

RSA-3326-2014 (O&M)
RSA-412-2015 (O&M)

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2025-PHC-1172875



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

Date of decision : 10.12.2025.

RSA-3326-2014 (O&M)

Saraj Singh

....Appellant

Versus

Major Singh

....Respondent

RSA-412-2015 (O&M)

Major Singh

....Appellant

Versus

Saraj Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Nakul Sharma, Advocate
for the appellant in RSA-3326-2014 and
for the respondent in RSA-412-2015.

Mr. Damanjeet Bhorawal, Avocate
for the appellant in RSA-412-2015 and
for the respondent in RSA-3326-2014.

PANKAJ JAIN, J. (ORAL)

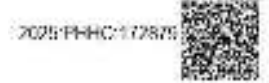
CM No.1140-C of 2015 in RSA-412-2015

This is an application filed under Section 5 of Limitation Act
seeking condonation of delay of 177 days in filing the instant appeal.

Notice of the application.

Mr. Sharma accepts notice and pleads no objection.

For the reasons recorded in the application, this Court is
satisfied that the applicant/appellant has made out a sufficient cause for
condonation of delay.



Consequently, the present application is allowed. The delay of 177 days in filing the instant appeal is hereby condoned.

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These cross-appeals arise out of a suit filed by the plaintiff seeking decree of specific performance of agreement to sell, dated 26.11.2005.

2. Plaintiff filed suit seeking decree of specific performance of agreement to sell, dated 26.11.2005. As per plaint, defendant agreed to sell land admeasuring 16 Kanals owned by him, in favour of the plaintiff for a total sale consideration of Rs.5,60,000/-. Rs.2,50,000/- was paid as earnest money. Parties agreed to get the sale deed executed on or before 06.07.2007. Plaintiff claims that he continues to be ready and willing to perform his part of contract. On the stipulated date i.e., 06.07.2007, plaintiff appeared before the Sub Registrar, Zira along with the balance sale consideration. His presence was marked before the Sub Registrar, vide Exhibit P-1. Defendant having failed to come present, plaintiff is entitled to decree of specific performance.

3. Suit was contested by the defendant claiming that the agreement to sell was a result of fraud committed by the plaintiff acting in connivance with his father-in-law, namely Lachhman Singh, who is running a commission agency and defendant is selling his produce through him. He claims that the commission agent namely Kabal Singh and Lachhman Singh



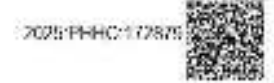
obtained signatures of the defendant on blank-papers. The same papers have been utilized to create this forged and fabricated document.

4. Suit filed by the plaintiff, was put to trial by the Court of First Instance, framing following Issues:

- “1. Whether defendant agreed to all the property in dispute by way of specific performance of the agreement of sale dated 26.11.2005 in favour of plaintiff? OPP
2. Whether defendant received a sum of Rs.2,50,000/- as earnest money at the time of execution of agreement of sale dated 26.11.2005? OPP
3. Whether plaintiff is entitled to the decree of specific performance on the basis of agreement dated 26.11.2005? OPP
4. Whether the plaintiff is always ready and willing and still ready and willing to perform his part of contract? OPP
5. Whether the plaintiff is entitled to the decree for recovery of Rs.5,60,000/- as an alternative relief? OPP
6. Whether the alleged agreement to sell is forged and fabricated document? OPD
7. Whether the suit is not maintainable? OPD
8. Relief.

5. Plaintiff successfully proved execution of agreement to sell examining attesting witness Sukha Singh @ Sukhwinder Singh as PW2 and scribe of the agreement to sell Jorawar Singh as PW3.

6. The Court of First Instance after evaluating the evidence, came to the conclusion that the plaintiff has successfully proved execution of agreement to sell and has also proved that he always remained ready and



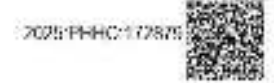
willing to perform his part and decreed the suit filed by the plaintiff for the main relief of specific performance.

7. Dissatisfied defendant preferred appeal.

8. Lower Appellate Court though recorded that the agreement to sell is shrouded with mysterious and suspicious circumstances, but held that the defendant being only a co-sharer in suit land measuring 16 Kanals of land comprised in specific Khasra numbers which are subject matter of agreement to sell, plaintiff is entitled not for the main relief of specific performance but for the alternate relief of recovery of Rs.2,50,000/- along with interest @ 9% per annum from 26.11.2005 till the date of decree and 6% future interest.

9. Mr. Nakul Sharma, Advocate, counsel for the plaintiff has assailed the findings recorded by the Lower Appellate Court. He submits that the reasoning recorded by the Lower Appellate Court to deny the main relief to the plaintiff, is unsustainable in the eyes of law. He submits that admittedly, the defendant owns more than 16 Kanals of land in joint khewat. Thus, the agreement to sell cannot be said to have been frustrated merely for the reasons that the defendant is not absolute owner of the Khasra numbers which forms subject matter of the agreement to sell.

10. Counsel for the defendant, who is also in appeal, assails the findings recorded by both the Courts below. He submits that the defendant successfully evinced that the agreement to sell was a result of fraud as the



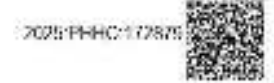
blank signed papers obtained by Kabal Singh and Lachhman Singh, were misused by the plaintiff to create agreement to sell, yet the Courts below have granted the relief to the plaintiff. The Lower Appellate Court erred in granting alternate relief of recovery of Rs.2,50,000/- despite having recorded that the agreement to sell was shrouded with suspicious circumstances.

11. I have heard counsel for the parties and have gone through records of the case.

12. The plaintiff was required to shoulder the onus to prove execution of agreement to sell. Having discharged his burden by examining the attesting witness as well as the scribe, it was for the defendant to prove his defence. In the considered opinion of this Court, from the testimony of defendant as well as Kikkar Singh (DW4), it can be inferred that the defendant miserably failed to prove his defence. Thus, the findings recorded by the Trial Court holding that the plaintiff proved execution of agreement to sell, stand affirmed.

13. There also can't be quarrel with the proposition canvassed by Mr. Nakul Sharma that the defendant being co-owner in the joint khewat to the extent of more than 16 Kanals of land, Lower Appellate Court ought not have non-suited the plaintiff holding that the agreement to sell cannot be performed.

13.1. However, the matter does not end here. In terms of Section 16 of the Specific Relief Act, 1963 (hereinafter referred to as '1963 Act'), the



plaintiff seeking decree of specific performance is required to plead and prove his continuous readiness and willingness *dehors* the objection/defence raised by defendant. Reference can be made to ratio of law laid down by Supreme Court in the case of **J.P. Builders vs. A. Ramadas Rao' (2011) 1 SCC 429.**

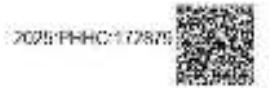
14. In the entire evidence led by the plaintiff, there is nothing except mere presence before the Sub Registrar, vide Exhibit P-1. The same may lead the Court to infer willingness of the plaintiff but it does not prove his readiness. In order to prove his readiness, plaintiff was required to prove that he possessed financial prowess on the appointed date i.e., 06.07.2007 to perform his part. Surprisingly, in the impugned judgments passed by both the Courts below, not even a whisper has been recorded regarding satisfaction of Section 16(c) of 1963 Act.

15. In view thereof, this Court finds that the plaintiff has been rightly held to be entitled to alternate relief of recovery of Rs.2,50,000/- along with interest @ 9% per annum from the date of agreement to sell i.e., 26.11.2005 till the date of decree and 6% future interest, by the Lower Appellate Court. The same is affirmed though by substituting the reasoning recorded by the Lower Appellate Court.

16. In view of above, finding no merit in the instant appeals, the same are ordered to be dismissed.

17. Pending application, if any, shall also stands disposed off.

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18. A copy of this order be kept on the file of other connected case.

December 10, 2025					(Pankaj Jain)
Dpr					Judge
	Whether speaking/reasoned	:		Yes/No	
	Whether reportable	:		Yes/No	