



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

105

**RSA-1456-1995 (O&M)
Date of decision:22.01.2026**

Dalip Singh

...Appellant

Versus

Balbir Singh (since deceased) through legal representatives

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Arjun Dhaliwal, Advocate
for appellant.

PARMOD GOYAL, J. (ORAL)

Present appeal has been preferred by appellant-plaintiff being aggrieved by impugned judgment and decree dated 04.12.1991 passed by learned Sub Judge First Class, Firozepur and judgment and decree dated 03.01.1995 passed by learned Additional District Judge, Firozepur vide which suit for specific performance preferred by appellant-plaintiff as well as first appeal were dismissed.

2. Vide suit for specific performance, plaintiff had sought specific performance of agreement to sell dated 27.06.1988 regarding land measuring 8 kanals fully described in the plaint. It was the case of appellant-plaintiff that the total consideration was agreed upon at the rate of Rs.16,000/- per acre against that Rs.5000/- was paid as advance to the respondent-defendant at the time of execution of agreement to sell. The respondent-defendant had agreed to execute sale deed within eight months. On last date for execution of sale deed, appellant-plaintiff had duly requested respondent-defendant to remain present before the Office of Sub-Registrar, Dharmokot but respondent-defendant gave evasive reply and had failed to come present to



execute sale deed. Appellant-plaintiff had duly moved an application to mark his presence which was fixed for 28.02.1989. Appellant-Plaintiff again went to office of Sub-Registrar but none came present for respondent-defendant and accordingly his presence was duly marked. Appellant-plaintiff had served a legal notice dated 12.04.1990 upon respondent-defendant, however, no reply was given. Accordingly, appellant-plaintiff had sought specific performance of agreement dated 27.06.1988 and prayed that in alternative he be awarded Rs.16,000/- as damages and compensation.

3. On notice, suit was contested by respondent-defendant by filing written statement while taking number of preliminary objections. It was asserted that suit for specific performance is not maintainable. Respondent-defendant had denied the execution of agreement to sell and its contents. It was pleaded that appellant-plaintiff had taken benefit of his illiteracy and accordingly when he had taken loan of Rs.5000/- from appellant-plaintiff, who is a money-lender at that time in the garb of creating security for loan, appellant-plaintiff prepared agreement to sell by misrepresenting the document as a pronote for repayment of Rs.5000/- with interest at the rate 20% per annum. It is asserted that appellant-plaintiff has committed a fraud upon respondent-defendant. It was further claimed that suit property was worth Rs.60,000/- per acre, in 1988, therefore, could not have been sold for Rs.16,000/- and accordingly dismissal of suit was prayed for.

4. On the basis of pleadings of parties, learned Court of first instance framed the following issues:

- i) Whether the defendant executed agreement to sell dated 27.06.1988 in favour of plaintiff in respect of the suit land?OPP
- ii) Whether the plaintiff paid Rs.5000/- as earnest money at the time of executions of the agreement dated 27.06.1988 to the defendant?OPP
- iii) Whether the plaintiff is entitled to specific performance of the agreement to sell?OPP
- iv) Whether the plaintiff is entitled to alternative relief for the recovery of Rs.16,000/- as damages and compensation?OPP
- v) Whether the plaintiff has always been ready and willing to perform his part of the contract?OPP
- vi) Whether the suit is not maintainable the plaintiff being big land lord?OPD
- vii) Whether the suit for mere specific performance of the agreement is not maintainable?OPD
- viii) Whether the agreement in question is the result of fraud as alleged?OPD
- ix) Whether the suit land is coparcenary property? If so, its effect? OPD
- x) Relief.

Onus to prove due execution of agreement was upon appellant-plaintiff.

5. It is the case of appellant-plaintiff that as far as thumb impressions of respondent-defendant are concerned on agreement to sell, there is no dispute as even respondent-defendant had admitted to have gone to Tehsildar and had executed the said document and therefore, the learned



Courts below have erred in dismissing the suit preferred by appellant-plaintiff for specific performance.

6. On perusal of both the judgments and decrees, as well as pleadings, it is clearly made out that from appreciation of evidence led by both the parties i.e. appellant-plaintiff as well as respondent-defendant, especially Ex.DW1/A and Ex.DW1/B, the Courts below have rightly concluded that agreement to sell was result of misrepresentation as it was a transaction of loan as was pleaded by defendant-respondent. Perusal of evidence goes to show that respondent-defendant duly placed reliance on Ex.D2, suit which was filed by Surjit Singh, brother of appellant-plaintiff for recovery of Rs.6,100/-, which goes to show that respondent-defendant had borrowed Rs.4,000/- from Surjit Singh and executed a pronote and receipt at Moga.

7. I am also in agreement with the conclusion drawn by both the courts below that once respondent-defendant was selling his property, then on the same day, there was no reason for him to borrow loan amount, equivalent to earnest money, from the brother of appellant-plaintiff. Respondent-defendant could have very well demanded higher earnest money or immediately had executed sale deed if he was in need of money as being argued by learned counsel for appellant-plaintiff.

8. There is no straitjacket formula to appreciate evidence led by the parties. Appreciation of evidence is based upon facts and circumstances of each case.

9. In present case, it is highly improbable that respondent-defendant would have agreed to sell his property and receive just Rs.5000/- as earnest money and by different transaction on same day, he would go for loan from the brother of appellant-plaintiff. In fact, evidence led by parties points out that agreement to sell was got executed from respondent-defendant by way of misrepresentation by representing it as pronote taking benefit of illiteracy of respondent-defendant.

10. In view of above discussion, the appreciation of evidence by learned courts below cannot be faulted with. The argument that appellant-plaintiff is entitled to alternatively relief of damages to the extent of Rs.16,000/- is also liable to be rejected for a simple reason that once appellant-plaintiff has failed to prove agreement to sell to be a genuine document, he is not entitled to any damages for non-execution of sale deed. No substantial question of law arises in present appeal.

11. Appeal is dismissed being without any merit.

12. Pending application(s), if any, stand disposed of.

(PARMOD GOYAL)
JUDGE

22.01.2026
Sunil Chander

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