

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****107****RSA-2036-2018 (O&M)
Date of decision: 27.02.2025****Satpal Pessey****...Appellant(s)****Vs.****Bal Kishan @ Bal Krishan and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Dr. Rau P.S.Girwar, Advocate with
Ms. A.A.P. Rau and Ms. K.T. Rau, Advocates
for the appellant.

NIDHI GUPTA, J.
CM-5648-C-2018

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 60 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application which is
supported by an affidavit of the applicant/appellant, the same is allowed
and delay of 60 days in refiling the accompanying appeal is condoned.

RSA-2036-2018 (O&M)

The present second appeal has been filed by the plaintiff
No.1 against the concurrent judgments and decrees of the learned Courts
below, whereby the suit filed by the plaintiffs seeking decree of specific
performance of Agreement to Sell dated 18.04.2001; or in the alternative,
for recovery of Rs.10 lacs i.e. Rs.5 lacs being the amount paid as earnest



money and Rs.5 lacs being the liquidated damages along with interest @ 18% per annum, has been decreed with costs by the learned trial Court vide judgment and decree dated 14.05.2012 for "*alternative relief for the recovery of Rs.5 lacs alongwith interest @ 9% per annum till filing of the suit.*" The appeal filed by the plaintiff No.1 against the said judgment and decree dated 14.05.2012 was dismissed by the learned Additional District Judge, Bathinda vide judgment and decree dated 27.03.2017. It may be pointed out that during the pendency of trial, plaintiff no.2 had compromised the matter with the defendants.

3. It may also be pointed out that the present appeal is of the year 2018. However, notice has not yet been issued in the same as since then, the matter has been adjourned numerous times either due to non-appearance of, or at request of learned counsel for the appellant.

3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff No.1'; and the respondents are the 'defendants'.

4. Brief facts of the case are that the plaintiffs filed suit against the defendants seeking specific performance of Agreement to Sell dated 18.04.2001 regarding the suit land as described in the plaint on payment of balance sale consideration; or in the alternative for recovery of Rs. 10 lacs i.e. Rs.5 lacs being the amount paid as earnest money and Rs.5 lacs being the liquidated damages along with interest @ 18% per annum. The plaintiffs further sought declaration that sale deed No. 317 dated 08.04.2005 in respect of part of the suit land executed by defendant No. 1 in favour of



defendants No. 2 to 6; and sale deed no. 318 dated 08.04.2005 in respect of part of the suit land executed by defendant No.1 in favour of defendants No. 7 and 8; and sale deed No. 319 dated 08.04.2005 in respect of part of the suit land executed by defendant No.1 in respect of defendant No.9 are illegal, null and void.

5. The facts as set out in the plaint are that on 18.4.2001 the defendant No.1 agreed to sell his land measuring 4000 sq. yards equivalent to 4 bighas bearing khasra No. 3667/2 to the plaintiffs in equal shares @ Rs.825/- per sq. yards vide an Agreement to Sell dated 18.4.2001. The defendant No.1 received Rs. 5 lacs in advance as earnest money on 18.4.2001 from the plaintiffs in the presence of the marginal witnesses. After receipt of earnest money and admitting the correctness of the contents of the Agreement, the defendant No.1 signed the Agreement in the presence of the marginal witnesses, who also signed the same. The plaintiffs being purchasers also signed the Agreement. The defendant No.1 agreed to get the sale deed executed and registered in favour of the plaintiff on receipt of the balance sale consideration amount on or before 18.10.2001. He also agreed that in case he fails to execute the sale deed executed and registered by the said date, he would be liable to pay Rs. 10 lacs i.e. Rs.5 lacs received as earnest money and Rs. 5 lacs as consolidated damages. The defendant No. 1 also agreed to obtain the clearance certificate of Income tax or any other dues if any. The expenses of the execution and registration of the sale deed were agreed to be borne by the plaintiffs. It was also agreed that in case the plaintiffs fail to perform their



part of the contract, the earnest money would stand forfeited. The plaintiffs many times approached the defendant No. 1 to get the sale deed executed and registered in their favour, as per the Agreement, but he kept putting off the matter on one pretext or the other. On 18.10.2001, the plaintiffs went to the office of Sub-Registrar, Bathinda with balance sale consideration and amount required for expenses of the execution and registration. The defendant No.1 also reached the office of Sub-Registrar to perform his part of the contract. The plaintiffs showed the Agreement to a Deed Writer for scribing the sale deed. The Deed Writer conveyed that the area of which the plaintiffs want to get the sale deed executed and registered from the defendant No.1 is near the boundary of Bathinda cantonment and it is declared as 'Buffer Zone' by the Military authorities and no sale-purchase is valid for that area. The plaintiffs and defendant No. 1 immediately went to the Sub-Registrar, Bathinda for clarification of the matter and the Sub-Registrar conveyed that the khasra No 3667/2 min is in 'buffer zone' of Bathinda cantonment and no sale deed of the area can be executed or registered by the office. The plaintiffs requested the Sub-Registrar to give in writing the said facts but he showed his inability and asked the parties to get the necessary certificate from the District Magistrate, Bathinda. Thereafter, the plaintiffs asked the defendant No.1 to get necessary and actual certificate from the District Magistrate, Bathinda as to whether the land in question falls within 'Buffer zone' and in case it does not fall in the 'Buffer zone', then he should execute and register the sale deed in respect of the land in question after receiving the balance sale consideration. But



the defendant No.1 refused to do so. The plaintiffs then requested him to return their earnest money and Rs.5 lacs consolidated damages. The defendant No.1 did not pay any heed to the requests of the plaintiffs. The plaintiffs to show their willingness to get the sale deed executed and registered, moved an application before the Sub-Registrar, Bathinda and the Sub-Registrar returned the original application with an endorsement that the application does not relate to that office. Thereafter, the plaintiffs have been approaching the defendant No. 1 with request to get necessary certificate from the District Magistrate but the defendant No.1 has been postponing the matter on one pretext or the other. The defendant No.1 deceived the plaintiffs and made them pay amount of Rs.5 lacs without disclosing that the land in question falls land in 'Buffer Zone' and no sale purchase is being done of the said land. Subsequently, the defendant no.1 further sold the land to defendants 2 to 9. As such, declaration was sought in respect of the said sale deeds being void. Hence, present suit was filed on 28.09.2004.

6. Upon notice, defendant No.1 appeared and filed written statement along with counter claim for recovery of Rs.21 lacs resisting the suit by *inter alia* submitting that the suit of the plaintiffs was not maintainable since the plaintiffs had lodged FIR No. 79 dated 23.02.2003 against the defendants under Section 420 IPC alleging therein that Balkishan/defendant No.1 had falsely alleged his ownership of the suit property; that the land falls under the Buffer Zone of Cantonment area and, therefore, Balkishan had alleged his ownership on the property falsely; and



that thereafter, defendant No. 1 is neither executing nor returning their earnest money. The said allegations were denied in the written statement and it was alleged that the plaintiffs themselves were not having the balance sale consideration nor did they want to get executed sale deed in their favour from the defendants; and as such, the plaintiffs had adopted devious way of merely getting their presence marked before the Sub-Registrar, without any sale consideration; that after almost 2 years of Agreement to Sell dated 18.04.2001, the plaintiffs had wrongly got false FIR registered against the defendants on 23.02.2003 only to pressurize the defendants to pay back the earnest money; the said FIR was subsequently cancelled by this Court as per report dated 22.10.2003. It was further averred that the defendant No.1 was the rightful owner of the land measuring 400 sq. yards comprised in khasra No. 3667/2 min. measuring 80 ft. X 235 ft. And 135 ft. X 127 ft. which was agreed to be sold by him to the plaintiffs for consideration of Rs.825/- per square yard. The plaintiffs paid Rs.5 lacs as earnest money. As per the terms and conditions of the Agreement to sell dated 18.04.2001, the sale deed was to be executed on or before 18.10.2001 on receipt of balance sale consideration. It was further stipulated in the Agreement that in case the purchasers/plaintiffs failed to get the sale deed executed in their favour on payment of balance sale consideration then their earnest money would stand forfeited; and in case the defendant failed to execute the sale deed in favour of the plaintiffs then the seller/defendant would have to pay double the amount to the purchasers i.e. the plaintiffs. It was contended in the written statement that



at the time of executing the Agreement to Sell, all relevant inquiries about the title of the defendant were conducted by the plaintiffs at their own level. The plaintiffs also examined relevant revenue record in the form of jamabandi and girdawari, and the site was also inspected by the plaintiffs at which time harvesting of wheat was in progress; and it is only thereafter, the plaintiffs voluntarily agreed to purchase the land after verification of the title. Accordingly, the defendant No.1 had requested the plaintiffs to come to the office of Sub-Registrar on 18.10.2001 for getting the sale deed executed on payment of balance sale consideration of Rs.28 lacs but the plaintiffs failed to respond. Thereafter, the defendant No.1 duly appeared before the Sub-Registrar and filed the application to the effect that he is ready and willing to perform his part of contract; and the Registrar after receiving the application of the defendant No.1 had marked the presence of the defendant No.1 and the plaintiffs; and thereafter returned the application of the defendant No.1 since plaintiffs were neither having balance sale consideration of Rs.28 lacs nor they had purchased any stamp papers for getting the sale deed executed in their favour after drafting the sale deed. It was further contended in the written statement that the plaintiffs had no intention to get the sale deed executed in their favour from the defendant No.1 and they had only come to Tehsil office to watch the activities of the defendant No.1. Accordingly, the defendant No.1 had filed a complaint under Section 500/182 of IPC; and defendant No.1 also moved an application dated 12.02.2004 for cancellation of FIR No. 79 dated 21.02.2003. The defendant no.1 also served legal notice dated 01.07.2004



upon the plaintiffs through counsel but the plaintiffs, despite receipt of legal notice, failed to respond to the same. It was contended that as such, the plaintiffs left with no right, title or concern of any kind on the basis of said Agreement to Sell dated 18.04.2001 as they had failed to pay the the balance sale consideration of Rs.28 lacs; and failed to execute the sale deed from the defendant on the false ground that defendant was not the owner of the suit land. It was accordingly averred that plaintiffs have never been ready and willing to perform their part of contract and they wanted to harass the defendant and the contract failed due to fault of the plaintiffs.

7. Similar averments were reiterated in the counter claim filed by the defendant No.1. It was additionally stated in the counter claim that the defendant No.1 had suffered damages to the tune of Rs.5 lacs due to the malicious prosecution and defamation caused to the defendant by the plaintiffs; that the defendant No.1 had suffered damages of Rs.16 lacs for selling the land at lower rate of Rs.425/- per sq. yard instead of Rs.825/- per sq. yard to the subsequent purchasers/defendants No. 2 to 9 herein and therefore, the plaintiffs had caused total loss of Rs.21 lacs to the defendant No.1 and the defendant No. 1 was legally entitled to recover the same from the plaintiffs on account of defamation and breach of contract after forfeiting the amount of earnest money of Rs.5 lacs.

8. Replication was filed wherein averments of the plaint were reiterated and those of the written statement were denied. Counter claim of the defendant was registered by the plaintiffs and averments made in the plaint were reiterated.



9. Separate written statement was filed by the defendants No. 7 to 9 resisting the suit of the plaintiffs. Replication thereto was also filed by the plaintiffs.

10. On 15.11.2011 Ram Kumar, plaintiff No.2 appeared and gave a statement that he has effected a compromise with the defendants No. 2 to 9 and does not want to proceed with the present suit.

11. On the basis of the pleadings of the parties, following issues were framed: -

1. Whether the plaintiff is entitled for specific performance of contract of sale on basis of an agreement dated 18.4.2001?

OPP

2. Whether the defendant entered into agreement for sale with plaintiff regarding sale of land measuring 4000 sq. yards with the plaintiff and he received Rs 5 lacs in advance as earnest money on 18.4.2001 from the plaintiff? OPP

3. Whether the plaintiff is entitled to injunction as prayed for?

OPP

4. Whether plaintiff has no locus standi and cause of action to file suit? OPD

5. Whether suit is not maintainable in present form? OPD

6. Whether plaintiff is estopped from filing the suit by his act and conduct? OPD

7. Whether suit has not been properly valued for purpose of court fee and jurisdiction? OPD

8. Whether the suit of the plaintiff is time barred? OPD

9. Whether suit is bad for non joinder of necessary parties?

OPD

10. Whether the defendant is entitled to compensatory costs u/s 35 A CPC? OPD



10A) Whether the defendant No.1 is entitled to recover Rs.21 lacs alongwith interest by way of counter claim?

OPD

11.Relief.

12. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issue No. 1 in favour of the plaintiffs and against the defendants holding that although plaintiff was entitled to specific performance of Agreement to Sell dated 18.04.2001, however specific performance of the said Agreement would become difficult and in such eventuality, the plaintiff should be allowed alternative relief of earnest money with interest; as regards **issue No.2**, it was held that since the parties are not at issue on this specific issue framed by Court, further findings need not to be recorded; issue No. 3 was found to be rendered redundant as plaintiff was found entitled to alternative relief; issues No. 4 to 10 were decided against the defendants and in favour of the plaintiff; issue No.10A was decided against the defendants and in favour of the plaintiff; and vide judgment and decree dated 14.05.2012, the suit of the plaintiff was decreed with costs for alternative relief for the recovery of Rs.5 lacs along with interest @ 9% per annum till filing of the suit. Interest @ 6% p.a. pendente lite and future interest from the date of decree till its realisation was also allowed. The counter claim of the defendant no.1 was dismissed as the learned trial Court found that during the pendency of the suit on 08.04.2005, the defendant had hastily entered into 3 sale deeds



(Ex.D1 to Ex.D3) with defendant Nos.2 to 9 after the vacation of the stay order on 07.04.2005.

13. The appeal filed by the appellant/plaintiff No.1 against the said judgment and decree dated 14.05.2012 of the learned trial court was dismissed with costs by the learned Additional District Judge, Bathinda vide judgment and decree dated 27.03.2017. Hence, the present second appeal.

14. The only argument raised on behalf of learned counsel for the appellant/plaintiff no.1 is that despite the stay granted by the learned trial Court vide order dated 07.04.2005, the defendant No.1 had executed 3 sale deeds (Ex.D1 to Ex.D3) on 08.04.2005 in favour of subsequent purchasers/defendants No. 2 to 9. Learned counsel contends that in view of the stay granted by the learned trial Court, the execution of the said sale deeds amounted to violation of the stay order dated 07.04.2005. It is submitted that therefore, the learned Courts below were in patent error in not decreeing the suit of the plaintiff. It is submitted that record bears out that the plaintiff was always ready and willing to perform his part of contract. In these circumstances, to deny the relief of specific performance of contract to the plaintiff is unjustified. No special circumstances have been mentioned by the learned Courts below for denying the relief of specific performance of contract in favour of the plaintiff. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees be set aside.

15. No other argument is raised on behalf of the appellant.



16. I have heard learned counsel for the appellant/plaintiff no.1 and perused the case file in a great detail.

17. It has been contended by learned counsel for the appellant that the defendant no.1 sold the suit land vide sale deeds dated 8.4.2005 (Ex.D1 to Ex.D3) in favour of defendants No.2 to 9 during the subsistence of stay granted by learned trial Court vide order dated 07.04.2005. The said contention of learned counsel for the appellant is borne out to be patently incorrect, as the file reveals that injunction restraining alienation was *vacated* on 07.04.2005. It is only thereafter, that the sale deeds were executed by defendant No.1 on 08.04.2005. Despite repeated queries, learned counsel for the appellant is unable to inform this Court as to on what date was stay of alienation granted by the learned trial court. Furthermore, learned counsel for the appellant is also unable to deny the broad facts as already noticed here in above.

18. Other relevant findings and reasoning of the Id. trial Court are contained in para 37 of the judgment dated 14.05.2012, which reads as under:-

“The property in the instant case has been sold by the defendant No.1 alongwith his brother Dixit Rai who is also a co sharer, to defendants No.2 to 9 through three sale deeds. The plaintiff No.2 has compromised with the defendants. In such an eventuality it would be difficult to order specific performance of the agreement dated 18.4.2001. More over the property sold through the Ex.D1 to Ex.D3 is not of specific boundaries and property which is subject matter of Ex.P1, the agreement to sell dated 18.4.2001 is also of a share and hence the specific



performance which the plaintiff no doubt is entitled to, would become difficult and in such eventuality the plaintiff should be allowed alternative relief of earnest money with Interest, This issue is accordingly decided in favour of the plaintiff and against the defendants”

19. I find no error in the above reasoning/findings contained in the impugned judgments and decrees. It is to be noted that Ex.PW2/A and Ex.DW1/12 are completely silent regarding the fact that though both the parties were present before the Sub-Registrar on 18.10.2001, then why sale deed was not executed. This would lead to the presumption that plaintiff was not equipped with balance sale consideration and, hence, sale deed could not be executed.

20. Moreover, it is not denied by learned counsel for the plaintiff that the Agreement in question contained a penalty clause, as per which it was stipulated that if the defendant No.1 failed to execute sale deed, the plaintiff would get refund of Rs.5 lacs earnest money and Rs. 5 lacs as damages; and if the plaintiff failed then earnest money would stand forfeited. Even further, prayer for alternative relief of money decree was made by the plaintiff himself in the suit. Thus, there is no infirmity in granting alternative relief of money decree to the plaintiff.

21. Learned counsel for the appellant is unable to dispute or controvert the above said facts.

22. Accordingly, present regular second appeal is hereby **dismissed.**



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

27.02.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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