

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****222****RSA-2386-2014 (O&M)****Date of decision: 17.11.2025****Pushpa Devi****...Appellant(s)****Vs.****Dev Dutt****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Jangvir Singh Hooda, Advocate
for the appellant.

Mr. Rakesh Nehra, Senior Advocate with
Ms. Bindu Tanwar, Ms. Harmanpreet Kaur
and Ms. Nitika Malik, Advocates for the respondent.

NIDHI GUPTA, J.

The plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the appellant for specific performance of Contract, has been dismissed by both the Courts below.

2. The facts as pleaded in the plaint are that the defendants are owners in possession of the agricultural land measuring 104K 13M to the extent of 1/11th share i.e. 9K 10M/suit land. The defendant had agreed to sell the suit land to the plaintiff vide Agreement to Sell dated 31.08.2005 for total sale consideration of Rs.8 lacs. The defendant had executed the Agreement to Sell dated 31.08.2005 and got the same registered on the next date i.e. 01.09.2005 in the office of Sub Registrar, Hodal vide vasika No. 2420 at which time, defendant had also received Rs.7 lacs from the



plaintiff as earnest money in cash. It was agreed between the parties that balance sale price would be paid at the time of registration of Sale Deed on target date of 1.12.2005. It is the case of the plaintiff that she had reached the office of Sub Registrar on 01.12.2005 alongwith balance sale consideration and waited for the defendant. It was pleaded that the defendant had also come present, but he had refused to execute the Sale Deed. So, a quarrel had taken place between the parties in the office of Sub Registrar because of which presence of the parties could not be recorded on 01.12.2005. It was averred that plaintiff was always ready and willing to perform her part of contract. The plaintiff served legal notice dated 07.12.2005 but no response was received. Defendant had finally refused to admit the claim of the plaintiff. Accordingly, plaintiff had filed the present suit on 21.08.2008.

3. The learned Civil Judge (Junior Division), Hodal had dismissed the suit of the plaintiff vide judgment and decree dated 29.04.2011. The Civil Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Palwal vide judgment and decree dated 25.10.2013. Hence, present Second Appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the appellant/plaintiff that Agreement to Sell dated 31.08.2005 stood duly proved on record by examining the Scribe PW2 Advocate Nawal Singh; the plaintiff herself as PW3; and PW4 Lal Chand Numberdar, who was one of the attesting witnesses of the Agreement to Sell. Presence of the plaintiff in the office of Sub Registrar is proved from the Affidavit of Attendance



dated 01.12.2005 Ex.P8 and from the receipts of the office of Sub Registrar, Hodal Ex.P2 and Ex.P3. It is submitted that accordingly in view of these facts, specific performance of the contract could not have been denied to the appellant as the appellant had duly proved the Agreement as well as her readiness and willingness to perform the contract. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

5. *Per contra*, learned Senior Counsel appearing on behalf of the respondent/defendant opposes submissions made on behalf of the appellant and submits that the clear finding has been given by both the Courts below that the appellant had concealed the material facts. Moreover, even the payment of earnest money is not proved on record and even the Affidavit of Attendance is not proved. He accordingly prays for dismissal of the present Second Appeal.

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

7. Perusal of the record of the case shows that it has been proved on record that the appellant had executed a Relinquishment Deed dated 01.09.2005 Ex.D1/A in favour of the defendant. However, plaintiff has failed to mention this fact in the plaint. There are concurrent findings of both the Courts below that the defendant has unequivocally proven the said Relinquishment Deed through complete oral and documentary



evidence. Thus, suit of the plaintiff suffered from suppression of material facts and concealment of truth.

8. As regards the alleged Agreement to Sell dated 31.08.2005 Ex.PW1/A, the plaintiff has failed to prove that the signatures borne on the said Agreement belong to the defendant. The learned Courts below have clearly found that the signatures borne on the admitted Relinquishment Deed dated 01.09.2005 Ex.D1/A do not tally with the purported signatures of the defendant on the Agreement in question.

9. As regards the payment of part sale consideration/earnest money of Rs.7 lacs, on a Court query, it has been admitted by learned counsel for the appellant that the said payment was made in cash. However, the same is shrouded in suspicious circumstances as, in the plaint and in her evidence, the plaintiff had stated that the said amount was paid by her to the defendant on the date of registration of Agreement dated 01.09.2005. However, PW4 Lal Chand Numberdar attesting witness to Agreement Ex.PW1/A has admitted in his cross-examination that no transaction of money took place in his presence on 01.09.2005 when he attested the Agreement on its registration date before the Sub Registrar office. PW4 also could not remember the total amount i.e. the alienated land according to the Agreement to which he was witness. In further contradiction, the abovesaid statement of the plaintiff is contradicted by Scribe PW2 who had stated that Rs.8 lacs i.e. entire sale consideration was paid by the plaintiff to the defendant in his presence at the time of writing the agreement on 31.8.2005.



10. PW4 was also examined by the defendant as DW3 where he has stated as DW3 that on the same date i.e. on 01.09.2005, sisters of the plaintiff including the plaintiff had suffered a Relinquishment Deed in favour of the defendant in respect of the present suit property. Clearly therefore, if the plaintiff had intention to purchase the suit property from the defendant, then why did she simultaneously execute a Relinquishment Deed in favour of her brother/defendant. Learned counsel for the appellant is unable to reconcile the above discrepancies.

11. As regards readiness and willingness to perform the contract, plaintiff has averred in the plaint that on the target date of 01.12.2005, she had failed to get her presence marked in the office of Sub Registrar Hodal as a quarrel had taken place between the parties. Yet, inexplicably, plaintiff has produced her Affidavit of Attendance dated 01.12.2005 Ex.P8. Therefore again, plaintiff has taken a contradictory stand. In any event, Affidavit of Attendance is Ex.P8 shows that it does not bear the attestation of Sub Registrar, Hodal. As such, the same is not admissible. Moreover, plaintiff has failed to produce any evidence whatsoever to remotely indicate the source of the said amount of earnest money of Rs.7 lacs. Even legal notice Ex.P5 is undated and unsigned.

12. From the above discussion, it is clear that the plaintiff has failed to disclose material facts in her plaint; that the case set up by the plaintiff is wrought with material contradictions and discrepancies; that plaintiff has failed to prove payment of earnest money/any consideration or even the source thereof; and that the plaintiff has failed to prove her

readiness and willingness to perform the contract. As such, decree of specific performance could not be granted in favour of the appellant.

13. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

14. In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

15. Pending applications, if any, stand disposed of.

17.11.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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