

2026:PHHC:048649



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

RSA-2069-1994

Ramditta Mal (now deceased) through his LR

...Appellant

VERSUS

Sadhu Ram and another

...Respondents

Reserved on: 09.02.2026
Pronounced on: 27.03.2026
Uploaded on: 27.03.2026

<i>Whether only the operative part of the judgment is pronounced?</i>	<i>No</i>
<i>Whether full judgment is pronounced?</i>	<i>Yes</i>

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anupam Sharma, Advocate,
for the appellant.

Respondents being proceeded against *ex parte* vide order dated 16.09.2025.

HARPREET SINGH BRAR, J.

1. The present regular second appeal has been preferred by the appellant-plaintiff, now represented by his legal representative, against the judgment and decree dated 22.02.1994 passed by the learned Additional District Judge, Gurdaspur, whereby the appeal filed by the appellant-



plaintiff against the judgment and decree dated 13.12.1990 passed by the learned Senior Sub Judge, Gurdaspur, was dismissed.

FACTUAL BACKGROUND

2. Briefly, the facts, as pleaded, are that the appellant-plaintiff purchased a total of 45 kanals 14 marlas of land from respondent No.1-defendant No.1, Sadhu Ram, through five registered sale deeds executed between the years 1979 and 1981 (Ex. P-1 to P-5). However, subsequent to the sale, a family partition took place between the respondents-defendants. Accordingly, the land measuring 12 kanals 18 marlas, though purchased by the appellant-plaintiff, was allotted to the share of respondent No.2-defendant No.2, Karam Chand, the brother of respondent No.1-defendant No.1. As such, the appellant-plaintiff was delivered possession of only 32 kanals 16 marlas of the purchased land by the respondent No.1-defendant, falling short of 12 kanals 18 marlas.

3. The appellant-plaintiff relied on a covenant in the aforementioned sale deeds which stipulated that if he were deprived of any part of the purchased land due to a defect in title, he would be entitled to alternative land from the vendor i.e. respondent No.1-defendant No.1. In pursuance thereof, the appellant-plaintiff filed a suit before the learned Civil Court seeking possession of the parcel of land. Relying upon the pleadings of the parties, learned Civil Court framed the following issues:

1. *Whether the plaintiff is the owner of the land in dispute?*
OPP
2. *Whether the plaintiff purchased the suit land? OPP*



3. *Whether the sale deed is illegal and the result of fraud and without consideration? OPP*
4. *Whether the suit has been properly valued for the purpose of court fee and jurisdiction? OPP*
5. *Relief.*

4. Upon assessing all the material available on record, the learned Civil Court dismissed the said suit for possession vide judgment dated 16.11.1988. Aggrieved by the same, the appellant-plaintiff preferred an appeal before the learned lower Appellate Court which remanded the case to the learned Civil Court for fresh decision after framing specific issues. Accordingly, the following issues were framed by the learned Civil Court post-remand:

1. *Whether Sadhu sold 45 kanals 14 marlas of land in favour of the plaintiff vide sale deeds mentioned in the plaint? OPP*
2. *Whether land measuring 12 kanals 18 marlas mentioned in 2nd part of the head note of the plaint fell to the share of Karam Chand in partition proceedings? OPP*
3. *Whether the plaintiff is entitled to claim 12 kanals 18 marlas as mentioned in first part of the head note of the plaint? OPP*
4. *Whether the suit is properly valued for the purposes of court fee and jurisdiction? OPP*
5. *Relief.*

5. Thereafter, upon reappraisal of the evidence, the learned Civil Court decided Issue No.1 in favour of the appellant-plaintiff, holding that respondent-Sadhu Ram had indeed sold 45 kanals 14 marlas of land to him. However, Issue No.2 was decided against the plaintiff. With respect to Issue No.3, it was held that the plaintiff was entitled to claim alternative land, but Issue No.4 was decided against the plaintiff noting that the suit has not been properly valued and that the plaintiff ought to have filed a suit for specific



performance and paid the relevant court fee for the same. Holding the suit to be not maintainable, the same was dismissed vide impugned judgment dated 13.12.1990.

6. Aggrieved by the impugned judgment dated 13.12.1990 passed by the learned Civil Court, the plaintiff preferred an appeal before the learned Additional District Judge, Gurdaspur. While affirming the finding that the plaintiff was deprived of the land he purchased from defendant-Sadhu Ram due to the partition, learned lower Appellate Court delved into the question of limitation, a plea which was not specifically raised in the written statement. The learned lower Appellate Court noted that the plaintiff has filed a suit seeking alternative land based on the covenant in the sale deed. As such, he is essentially seeking specific performance of a contract. Further, it was opined that the plaintiff was deprived of the land on 22.11.1981 i.e. the date of the partition order (Ex.P-8) while the suit was filed, after efflux of 04 years, on 23.01.1985. Since Article 113 of the Limitation Act, 1963 prescribes a three-year period for pursuing the same, the learned lower Appellate Court, while relying on the judgment in ***Rattan Dai Vs. Surain Singh, AIR 1973 Punjab & Haryana 285***, affirmed the dismissal of the suit, albeit on the grounds of limitation.

CONTENTIONS

7. Learned counsel appearing on behalf of the appellant-plaintiff *inter alia* submitted that both the learned Courts below have held that the land in question was indeed purchased by the appellant-plaintiff from respondent No.1-Sadhu Ram, who had also received sale consideration for



the same. Thus, both the learned Courts below have fallen into grave error by dismissing the claim of the appellant-plaintiff as respondent No.1-Sadhu Ram cannot deny possession to the appellant-plaintiff once he has received the sale consideration. Learned counsel further argued that the plea of limitation was neither raised by the respondents-defendants in their written statement nor was any issue framed by the learned Civil Court on this point. Therefore, learned lower Appellate Court has erred in delving into the matter of limitation and consequently, dismissing the suit on a new ground that neither form a part of the pleadings nor the issues framed by the learned Civil Court. Further still, the suit filed by the appellant-plaintiff was for possession of immovable property, and which is governed by Article 65 of the Limitation Act, 1963, which allows a period of 12 years to agitate such a claim before the relevant court. As such, the dismissal of the claim of the petitioner by invoking Article 113 of the Limitation Act, 1963 is patently erroneous and has resulted in grave miscarriage of justice.

8. Vide order dated 16.09.2025 passed by a Coordinate Bench, both the respondents were proceeded against *ex parte*.

OBSERVATION & ANALYSIS

9. Having heard the learned counsel for the appellant-plaintiff and after perusing the record with his able assistance, it transpires that the learned lower Appellate Court has concluded that the suit filed by the appellant-plaintiff is barred by limitation after relying upon *Rattan Dai (supra)* wherein the limitation of suit for specific performance was determined in terms of Article 113 of the Limitation Act, 1963. The learned



trial Court in para 10 of the impugned judgment dated 13.12.1990 while returning the finding on Issue No.4, had concluded that the appellant-plaintiff should have filed a suit for specific performance. As such, a concurrent finding has been rendered by both the learned Courts below by concluding that the appellant-plaintiff had not filed a suit for specific performance and the suit for possession filed by him is not maintainable.

10. Further, the appellant-plaintiff has filed the civil suit on the basis of five sale deeds dated 01.01.1979, 11.03.1980, 03.10.1980 and 20.01.1981 and 16.11.1981, respectively for a total of 45 kanals 14 marlas of land. Respondent No.1-defendant No.1 had sold the land bearing rectangle no.32 killa nos.14 (7-12), 15(8-0), 13/2, 6/2, 6/3 and rectangle no.33 killa nos.10, 11/1, 1 to the appellant-plaintiff. However, the appellant-plaintiff was delivered possession of 32 kanals 16 marlas only and possession of remaining 12 kanals 18 marlas was not delivered. Thereafter, the appellant-plaintiff has sought the possession of the 12 kanals 18 marlas of land from respondent No.1-defendant No.1 out of his share of the allotted land in partition from rectangle no.32 killa no.5/3/1 (2-8), 5/3/2 (1-12), 5/2(0-8), 5/1(3-12), rectangle no.22 killa nos. 16/1(1-12) and rectangle no.21 killa no.20(3-6). Further, the learned trial Court has categorically held that the respondent No.1-defendant had no defective title of the land sold by him to the appellant-plaintiff. As such, the entire controversy hinges upon the fundamental issue whether the appellant-plaintiff has wrongly filed a suit for possession instead of a suit for specific performance.



11. Indubitably, the title of the suit land was not in dispute. On the basis of the sale deeds (supra), the title of the 45 kanal 14 marlas was validly passed on to the appellant-plaintiff. As such, he has rightly filed a suit for possession on the basis of this undisputed and valid title. It is settled legal position that once a sale deed is registered, the agreement to sell merges into the sale deed and the contract between the parties stands fully performed. Therefore, a suit for specific performance of a concluded contract is not maintainable. The vendee can directly seek possession by filing a suit for possession on the basis of the title under the sale deed as after the execution of the sale deed, the remedy shifts to possession based on title and not specific performance. The appellant-plaintiff became absolute owner of the property after the registration of the sale deeds and any right which flows from the agreement to sell cannot be enforced by filing a suit for specific performance. Once the possession of the sold property, after receiving the sale consideration, is not delivered, the appellant-plaintiff, being its lawful owner by virtue of the registered sale deeds (Ex. P-1 to P-5), is entitled to seek possession on the basis of title. The limitation to file a suit for possession of an immoveable property based on title is 12 years under Article 65 of the Limitation Act, 1963.

12. Further, the remedy of specific performance is fundamentally predicated upon the existence of a valid and subsisting contract. A court of law cannot enforce an agreement that has ceased to exist in the eyes of law. The very foundation of a suit for specific performance is that the contract must be alive and enforceable at the time the litigation commences and must



continue to subsist throughout the pendency of the proceedings. If the underlying contract has been extinguished upon the registration of a sale deed, there remains no enforceable right upon which the courts can act.

13. Reliance in this regard can be placed on the judgment rendered by a two-Judge Bench of the Hon'ble Supreme Court in ***Sangita Sinha Vs. Bhawana Bhardwaj, 2025 INSC 450***, wherein, speaking through Justice Manmohan, the following observations was made:

“24. This Court further finds that the seller had admittedly issued a letter dated 7th February 2008 cancelling the Agreement to Sell dated 25th January 2008, prior to the filing of the subject suit on 5th May 2008. Even though the demand drafts enclosed with the letter dated 07th February, 2008 were subsequently encashed in July, 2008, yet this Court is of the view that it was incumbent upon the Respondent No.1-buyer to seek a declaratory relief that the said cancellation is bad in law and not binding on parties for the reason that existence of a valid agreement is sine qua non for the grant of relief of specific performance.”

14. Similarly, a two-Judge Bench of the Hon'ble Supreme Court in ***I.S. Sikandar (D) By Lrs. Vs. K. Subramani 2013 INSC 577***, while speaking through Justice V. Gopala Gowda, opined as follows:

“17. ...As could be seen from the prayer sought for in the original suit, the plaintiff has not sought for declaratory relief to declare the termination of Agreement of Sale as bad in law. In the absence of such prayer by the plaintiff the original suit filed by him before the trial court for grant of decree for specific performance in respect of the suit schedule property on the basis of Agreement of Sale and consequential relief of decree for permanent injunction is not maintainable in law. Therefore, we have to hold that the relief sought for by the plaintiff for grant of decree for specific performance of execution of sale deed in respect of the suit schedule property in his favour on the basis of non existing Agreement of Sale is wholly unsustainable in law. Accordingly, the point No. 1 is answered in favour of the defendant No. 5.”



15. Therefore, this Court is of the considered opinion that both the learned Courts below have committed a fundamental error by failing to appreciate the settled legal position governing the maintainability of a suit for possession where the title is undisputed. There is no justification to the finding rendered by the learned lower Appellate Court that the appellant-plaintiff ought to have filed a suit for specific performance instead of a suit for possession or the dismissal on the ground of limitation.

16. A profitable reference in this regard can also be made to the judgment rendered by a two-Judge bench of the Hon'ble Supreme Court in *Anathula Sudhakar Vs. P. Buchi Reddy (Dead) by LRs, 2008 INSC 395*, wherein it has been held that where the title is not in dispute but the plaintiff is not in possession, the appropriate remedy would be to file a suit for possession. Speaking through Justice R.V. Raveendran, the following was observed:

“(11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.”



CONCLUSION

17. In light of the aforesaid discussion, the following conclusions emerge:-

- a. *Where the title is undisputed but the plaintiff is not in possession, the appropriate remedy would be to file a suit for possession, governed by Article 65 of the Limitation Act, 1963.*
- b. *Once a sale deed is executed and registered, the contract stands successfully performed and concluded. A suit for specific performance would not be maintainable at this stage.*

18. As held by a Constitution Bench of the Hon'ble Supreme Court in ***Pankajakshi Vs. Chandrika (2016) 6 SCC 157***, there is no requirement to frame substantial question(s) of law.

19. In view of the above, the present Regular Second Appeal is allowed. The impugned judgment and decree dated 13.12.1990 passed by the learned Senior Sub Judge, Gurdaspur as well as judgment and decree dated 22.02.1994 passed by the learned Additional District Judge, Gurdaspur are hereby set aside.

20. The suit filed by the appellant-plaintiff for possession of 12 kanals 18 marlas, as detailed in the impugned judgment dated 13.12.1990 passed by the learned Senior Sub Judge, Gurdaspur, is decreed and the Registry is directed to prepare the decree sheet accordingly. The record of the learned lower Court be returned after due compliance.

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21. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

27.03.2026
Puneet Chawla

Whether speaking/reasoned. : Yes/No
Whether Reportable : Yes/No