

RSA-665-2024 (O&M)

2026-PHIC-048717



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

**RSA-665-2024 (O&M)
Decided on : 10.03.2026**

Nanak

....Appellant

Versus

Smt. Rajbala & anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present :- Mr. Neeraj Yadav, Advocate
for the appellant.

PANKAJ JAIN, J. (ORAL)

CM-144-C-2025

This is an application for restoration of appeal which was dismissed for non-prosecution vide order dated 09.12.2024.

For the reasons mentioned in the application, the same is allowed. Appeal is restored to its original number.

Main case

1 Appellant-plaintiff is in second appeal aggrieved of judgment and decree passed by both the Courts below. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellant as plaintiff and the respondents as defendants.

2 Plaintiff filed suit seeking decree of declaration, specific performance and permanent injunction. As per the case of the plaintiff, defendant No.1 agreed to sell land measuring 2 marla i.e. 73 sq. yards in his



favour vide written agreement to sell dated 19.02.2010 for a total sale consideration of Rs.4,30,000/- and received Rs.2,00,000/- as earnest money. Possession of the plot was delivered to him. Parties agreed to get the sale deed executed on or before 20.06.2010. Plaintiff claims to have remained present before the office of Sub-Registrar on 20.06.2010 with the balance sale consideration and waited for defendant No.1 the entire day. On the next day, i.e. on 21.06.2010 plaintiff contacted defendant No.1. Her son informed the plaintiff about her illness and requested the plaintiff to pay an amount of Rs.1,50,000/- to him. Plaintiff claims that on request made by the defendant No.1, he further paid an amount of Rs.1,50,000/- to the son of defendant No.1 on 10.09.2010. After defendant No.1 failed to execute sale deed in his favour, he claims to have served legal notice through his counsel on defendant No.1 vide registered post on 01.07.2014 calling upon defendant No.1 to come present before the office of Sub-Registrar and to execute sale deed in his favour on 14.08.2014. He again remained present on the said day before Sub-Registrar but defendant No.1 failed to come present. Defendant No.1 rather executed sale deed dated 30.06.2014 in favour of defendant No.2 to defeat the rights of the plaintiff. Plaintiff thus instituted present suit seeking decree of declaration *qua* sale deed bearing document No.2034 dated 30.06.2014 executed by defendant No.1 in favour of defendant No.2 and sought injunction to protect his possession. He further sought decree of specific performance claiming his readiness and willingness to perform his part of contract.

3 Defendant No.1 was proceeded *ex-parte*.

4 Defendant No.2 filed written statement denying execution of agreement to sell by defendant No.1 in favour of plaintiff. Defendant No.2



further claimed to be in possession of the suit land since the date of execution of sale deed in his favour. It was asserted that the agreement to sell is dated 19.02.2010 and the legal notice plaintiff claims to have served upon defendant No.1 is dated 01.07.2014 i.e. after more than three years from the date of execution of agreement to sell.

5 On the basis of the pleadings Court of the First Instance framed following issues :-

- 1) Whether the plaintiff is entitled a decree for declaration as in possession by setting aside subsequent sale deed vasika no. 2034 dated 30.06.2014 being illegal, null and void, on the basis of registered agreement to sale dated 19.02.2010? OPP*
- (2) Whether plaintiff is entitled a decree for specific performance against defendant no.1 as per agreement to sell dated 19.02.2010?OPP*
- (3) Whether plaintiff is entitled a decree for permanent injunction as prayed for?OPP*
- (4) Whether plaintiff is in actual possession of suit land? OPP*
- (5) Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- (6) Whether defendant no.2 is in possession over the suit land and bound fide purchaser against valid construction of the same?OPD*
- (7) Whether suit is barred by limitation? OPD*
- (8) Relief.”*

6 Trial Court found that the plaintiff failed to prove execution of agreement to sell and the payment of earnest money. The suit filed by the plaintiff was accordingly dismissed.

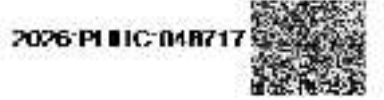
7 The Lower Appellate Court affirmed the findings in appeal preferred by the plaintiff.



8 I have heard learned counsel for the appellant and have carefully gone through records of the case.

9 The plaintiff was under an obligation to prove execution of agreement to sell in terms of Section 68 of the Evidence Act, 1872. Counsel for the appellant is not in a position to dispute that plaintiff failed to examine any attesting witness to prove the agreement to sell. The other evidence that the plaintiff led to prove execution of agreement to sell is in form of Scribe Kailash Chand Sharma who appeared as PW-3 and Stamp Vendor, Dharmesh Kumar, PW-2. Dharmesh Kumar, Stamp Vendor in his evidence deposed that the stamp paper was purchased by defendant No.1-Rajbala wife of Lal Singh. However, he failed to produce original record which as per him was lost. Kailash Chand Sharma, Scribe testified, supporting the case of the plaintiff and claimed that Rajbala, defendant No.1 received Rs.2,00,000/- earnest money in his presence. However, he also failed to produce his register carrying signatures of Rajbala. In view of above the Courts found that the execution of agreement to sell could not be proved by the plaintiff.

10 Matter does not end here. Plaintiff claims to have paid another sum of Rs.1,50,000/- to Sandeep son of Rajbala on 10.09.2010 and claims that a writing was recorded on the left side of first page of agreement. Scribe of the said writing has not been examined. No effort was made by the plaintiff to prove that the agreement to sell bears signatures of Rajbala defendant No.1 or that the writing on the left side of the agreement to sell bears signatures of Sandeep. In these circumstances, the Courts found that the plaintiff miserably failed to prove execution of agreement to sell and the payment of earnest money.



11 In view of above, this Court finds that once the plaintiff failed to prove the execution of agreement to sell, the Courts below rightly dismissed the suit filed by him seeking decree of specific performance.

12 Even the claim of the plaintiff to be in possession of the suit property is not supported by the covenants contained in agreement to sell.

13 In view thereof, this Court finds no reason to interfere in well-reasoned findings recorded by the Courts below. Finding no merits in the present appeal, the same is ordered to be dismissed.

10.03.2026
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

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