 was duly issued by respondent-plaintiff and appellant-defendant was called upon to execute the documents of sale viz. general power of attorney, will, affidavit and sale deed in favour of plaintiff-respondent. On 04.09.2002, legal notice was received back undelivered, however, A.D./U.P.C. notices were not received back though the address of appellant-defendant was correct address. Thereafter, respondent-plaintiff had visited Office of Sub-Registrar for execution of sale deed on 04.09.2002, however, none came on behalf of appellant-defendant. Accordingly, respondent-plaintiff got his presence marked before Sub-Registrar. It was averred that respondent-plaintiff has always been ready and willing to perform his part and prayed for possession by way of specific performance of agreement dated 30.01.1990.

4. The suit was duly contested by appellant-defendant. He denied, in totality, execution of agreement and receipt of Rs.40,000/- towards sale consideration. The father of respondent-plaintiff was posted as Deputy Superintendent of Police. That Sh. J.N. Sharma, brother-in-law of respondent-plaintiff had advised that plot can be got vacated with the help of his brother-in-law (*Jija's* father) and therefore original file containing allotment letter along



with blank signed paper for purpose of making appropriate application was handed over to respondent-plaintiff through Sh. J.N. Sharma. Appellant-defendant further asserted that suit property was under illegal possession of one Smt. Firdous Begum wife of Sh. Mohammed Zakki, who started civil litigation which was duly contested by appellant-defendant. Appellant-defendant also asserted to have filed writ petition before this Court and claimed that possession was delivered to him only on 10.05.2002. It was asserted that appellant's-defendant's relation with Sh. J.N. Sharma remained cordial till 1993. In fact, J.N. Sharma had contributed Rs.1,70,000/- as share capital in a partnership, however, subsequently he backed out and had not signed partnership deed and had sought recovery of Rs.1,70,000/- by filing suit dated 31.08.1993, which was duly dismissed by Mrs. Jitinder Walia, Civil Judge (Junior Division), Chandigarh on 01.08.2000. It was further averred that against abovesaid dismissal, Sh. J.N. Sharma had gone in appeal, which is pending adjudication. The story made up by respondent-plaintiff was stated to be false, forged and fabricated and accordingly dismissal of suit was prayed for.

5. From the pleadings of the parties, following issues were framed:-

- i. *Whether the plaintiff is entitled for specific performance of agreement dated 30.01.1990? OPP.*
- ii. *Whether the present suit filed by the plaintiff is not maintainable? OPD.*
- iii. *Whether the suit filed by the plaintiff is time barred? OPD.*
- iv. *Whether no cause of action has accrued to the plaintiff to file the present suit? OPD*
- v. *Relief.*



6. In the present case, the plaintiff-respondent had asserted that the defendant-appellant executed an agreement dated 30.01.1990 whereby he agreed to sell the dairy plot to the plaintiff-respondent. In addition to the agreement to sell, the plaintiff-respondent claimed that the defendant-appellant had also executed and signed a receipt acknowledging the payment of ₹40,000/- towards the agreed total sale consideration, as well as signed a power of attorney in favour of the plaintiff-respondent's wife, a Will in favour of the plaintiff-respondent, and an affidavit admitting sale. It is the case of the plaintiff-respondent that upon execution of the agreement and payment of the entire sale consideration amount, the defendant-appellant handed over all the original documents pertaining to the suit property to the plaintiff-respondent. As per the agreement dated 30.01.1990, it was further agreed that the remaining amount payable towards the purchase of the suit property was to be paid by the defendant-appellant. The plaintiff-respondent had also claimed that the balance amount due to the Chandigarh Administration, which had originally allotted the suit property to the defendant-appellant, was paid by him through various receipts, and that he is in possession of all the original receipts.

7. These facts were duly asserted and proved by the plaintiff-respondent by appearing as a witness himself and by examining one of the attesting witnesses to the agreement, namely Sunil Kumar Sharma (PW-3). The plaintiff-respondent also examined an official from the Estate Office as PW-2 Sh. Saroj Khillan, Junior Assistant Estate Office, who confirmed that the suit property had been allotted in favour of the defendant-appellant and that various payments had been made towards ground rent as well as lease/premium amounts in



respect of the suit property.

8. The learned Courts below, upon appreciation of evidence have recorded concurrent findings of fact against appellant-defendant, I find no error therein. Both Courts have rightly relied upon the testimony of one of the attesting witnesses, namely Sunil Kumar Sharma (PW-3), who duly proved the execution of the agreement to sell, the receipt, the Will, the general power of attorney, and the affidavit signed by the defendant-appellant. PW-3 Sunil Kumar Sharma clearly stated that he is engaged in the property-dealing business and was approached by the defendant for sale of the property, which the plaintiff agreed to purchase. He is an independent witness with no connection with either the plaintiff or the defendant. His evidence has remained unimpeached and inspires confidence. The plaintiff-respondent has also succeeded in proving that all original documents pertaining to the disputed site are in his possession and that he had made subsequent payments to the Chandigarh Administration, as evidenced by the original receipts in his possession. No explanation has been furnished by the defendant-appellant regarding how the plaintiff came into possession of these original receipts and documents, which ordinarily ought to have been with the defendant-appellant. The defendant-appellant merely denied his signatures without leading any evidence to substantiate his assertions. His sole, self-serving statement in this regard has rightly been ignored by the Courts below.

9. No doubt the initial onus to prove due execution of the agreement to sell dated 30.01.1990 was upon the plaintiff-respondent, however, in view of the evidence of the plaintiff-respondent and that of PW-3-the attesting witness



and the fact that the original documents pertaining to the suit property are in the plaintiff's possession, the initial onus stood discharged. The burden thereafter shifted upon the defendant-appellant to show that he had not signed the documents. No handwriting expert was examined to prove that the signatures on the agreement, receipt, Will, affidavit, or power of attorney were forged. The Courts below have rightly preferred the testimony of PW-3, an independent witness with no concern with either party, over the defendant's uncorroborated self-serving statement.

10. In these circumstances, no error can be found in the manner in which the Courts below have appreciated the evidence. The findings of fact recorded by the Courts below are in accordance with the pleadings and evidence led by the parties.

11. Faced with the above conclusions, learned counsel for the appellant has attempted to argue that, in view of the provisions of Rule 19(11) of the Chandigarh Milk Colony Allotment of Sites Rules, 1975, (hereinafter referred to as '**1975 Rules**') the transfer of the site or the building was not permissible, and therefore, the agreement to sell was void *ab initio*. Rule 19(11) of the Chandigarh Milk Colony Allotment of Sites Rules, 1975, is reproduced as under:-

(11) (i) The lessee will not be entitled to transfer the site or the building except by way of mortgage to the bank as stated under rule 16 above, without the prior permission of the [Deputy Chief Administrator]. Such permission shall not be given until the lessee has paid full premium and the rent due under the lease for the site unless in the opinion of the [Deputy Chief Administrator] exceptional circumstances exist for the grant of such permission.



(ii) Where transfer is allowed under sub-Rule (i) above 50 per cent of the unearned increase in the value, i.e. the difference between the premium and the market value of the site at the time of transfer shall be paid to the Government, before registering such sale or transfer. The market value of the site for this purpose shall be assessed by the [Deputy Chief Administrator] or such other authority as may be prescribed by the Chief Administrator. The lessee shall be entitled to produce his evidence and of being heard.”

12. However, on consideration of Rule 19(II) of 1975 Rules, I do not find any merit in the contention raised on behalf of appellant-defendant. Rule only says that the building cannot be transferred without prior permission of the Deputy Chief Administrator, and such permission shall not be given until lessee has paid full premium and the rent due under the lease for the site unless in the opinion of the [Deputy Chief Administrator] exceptional circumstances exist for the grant of such permission.

13. On consideration of Rule 19(11), I do not find any condition which bars the transfer of the suit property in absolute terms for all times to come. Rule 19(11) is regulatory in nature and merely stipulates that permission for transfer is to be sought by the lessee only after the entire premium and rent due have been paid, along with 50% of the unearned increase in the value. Thus, Rule 19(11) neither imposes an absolute prohibition nor does it render an agreement to sell void ab initio in law; it only prescribes the conditions under which a transfer may be permitted. This rule otherwise would come in force at the time of transfer of site in favour of plaintiff-respondent.



14. In the present case, admittedly, under the agreement, after its execution, it was the duty of the plaintiff–respondent to pay the remaining consideration amount along with the rent, which he has duly paid. Otherwise also, the permission contemplated under Rule 19(11) could only have been sought by the defendant, and he never applied for such permission. This is not a case where permission was refused on any application moved by the defendant. On the contrary, the defendant has taken the stand that he never executed any agreement to sell, a plea which stands disproved by the evidence on record.

15. Therefore, Rule 19(11) of the 1975 Rules does not bar the transfer of a leasehold site; it merely regulates such transfers subject to compliance with prescribed conditions. Consequently, the agreement to sell cannot be held to be void ab initio or barred by any statutory provision. The reliance placed upon the judgments of *Illoth Valappil Ambunhi (dead) by legal representatives Vs. Kunhambu Karanavan*, (2020) 18 SCC 317; *Rangammal VS. Kuppuswami and another*, 2011(4) RCR (Civil), 251; *Municipal Committee, Hoshiarpur Vs. Punjab State Electricity Board and others*, (2010) 13 SCC 216; *Balmukund S. Bharuka (dead) by LRS. Vs. Shankarlal G. Khandelwal (dead) by LRS*, (2005) 12 SCC 131; *Kashmir Singh Vs. Harnam Singh & Anr.*, 2008(2) RCR (Civil) 688; *T.K. Lathika VS. Seth Karsandas Jamnadas*, 1992(2) RCR (Rent) 233; *The State of Rajasthan Vs. Rao Raja Kalyan Singh (dead) by his legal representatives*, 1972(4) SCC 165; *Ram Niwas Gupta VS. Mumtaz Hasan & Ors.*, JT 2002(2) SC 384; *Surinder Mohan Vs. M/s Deep Kumar & Co. & others*, 1989 Civil Court Cases 309 (P&H); *Y.R. Mahadev Vs. K. Dayalan*, 1998(1) Civil Court Cases 294 (Karnataka); *Smt. Mamata Ghosh & Anr. Vs.*



Tapas Kumar Ghosh, 2012(2) Civil Court Cases 300 (Calcutta) Calcutta High Court; *Vimaleshwar Nagappa Shet Vs. Noor Ahmed Sheriff & Ors.*, 2011(3) Civil Court Cases 673 (S.C.); *Rachhpal Singh son of Gurdial Vs. Swaran Kaur and others*, 2009(2) HLR; *Richhpal Singh Vs. Sandhura Singh*, 2013(3) Civil Court Cases 242 (P&H); *Sir Mohammed Yusuf and another Vs. D and another*, AIR 1968 Bombay 112 (V 55 C 20); *Malay Kumar Ganguly Vs. Sukumar Mukherjee & Ors.*, AIR 2010 Supreme Court 1162; *Smt. T.S. Ratna Vs. Sri S. Subramanyam and others*, 2012(2) ICC; *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and others*, 1959 SIR Supreme Court 443; *Rangammal Vs. Kuppuswami and another*, 2011(4) RCR (Civil) 251 and *Subhash Chander and others Vs. M/s Active Promoters Pvt. Ltd.*, 2015(1) RCR (Civil) 62 cited by learned counsel for the appellant are no help to the appellant's case. In the facts and circumstances of present case, relief of specific performance is just and appropriate relief, which could have been granted by the courts below in the facts and circumstances of case.

16. The judgments cited as *Janardhanam Prasad Vs. Ramdas*, 2007(1) RCR (Civil) 881; *Anil Rikshi Vs. Gurbaksh Singh*, 2006(3) RCR (Civil) 347; *Maharashtra State Board of Secondary & Higher Secondary Education Vs. Amit & Anr.*, 2006(6) BCR 686; *Syed Abdul Khader Vs. Rami Reddy and others*, 1979 AIR (Supreme Court) 553; *D.S. Thimmappa Vs. Siddaramakka*, 1998(1) RCR (Civil) 550; *Durlabh Singh Vs. Nahar Singh and another*, 1991(2) PLR 92; *Achhar Singh Vs. Smt. Gurdev Kaur*, 2001(4) RCR (Civil) 488; *S.K. Nayyar Vs. C.K. Anand*, 1998(2) RCR (Civil) 331; *Mohammed Sultan Vs. Miss Nawazunnisa*, 1997(3) ALT 183; *Kharku and*



others Vs. Rasil Singh and others, 1954 AIR Jammu and Kashmir 33; *Ahamad VS. Gangadharan*, 1990 CivCC 492 and *Khushi Ram Vs. Munshi Lal and Anr.*, 1940 AIR (Lahore) 225; by learned counsel for the defendant-respondent are fully applicable to the facts and circumstances of the present case and have been rightly relied upon by the Courts below while granting the relief of specific performance, particularly as the entire consideration amount stood paid by the plaintiff–respondent and even the unpaid premium and rent were paid by the plaintiff–respondent and not by the defendant.

17. Concurrent findings of fact are based on pleadings and evidence led by parties. No substantial question of law arises in the present appeal. Hence, the appeal is liable to be accordingly dismissed.

(PARMOD GOYAL)
JUDGE

02.12.2025

Sunil/manoj

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>