

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****123****RSA-2373-2024 (O&M)****Date of decision: 13.08.2025****Nisha****...Appellant(s)****Vs.****Joginder Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Liaqat Ali, Advocate for the appellant.

NIDHI GUPTA, J.

Present appeal has been filed by the defendant against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the respondent/plaintiff for possession by specific performance of Agreement to Sell dated 14.07.2016; **and** suit for permanent injunction, has been decreed by both the Courts below.

2. Learned counsel for the appellant assails the impugned judgments by submitting that suit of the plaintiff could not have been decreed as the Agreement to Sell is undated. It is submitted that the document produced by the plaintiff mentions no date on which the parties had entered into agreement; and therefore, the same is inexecutable. However, the learned Courts below have failed to appreciate this fact.

3. It is further submitted that there are material discrepancies in the evidence led by the plaintiff *in-as-much* as in his evidence, the plaintiff



has stated that the Agreement was executed at the shop in the presence of the witnesses; whereas PW2 marginal witness has stated that there was no person at the time of execution of the Agreement to Sell. It is contended that in view of the patent discrepancies in the statements of the prosecutions witnesses, it cannot be held that Agreement stood proven in accordance with law.

4. Learned counsel for the appellant lastly submits that it has been alleged by the plaintiff that he had paid Rs.20 lacs as earnest money. It is contended that however there is no Bank transaction reflecting the said payment of Rs.20 lacs. It is argued that therefore, the case put up by the plaintiff is false and based on concealment of facts and the suit of the plaintiff could not have been decreed. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

5. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in great detail. I find no merit whatsoever in the submissions made on behalf of the appellant.

6. Briefly stated the facts of the case are that the appellant/defendant was owner in possession of the suit house. Defendant had entered into Agreement to Sell dated 14.07.2016 Ex.P2 with the respondent/plaintiff, for sale of suit house for total sale consideration of Rs.25 lacs, of which plaintiff had paid Rs.20 lacs as earnest money. It has been pleaded in the plaint that the defendant had delivered possession of part of suit house to the plaintiff at the time of



execution of Agreement in the presence of marginal witnesses; and had agreed to give possession of remaining portion of her house at the time of registration of Sale Deed. The target date fixed for registration of Sale Deed was 31.07.2017. It was further agreed between the parties that if the plaintiff refused to execute the Agreement within the prescribed period, then Agreement to Sell would stand cancelled and earnest money would stand forfeited in favour of the defendant. It was pleaded in the plaint that plaintiff was always ready and willing to perform his part of Agreement but the defendant had postponed the matter on one pretext or the other. The plaintiff had accordingly served a registered notice dated 15.07.2017 upon the defendant however, to no avail. The defendant had received notice but had failed to comply with the same. On 01.08.2017, the plaintiff remained in Tehsil office after informing the defendant but the defendant did not turn up. Subsequently, plaintiff discovered that the defendant was negotiating to alienate the suit property. Accordingly, plaintiff had instituted the instant suit on 17.08.2017.

7. Vide judgment and decree dated 16.11.2022, the Civil Judge (Junior Division), Ludhiana had decreed the suit of the plaintiff for specific performance. The Civil Appeal filed by the defendant was dismissed by the learned Additional District Judge, Ludhiana vide judgment and decree dated 12.08.2024. Hence, present Second Appeal by the defendant.

8. It has been submitted on behalf of the appellant/defendant that the Agreement to Sell was undated. However the said statement of the appellant is misleading/factually incorrect as, a perusal of the



Agreement to Sell Ex.P2 (which begins from page 175 of the LCR and the endorsement is borne on page 176 of the LCR alongwith stamps of the Stamp Vendor bearing license No. 93) shows that the same bears the date of 14.07.2016. It is not disputed that on the back page of the Agreement to Sell the date of purchase of stamp papers is mentioned as 14.07.2016. The endorsement of the same date i.e. 14.7.2016 is borne on the back page of the Agreement to Sell. Merely because the Agreement itself mentions no date would not in any manner, cast a shadow of doubt on the validity, authenticity or legality of the said document(s); especially when the stamp papers correspond with the date mentioned in the endorsement borne on the back page of the Agreement; as also the head note of the plaint; and also with the Affidavit Ex.P6. As such, the said argument of the appellant is rejected.

9. It has next been contended on behalf of the appellant that there are discrepancies in the statements of the prosecution witnesses. However, I find no merit even in the said argument as the factum of Agreement to Sell having been executed between the parties, as also the factum of handing over of earnest money by the plaintiff to the defendant and presence of plaintiff in the office of Sub Registrar has duly been corroborated by testimonies of PW2 and PW3 who are the marginal witnesses to the Agreement to Sell. With the passage of time, certain minor irrelevant discrepancies may occur in the evidence of certain witnesses. However, in the present case, none of the discrepancies alleged by the defendant would be fatal to the case of the plaintiff. Just because



the Agreement to Sell was scribed at some other place and was signed in the house of the plaintiff, would not, to my mind in any manner, raise any doubt regarding the contents of the Agreement to Sell Ex.P2; or on the admitted signatures of the parties thereupon. In any event, the entire issue is laid to rest from the fact that the defendant during the cross-examination of PW1 Joginder Singh/plaintiff, and during her own cross-examination has admitted the entire case of the plaintiff. This cannot be held to be a major discrepancy especially when all the witnesses are in agreement with each other with regard to the place where Agreement was scribed, which is Bawa Stamp Vendor. In fact, the argument of the appellant is based on misreading of the evidence as PW1 has categorically stated that the Agreement was scribed at the shop of Bawa Stamp Vendor and was signed at his house. Similar is the statement of PW2 and PW3 who had stated that they have signed the Agreement at the house of the plaintiff. Therefore, there is no merit in this argument of the defendant as well.

10. It has lastly been contended by the appellant that the earnest money is not reflected in the bank transaction of the plaintiff. Even the said contention of the appellant is false. The plaintiff has proved from his bank account statement/Ex.P-7 that there were withdrawal entries of amount totalling to almost Rs.35 lacs during the relevant period i.e. on or around the date of execution of Agreement to Sell/14.7.2016. A perusal of Ex.P7, the bank account statement of the plaintiff, as also the Income Tax Returns for the assessment years 2015-2016, 2017-2018, 2018-2019,



2019-2020 (Ex.P8 to Ex.P11), show that plaintiff had withdrawn a sum of Rs.10 lacs on 06.07.2016; Rs. 15 lacs on 14.07.2016; and Rs.9,40,000/- on 15.07.2016. Clearly therefore, these are all major transactions/withdrawals which correspond with the date of Agreement to Sell. Even on target date of 01.08.2017, there is an entry of withdrawal of Rs.5 lacs from the account of the plaintiff which proves the readiness and willingness of the plaintiff to perform his part of contract. In this regard, reference needs be made to judgment of the Hon'ble Supreme Court in '*R. Shama Naik vs. G. Srinivasiah*' *Law Finder Doc Id # 2670489*, wherein it is held that in order to establish readiness and willingness, the following two specific ingredients are required to be fulfilled: (a) presence in the Tehsil office; and (b) demonstrate availability of funds. In the present case, the plaintiff has proved that he has fulfilled both requirements.

11. Ex.P3 is a notice calling upon the defendant to perform her part of contract. Ex.P5 and Ex.P6 are the affidavits of attendance proving presence of plaintiff in the office of Sub Registrar on 1.8.2017. Ex.P7 shows that an amount of Rs.5 lacs was withdrawn on 01.08.2017 and Mark A/copy of Bank Draft dated 01.08.2017 corresponds with the same.

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

13. In view of the 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**.



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

13.08.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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