

**RSA-2269-2015(O&M)
and other connected case**

2025.PHHC-016753



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

1.RSA-2269-2015(O&M)

Baljit Singh

..Appellant

Versus

Darshan Kaur @ Darsho and others

..Respondents

2.RSA-5046-2015(O&M)

Darshan Kaur @ Darsho and others

..Appellant

Versus

Baljeet Singh

..Respondent

Date of decision: 04.02.2025

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gurmeet Singh Saini, Advocate
for the appellant in RSA-2269-2015
and for respondent no.1 in RSA-5046-2015

Mr. Sandeep K Bokolia, Advocate
for appellants in RSA-5046-2015 and
for respondents in RSA-2269-2015

ANIL KSHETARPAL, J. (Oral)

1. With the consent of the learned counsel representing the parties, two connected Regular Second Appeals arising from a common suit filed for possession by way of the specific performance of the agreement to sell, in which the courts have ordered refund of earnest money, shall stand disposed of by this common order.

2. Ujjagar Singh was the owner of the property. He is alleged to have entered into an agreement to sell in favour of plaintiff Baljeet Singh on

20.10.2005 with respect to land measuring 29 kanals 16 marlas on receipt of



earnest money of Rs.2,00,000/- out of the total sale consideration of Rs.16,39,000/-. The sale deed was agreed to be executed on 25.05.2006. Ujjagar Singh died on 13.05.2006. The plaintiff filed suit on 08.06.2006. The defendant denied the execution of the agreement to sell. Both the courts have concurrently found that the plaintiff has failed to prove his readiness and willingness as he failed to examine the Commission agent from whom some part of the balance sale consideration was alleged to have been arranged by him. The courts have held that the plaintiff has failed to prove that he contacted legal heirs of Ujjagar Singh after 13.05.2006 but before 25.05.2006. Once Ujjagar Singh has died, the plaintiff was required to contact his legal representatives. Thus, the courts have ordered refund of the earnest money alongwith interest.

3. Learned counsel representing the appellant submits that the courts have erred in refusing to grant decree for the specific performance of the agreement to sell after recording finding that the agreement to sell is proved. He submits that in the plaint the plaintiff has asserted that he contacted legal representatives of Ujjagar Singh. He further submits that the plaintiff was not required to display the cash and the plaintiff while appearing in evidence has stated that he was carrying the balance sale consideration on 25.05.2006.

4. Per contra, the learned counsel representing the respondent submitted that the plaintiff has claimed that he had arranged some part of the balance sale consideration from the Commission agent, who has not been examined. He further submits that two courts have exercised discretion



which should not be interfered with. He further submits that there was no reason to enter into the agreement to sell with respect to 29 kanals 16 marlas land, particularly when total land holding of Ujjagar Singh was 30 kanals.

5. This Court has considered the submissions made by the learned counsel representing the parties.

6. In the agreement to sell, it is recorded that the suit land is free from all encumbrances. However, a perusal of jamabandi shows that the land was already mortgaged with the Bank. Furthermore, the plaintiff has failed to prove that he had access to the sufficient money to pay the balance sale consideration and expenses of stamp duty and registration on 25.05.2006. In order to prove his readiness and willingness, the plaintiff was required to prove that he possessed sufficient amount to pay the legal representatives of Ujjagar Singh and also pay expenses of stamp duty and registration charges. It is the plaintiff who has failed to examine the commission agent. Moreover, Ujjagar Singh has died. Two courts have already exercised their discretion. Hence, this Court does not find it appropriate to interfere with the concurrent findings of fact.

7. Hence, both the appeals stand dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

04.02.2025

rekha

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

**(ANIL KSHETARPAL)
JUDGE**