

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****211****RSA-712-2016 (O&M)****Date of decision: 09.09.2025****Rakesh Goel****...Appellant(s)****Vs.****Sarabjit Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

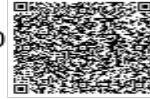
Present:- Mr. Amit Bansal, Advocate for  
Mr. N.K.Bansal, Advocate for the appellant.

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**NIDHI GUPTA, J.**

Present second appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below, whereby suit of the plaintiff has been partly decreed.

2. Perusal of the plaint reveals that plaintiff has filed the present suit for symbolic possession and permanent injunction on the averments that defendant being the owner in possession of one office portion of property No.B-XV-38, measuring about 500 sq feet, situated at third floor, Sodhi Complex, Miller Ganj, G.T.Road, Ludhiana ('suit property'), agreed to sell the same to the plaintiff and a written agreement to sell was dully executed by the defendant in favour of the plaintiff incorporating therein the total sale consideration as Rs. 3,50,000/- and it is further mentioned that at the time of execution of the agreement to sell, the defendant received full and final sale consideration from the plaintiff and possession of the property was delivered to the plaintiff by the defendant. It was



further agreed that vendee is at liberty to get the sale deed executed and registered in his favour whenever he will desire. Plaintiff has further averred that thereafter he lost the said agreement of sale and as a result of it the parties entered into another agreement to sell dated 23-10-2008 in the presence of marginal witnesses on the same terms and condition and at the time of execution of receiving the total sale consideration, the defendant represented that he is the absolute owner of the property where office subject matter of the agreement to sell is situated and the defendant also assured that he is having every right to sell a shop/office subject matter of agreement to sell but later on it came to the knowledge of the plaintiff that defendant has made false representation to the plaintiff as infact the defendant is not the absolute owner of the said property and the defendant has also entered into an agreement with company M/s. J.B.S.Builders and Traders Private Limited to develop the multi storey Complex in the property in which the shop/office subject matter of the agreement to sell is situated and as per the said agreement the company M/s J.B.S. Builders and Traders Private Limited shall have 50% rights over the constructed area of the building. It is further averred that a civil dispute has also arisen between the defendant and the said company but the defendant concealed all these facts from the plaintiff and duped him of lacs of rupees. The plaintiff several times requested the defendant to clear his status of ownership qua the said shop/office and to execute and get registered the sale deed in favour of the plaintiff and also requested him to intimate the date on which the defendant shall execute



and get registered the sale deed but the defendant did not pay any heed to the request of the plaintiff and ultimately refused to perform his party rather threatened that he shall further alienate/transfer the property and will illegally interfere in the peaceful possession of the plaintiff over the suit property and shall also illegally dispossess the plaintiff from the same. As such, plaintiff had filed the instant suit *“for symbolic possession by way of specific performance of the Agreement to Sell dated 23.10.2008 executed by defendant; or in the alternative, suit for recovery of Rs.7 lakhs i.e. Rs.3,50,000/- paid as sale consideration and Rs.3,50,000/- as liquidated damages; and suit for grant of permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiff and from illegally dispossessing the plaintiff from the suit property except in due course of law.”*

3. The suit of the plaintiff was partly decreed by the learned Trial Court for the reasons as recorded in para 8 of the judgment dated 19.03.2013. The relevant extract reads as under: -

*“8. .... Even otherwise, the agreement is admitted by the defendant and there is also admission of the defendant for taking of earnest money but as the defendant is not proved to be owner of the suit property regarding which agreement was executed so he cannot get executed and register the sale deed in favour of the defence. So the decree of specific performance cannot be granted in favour of the plaintiff nor he is entitled to relief of permanent injunction as prayed by him. However, in view of the above discussion, plaintiff is entitled to alternate relief of recovery of consideration amount alongwith liquidated damages. Accordingly, issue*



*No.1 and 3 are decided in favour of the defendant and against the plaintiff while issue No.2 is decided in favour of the plaintiff and against the defendant.”*

4. Accordingly, the learned Trial Court, vide its judgment and decree dated 19.03.2013 had partly decreed the suit of the plaintiff with costs *“to the effect that plaintiff is granted alternate relief for recovery of Rs.3,50,000/- which he paid as consideration amount to the defendant alongwith Rs.50,000/- as damages as there is no clause in the agreement to sell that the defendant incase of failure shall pay double the amount of sale consideration to the plaintiff.”*

5. The Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Ludhiana vide judgment and decree dated 09.07.2015; thereby affirming the findings of the learned Trial Court. Hence, present second appeal by the plaintiff.

6. It is *inter alia* submitted by learned counsel for the appellant/plaintiff that the findings of the learned Trial Court that the defendant was not owner of the suit property, is factually incorrect. It is submitted that the defendant has been held not to be owner of the suit property only on account of the fact that in respect of the suit property, defendant had previously entered into an Agreement to Sell dated 21.05.1998 with one M/s. J.B.S. Builders and Private Limited. However, it has been admitted by the defendant in his written statement that the said Agreement stood cancelled on dated 31.10.1999. It is contended that accordingly, there was no ground for the learned Trial Court to hold that



defendant was not owner of the suit property. Thus, suit of the plaintiff ought to have been decreed especially in view of the fact that defendant had admitted in his written statement that he has received entire sale consideration of Rs.3,50,000/- and pursuant to the Agreement, had also handed over possession of the suit property to the plaintiff. It is further submitted that the plaintiff is still ready and willing to perform the contract.

7. It is further submitted that the Ld. Courts below, while passing the impugned orders, have not considered the important admission made by the defendant that he has always been and is still ready and willing to perform his part of the contract by executing the sale deed in favour of the plaintiff. In this circumstance, the Ld. Courts below have gravely erred in granting the alternative relief of refund of the earnest money alongwith damages of Rs.50,000/- instead of granting the relief of symbolic possession by way of specific performance of the agreement to sell.

8. On the other hand, learned counsel for the defendant submits that telephonic instructions have been received from the defendant that he is not interested in selling the suit property. It is further submitted that plaintiff was very much in knowledge of the previous Agreement dated 21.05.1998 entered into between the defendant and the M/s. J.B.S. Builders and Private Limited; and the plaintiff was also aware of the fact that the said Agreement stood cancelled since 31.10.1999. It is further submitted that the amount of damages awarded

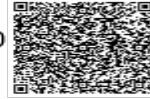


by Trial Court is sufficient; especially keeping in view the fact that the plaintiff has been in occupation of the suit property since 2008 without payment of any mesne profits or any such, to the defendant. Thus, dismissal of the suit is prayed for.

9. Heard.

10. I find no merit in the submissions made on behalf of the plaintiff. It is a pleaded case of the plaintiff in the plaint that he had entered into an Agreement to Sell dated 23.10.2008 with the defendant in respect of the suit property for a total sale consideration of Rs.3,50,000/-. The entire sale consideration was paid at the time of execution of the said Agreement. Accordingly, possession of suit property was also delivered to the plaintiff at the time of execution of Agreement to Sell. However, defendant had failed to execute the Sale Deed. It is further averred that it is only later on that he came to know that defendant was not absolute owner of the suit property; and that he had entered into an Agreement dated 21.05.1998 with M/s. J.B.S. Builders and Private Limited.

11. From the above, it is clear that plaintiff has filed the suit with vague averments. The plaintiff has alleged that the defendant was not willing to perform the contract; however, defendant in his written statement has taken a categorical stand that he has never denied to perform his part of contract and has never refused to execute the Sale Deed. Thereafter, the plaintiff has not mentioned that any legal notice was issued to the defendant to fix the target date and to demonstrate the readiness and willingness of the plaintiff to get the Sale Deed executed. In



fact, plaintiff has admitted in his cross-examination that no written notice was given by the plaintiff to the defendant for execution of Sale Deed.

12. Further, the Agreement to Sell dated 23.10.2008 has been admitted by the defendant in his written statement. Payment of the entire sale consideration of Rs.3,50,000/- has also been admitted by the defendant. Willingness to perform the contract has also been expressed by the defendant. In the face of these admissions of the defendant, it is not clear as to why Sale Deed was not executed. Onus was upon the plaintiff to prove his readiness and willingness and to establish as to why Sale Deed was not executed. Rather, the plaintiff in his cross-examination as PW1 has admitted that he could not tell the specific date when the previous Agreement was executed with the defendant which was lost. Moreover, admittedly, Agreement to Sell was an unregistered document. Even further, parties have placed on record no document to prove the title of the defendant. Even no mention is made as to how defendant is owner of the suit property. Accordingly in the entire facts and circumstances of the case, I find no error in the judgments and decrees of the learned Courts below; whereby plaintiff has been granted alternative relief of refund of Rs.3.50,000/- as sale consideration alongwith damages of Rs.50,000/-.

13. It may also be pointed out that first Appellate Court has given a categoric finding in para 17 of its judgment dated 09.07.2015 as follows:-

*“Admittedly, the agreement between the plaintiff and defendant is not denied and the receipt of payment of Rs.3,50,000/- is also not in dispute, but the fact that*



*defendant is owner of the property in dispute has not been proved. No doubt, the defendant is claiming himself to be absolute owner, but he has not attached any document which could show that he is owner of the shop/office. The fact of the ownership has also not been proved by the plaintiff. On Perusal of the cross-examination of the plaintiff, it is unconcealed that it has been admitted by him that he is not aware regarding the agreement between the builder and defendants and that in the agreement share of builder and defendants have been shown separately, whereas in the plaint, plaintiff is claiming that he has knowledge regarding the agreement between the plaintiff and the builder.”*

14. I find merit in the submissions made by learned counsel for the defendant that plaintiff has been occupying the suit property for almost 18 years without any payment to the defendant. As such, plaintiff cannot be held entitled to any further damages.

15. 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**.

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

**09.09.2025**

Divyanshi

**(NIDHI GUPTA)**  
**JUDGE**

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