

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****247****RSA-512-2019 (O&M)****Date of decision: 06.05.2026****Om Parkash Arora and another****...Appellant(s)****Vs.****Pritam Dass****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Rajiv Sharma (Hisarwale), Advocate with
Ms. Indu Bala Sharma, Advocate
for the appellants.

Mr. S.P.Arora, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiffs against the concurrent judgments and decrees of the learned District Courts, whereby suit filed by the appellant for recovery of Rs. 14 lacs + 24% p.a. interest, has been dismissed by both the District Courts.

2. Brief facts of the case are that the plaintiffs had filed instant suit for recovery of Rs.14 lacs alongwith interest @ 24% p.a. from the due date alongwith costs of the suit from the defendant. It was pleaded in the plaint that vide Agreement to Sell dated 03.09.2012, defendant/respondent herein, had agreed to sell two houses for a total sale consideration of Rs.25,75,000/- to the plaintiffs. Defendant had received Rs. 7 lacs as earnest money. Target date for execution of Sale Deed was fixed for 01.12.2012. As 01.12.2012 and 02.12.2012 were



holidays, the plaintiffs had duly remained present in the office of Sub Registrar, Ballabgarh on 03.12.2012 and got marked their presence. However, defendant had refused to perform his part of the Agreement despite repeated request. Plaintiff have previously filed suit for declaration and mandatory injunction which was withdrawn by them for want of Court Fee and with intention to file the present suit. Thereafter, panchayats were convened and defendant assured to make payment of Rs.14 lacs (double of earnest money as per Agreement to Sell). But later, defendant had flatly refused to honor his undertaking. Accordingly, present suit was filed on 13.01.2014.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Faridabad had dismissed suit of the plaintiffs with costs vide judgment and decree dated 31.05.2016. The Civil Appeal filed by the plaintiffs was dismissed by the learned Additional District Judge, Faridabad vide judgment and decree dated 15.10.2018. Hence, the present second appeal by the plaintiffs.

4. It is *inter alia* submitted by learned counsel for the appellants that learned District Courts were in grave error in non-suited the appellants as they failed to appreciate that it was the clearly pleaded case of the appellants in the plaint that at the time of execution of the Agreement to Sell defendant was not owner of the suit property; and was therefore, not in any manner competent to transfer the property in favour of the plaintiffs/appellants. Moreover, had there been any bonafide intention of transfer of property, defendant could have gone to the office of Sub



Registrar with the persons who were holding title of the houses on the target date. It is submitted that therefore, the case of the defendant that he had gone to office of Sub Registrar all alone, to execute the Sale Deed in favour of the appellants/plaintiffs is of no use or help. In any event, this version of defendant is hopelessly false and baseless; as on 03.12.2012, defendant was not in any manner competent to execute the Sale Deed. Hence, suit of the plaintiffs could not have been dismissed.

5. It is further submitted by Id. counsel for the appellants that it has been wrongly held by the Ld. Court below that the Plaintiffs were not ready and willing to purchase the houses. When the defendant was not competent to transfer the property in favour of the Plaintiffs, there was no reason to hold that appellants were not ready the purchase the properties. In fact, the Plaintiffs were having sufficient amount to get the sale deed executed in their favour on 03.12.2012.

6. Learned counsel reiterates that the Ld. Lower Appellate Court erred in deciding issues No. 1 & 2 in favour of the defendant-respondent and against the Plaintiffs-appellants. It is contended that the defendant was required to satisfy the Plaintiffs regarding the ownership and title of the houses in dispute. The defendant never showed the original documents to the Plaintiffs till the last. In fact, these houses were in the name of original allottees namely Sanjay Kumar and Ajay Kumar and those were never transferred in favour of the defendant. The original allottees transferred these houses in favour of the wife of defendant vide registered sale deeds dated 04.01.2013 and 18.11.2013. At no stage the defendant ever got the



authority or title regarding these houses to transfer them in favour of the Plaintiffs prior to 01.12.2012 the date on which the sale deeds were to be executed. Even later on these houses were transferred in favour of the wife of defendant and not in favour of the defendant. Meaning thereby the defendant was never in a position to transfer the said properties in favour of the Plaintiffs. Under such circumstances the lapse was on the part of the defendant-respondent and not on the part of the Plaintiffs-appellants. In these circumstances the Plaintiffs are entitled to get double of the amount of the advance money paid by him to the defendant with interest. It has been erroneously held by the Ld. Courts below that the defendant was ready and willing to transfer these properties in favour of the Plaintiffs.

7. Learned counsel for the appellants further submits that the Ld. Courts below erred in deciding issue No. 3 in favour of the defendant and against the Plaintiffs. Plaintiffs were competent to file the suit for recovery of Rs. 14,00,000/- with interest because the defendant had no title or right to transfer the houses in their favour on 03.12.2012. Even the houses were transferred in favour of his wife much after 01.12.2012. The relevant date for execution of the sale deed was 03.12.2012 and on that day neither defendant-respondent was entitled to transfer the property, nor his wife was competent to transfer the same. Under the circumstances the present suit is maintainable in the present form.

8. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.



9. *Per contra*, Id. counsel for the respondent/defendant vehemently opposes submissions advanced on behalf of the appellants and contends that defendant in his written statement has categorically pleaded as follows: -

“That on 01.12.2012 it was public holiday, whereas on 02.12.2012 was Sunday, hence on 03.12.2012 with prior intimation to the plaintiffs the defendant reached in the office of Sub Registrar, Ballabgarh for the purpose of execution of sale deed in favour of the plaintiffs in respect of the suit properties, as the defendant was ready to perform his part of agreement, but on that date the plaintiffs did not turn up whereas the defendant waited for the plaintiffs till evening hours as such the plaintiffs failed to perform their part of agreement. It came to notice of defendant that the plaintiffs were not having sufficient funds on that day and were not in position to get the sale deed executed in their favour. The defendant marked his presence before the Sub Registrar, Ballabgarh. Even thereafter also the defendant through his counsel send a legal notice dated 10.12.2012 to the plaintiffs vide which the plaintiffs were asked to perform their part of agreement as the defendant is ready to perform his part of agreement and thus the plaintiffs were asked to come present in the office of Sub Registrar, Ballabgarh with in a period of seven days from the date of receipt of that legal notice, and to make the payment of balance sale consideration to the plaintiff and to get execute and register the sale deed in their favour or in favour of their nominee, failing which the earnest money shall stand forfeit and the plaintiffs shall not have any right to claim for the same as per the terms and conditions mentioned in the agreement to sale dated 03.09.2012.”



10. It is submitted that no replication was filed to the above said averments made by the respondent in his written statement. It is contended that therefore, in actual fact, it was the plaintiffs who were not ready and willing to get the Sale Deed executed. A positive finding to this effect has been given by both the District Courts. Further, in terms of the Agreement in question as plaintiffs had failed to demonstrate their readiness and willingness to perform the contract, the earnest money stood forfeited. It is contended that therefore, the impugned judgments and decrees suffer from no error, and the present Appeal deserves to be dismissed.

11. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the plaintiffs/appellants.

12. It has been argued on behalf of the appellants that as, at the time of execution of Agreement to Sell dated 3.9.2012 Ex.P-1, defendant was not the owner of the suit property; and therefore, he was not competent to execute the contract, appellants are entitled to refund of double the amount of earnest money. However, a perusal of the Agreement to Sell dated 03.09.2012 Ex.P1, shows that it is categorically mentioned therein that defendant had entered into said Agreement to sell the suit properties to the appellants, on the basis of another Agreement to Sell. In Ex.P1, it is unambiguously mentioned that defendant is entering into the said Agreement dated 03.09.2012 with the plaintiffs on the basis of another Agreement to Sell executed between the defendant with the original



owners of the properties, namely, Sanjay Kumar and Ajay Kumar. Clearly, therefore, at the time of execution of the Agreement in question, the appellants were well aware of the fact that defendant was not owner of the suit property. The plaintiffs are thus, estopped from raising this plea.

13. The record for the reveals that the Sale Deed No. 10834 dated 04.01.2013 Mark '1'; and Sale Deed No. 8532 dated 18.11.2013 Mark '2' were executed by the original owners Sanjay Kumar and Ajay Kumar in favour of wife of the defendant. From this fact also, it is proved that defendant was in previous Agreement with the original owners in respect of the suit properties. From the above facts, it is established that plaintiffs were very well aware that at the time of execution of Agreement dated 3.9.2012, defendant was not the owner of the suit property. However, it would appear that plaintiffs had taken this misleading stance only to avoid specific performance of the Agreement.

14. This is fortified from the fact that admittedly, no legal notice was issued by the plaintiffs to the defendant calling upon him to execute the Sale Deed. Rather, it was the defendant who had issued legal notice dated 10.12.2012 Ex.D1 to the plaintiffs to execute the Sale Deed within 7 days of the receipt of the same. It is not disputed that the said legal notice was served upon the plaintiffs. It is not even disputed that plaintiffs filed no reply to the said legal notice. In fact, plaintiffs have not even challenged the legal notice, Ex.D-1. This has been admitted by the plaintiff in his cross-examination as PW1. In this situation, it will not be far fetched to state that



as plaintiffs have not challenged the legal notice, their very suit is not maintainable.

15. Further, both the District Courts have also given concurrent findings of fact that plaintiffs were not ready and willing to perform the contract as they failed to prove that they possessed sufficient financial capacity to pay balance sale consideration. Rather, plaintiff in his cross-examination as PW1 has conceded that he did not possess the balance sale consideration. It is also recorded in the impugned judgments that on an offer made by the defendant to get the Sale Deed executed, plaintiff had outrightly stated that he was not willing to get the same executed. In this situation, plaintiffs cannot be held entitled to refund of earnest money, let alone refund of double the earnest money. It is also to be noted that defendant had clarified in the legal notice dated 10.12.2012 Ex.D1 that in case of failure of execution of the Agreement within 7 days, earnest money shall stand forfeited. Even as per clause 4 of the Agreement to Sell Ex.P1, it was stipulated that earnest money will be forfeited upon default or failure of purchaser. Clearly, therefore, in the face of outright refusal of the plaintiffs to execute the sale deed, earnest money was rightly forfeited and suit for recovery was not maintainable.

16. Plaintiffs have also failed to prove the alleged Panchayati Compromise dated 24.12.2013 alleged to have been affected between the parties. Thus, in face of such explicit stipulation in the contract and findings to the effect that plaintiffs had refused to execute the Sale Deed, earnest money was liable to be forfeited.



17. Relevant findings of learned Additional District Judge, Faridabad are contained in para 11 of the judgment dated 15.10.2018, as under: -

*“11...Further, the fact that appellants/plaintiffs previously filed suit for declaration and mandatory injunction without praying for specific performance and thereafter, he filed the present suit for recovery of the earnest money again without praying for specific performance clearly shows that plaintiffs are more interested for refund of double of the earnest money, instead of requesting for specific performance in their favour. Further, plaintiff Om Parkash Arora in his cross-examination as PWI admitted the fact that on 1.12.2012, in his PNB account, he was having balance of Rs.5165/-; Rs.6075/- in HDFC account; and Rs.3646/- in Indian Overseas Bank account. Similarly, plaintiff no.2 Rakesh Kumar failed to show any sufficient amount in his account on 1.12.2012. This fact also shows that plaintiffs were not having any sufficient amounts in their bank accounts or cash in hand to tender the balance sale consideration of Rs.18,75,000/- to vendor/defendant Pritam Dass. PWI Om Parkash also admitted the fact that as per his ITR, he was having cash of Rs.64472/- on 31.3.2012 and sum of Rs.70,997/- on 31.3.2013. Plaintiffs also failed to prove the fact that they got prepared any demand draft for the balance sale consideration to tender the same to defendant on 1.12.2012. In view of the facts emerging in the cross-examination of the plaintiffs, I am of the considered view that learned Civil Judge rightly dismissed the suit for recovery filed by plaintiffs Om Parkash & Rakesh Kumar after relying upon the judgment of Hon'ble Supreme Court of India in case **Mrs. Sardamani Kadappan v. Rajalakshmi & oths (supra)** and **Bal Kishan and another v. Bhagwan Dass and Ors (supra)**. Moreover,*

respondent/defendant is still ready to sell the said two houses through his wife Mohini, subject to tendering of balance sale consideration alongwith interest, but appellants/plaintiffs declined this offer. The plea taken by the plaintiffs that the defendant is not the owner of the said two properties is not tenable, as defendant was always ready to facilitate the execution of sale deed in favour of plaintiffs through Sonia, GPA holder of the original allottees Ajay and Sanjay.”

18. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings.
19. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts below. The present Regular Second Appeal is hereby **dismissed**.
20. Pending applications, if any, stand disposed of.

06.05.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No