



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

104

**RSA-361-1995 (O&M)
Date of decision : 29.01.2026**

Deen Mohammad and another**..... Appellants**

versus

Kallu and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Amit Jain, Advocate
for the appellants.

None for respondent No.1(i).

Mr. Tanmoy Gupta, Advocate
for LR of respondent No.2(i)&(ii).

PANKAJ JAIN, J. (Oral)

1. Plaintiff is in appeal, aggrieved of judgement and decree passed by the Lower Appellate Court whereby judgement and decree passed by the Court of First Instance has been reversed and the suit filed by the plaintiff has been ordered to be dismissed.

2. Plaintiff filed suit, seeking decree of specific performance of agreement to sell dated 29.06.1987. As per plaintiff, defendant who was owner in possession of suit land (ad-measuring 12 Kanals as detailed in the plaint) executed written agreement to sell in his favour agreeing to sell the suit land for total sale consideration of ₹40,000. Earnest money of ₹20,000 was paid. Parties agreed to get the sale deed executed on or before 15.06.1988. The land was lying mortgaged with Land Development Bank Firozpur, Jhirka. Defendant agreed to get the



land redeemed on or before 15.06.1988. As per plaintiff, defendant delivered possession of land to him on the date of execution of agreement to sell. Plaintiff claims to have appeared before the Sub-Registrar on the appointed date of 15.06.1988. As per him, due to election duty, officials were not present in the office on the said date. Plaintiff thereafter appeared before the Sub-Registrar on 18.06.1988, along with balance sale consideration. Defendant failed to appear. Plaintiff got his presence marked by way of affidavit. Plaintiff instituted the present suit on 20.07.1989, accusing defendant no. 1 of having sold land in dispute in favour of defendant No.2 by way of registered sale dated 17.06.1989 in violation of the terms of agreement to sell executed in his favour. As per plaintiff, he always remained ready and willing to perform his part of contract. Defendants having acted in violation of the terms of the contract, plaintiff claims decree of specific performance in his favour.

3. Defendants filed joint written statement. Defendant No.1 denied execution of agreement to sell in favour of plaintiff. He denied of having received earnest money of ₹20,000 and denied delivery of possession of the suit property to the plaintiff. Defendant No.2 claimed to be a bona fide purchaser of the land.

4. Suit filed by the plaintiff was put to trial by the Court of First Instance, on following issues:-

“1. Whether the defendant No.1 executed an agreement dated 29-6-87 for the sale of the suit land in favour of the plaintiffs? OPP

2. Whether the plaintiffs have always been ready and willing to perform their part of the contract? OPP.

3. If issue No.1 and 2 are proved in the affirmative,



whether the plaintiffs are entitled to specific performance of the contract. Is so, on what terms? OPP

4. *Whether defendant No.2 is bonafide purchaser of the suit land for consideration and without notice as alleged. If so, to what effect? OPD-*

5. *Whether suit for specific performance is not maintainable without seeking the relief of possession as alleged in para No.3 of the preliminary objections of written statement? OPD*

6. *Relief.”*

5. Plaintiff in order to prove his case, examined PW1 Motilal Gupta the scribe of agreement to sell, Somnath handwriting expert as PW3 and appeared himself as PW4.

6. Defendants in support of their case, examined Sammi Khan DW1, Chaman Parkash DW2. Both of them are attesting witnesses of agreement to sell propounded by the plaintiff. Sulaiman as DW3 and Deen Mohd son of defendant no.2 the subsequent purchaser as DW4.

7. Returning findings and issue No. 1 to 3, the Court of First Instance found that the plaintiff successfully approved execution of agreement to sell dated 29.06.1987 Ex P1. Plaintiff proved document Ex.PW4/1 which shows that he appeared before the office of Sub-Registrar Ferozepur Jhirka on 15.06.1988. Since nobody was present in the office of Sub-Registrar, due to election duty, he appeared before Sub-Registrar on 18.06.1988. The same is evident from the endorsement made on application Ex.PW4/3. The Trial Court accordingly held that the plaintiff successfully proved execution of agreement to sell and his readiness and willingness. Deciding issue No. 4, the Court held that neither of the defendants entered witness box.

Enmity between the plaintiff and defendant No.2 stands proved by



attesting witness DW3. Revenue record up to 26.10.1991 does not indicate possession of defendant No.2 or his sons. Thus, defendant No.2 two failed to prove being a bona fide purchaser of the Suit land. Court of First Instance decreed the suit filed by the plaintiff.

8. Dissatisfied defendants preferred appeal. Lower Appellate Court reversed the findings recorded by the Court of First Instance. The Lower Appellate Court found that the execution of agreement to sell in favour of plaintiff by defendant No.1 and payment of earnest money could not be proved. Lower Appellate Court relied upon testimonies of attesting witnesses DW1 and DW2. While reversing findings on issue No.4, Lower Appellate Court held that since execution of agreement to sell could not be proved, the question of handing over possession of the land by defendant No.1 to the plaintiff does not arise and thus, there was no reason for defendant no.2 to hold enquiry, Lower Appellate Court accepted the appeal and dismissed the suit filed by the plaintiff.

9. Counsel appearing for the appellant/plaintiff has assailed the findings recorded by the Lower Appellate Court. He submits that Lower Appellate Court grossly erred in reversing well reasoned findings recorded by the Court of First Instance. Plaintiff fully proved execution of agreement to sell in question. Defendant No.1 denied execution of agreement to sell by filing written statement but failed to lead any evidence. Attesting witnesses examined by the defendant to deny execution of agreement to sell also admitted their signatures on agreement to sell Ex.P1. The Trial Court after appreciating evidence on record, rightly concluded that plaintiff proved execution of agreement to sell, but Lower Appellate Court merely on the basis of surmises and



conjectures reversed the findings. He further contends that plaintiff proved his possession over the suit land. In these circumstances, defendant No.2 cannot be held to be a bona fide purchaser. He submits that that judgement passed by Trial Court be restored, setting aside judgement and decree passed by the Lower Appellate Court.

10. *Per contra* counsel for the respondents submit that Lower Appellate Court rightly appreciated the evidence on record to conclude that the plaintiff failed to prove execution of agreement to sell Ex.P1. Plaintiff was required to prove the same in accordance with provisions of Section 68 of the Evidence Act. He did not examine any attesting witness. Attesting witnesses were examined by defendant. None of them supported the case of the plaintiff. Lower Appellate Court rightly reversed the findings recorded by Trial Court on issue No.1 to 4.

11. I have heard counsel the parties and have carefully gone through records of the case.

12. The issues that arise for consideration of this Court are:

- a) Whether plaintiff proved execution of agreement to sell in question?
- b) Whether plaintiff is entitled for grant of decree of specific performance?

13. In order to prove agreement to sell Ex.P1 plaintiff examined scribe thereof Motilal Gupta, Advocate as PW1. Plaintiff examined handwriting and fingerprint expert Somnath as PW3. Though defendant no. 1 denied execution of the agreement to sell, but did not dare to enter witness box to deny his thumb impressions. Lower Appellate Court completely misread the testimony of DW1 and DW2, the two attesting witnesses examined by defendant. Both these



witnesses though have denied execution of agreement to sell, but admitted their signatures on document Ex.P1.

14. There is no denial that in terms of Section 68 of the Indian Evidence Act, plaintiff was required to examine at least one of the attesting witnesses to prove agreement to sell. However, at the same time as per the mandate of Section 71 of the Evidence Act, other evidence can be relied upon to prove a document when execution is denied by the attesting witness. Proof of a document is not hostage to testimony of attesting witnesses. Where attesting witnesses deny execution of a document, the court is within its right to evaluate other evidence on record to ascertain whether the execution of the document has been proved or not.

15. In the present case, defendant No.1 denied execution of agreement to sell and his thumb impressions on the document, but failed to enter the witness box to support plea raised in the written statement. Plaintiff in order to prove thumb impressions of the defendant No.1 on agreement to sell, examined handwriting expert. He testified that the agreement to sell Ex.P1 bears thumb impressions of defendant No.1. Testimony of DW1 and DW2 is totally unreliable. Both of them though denied execution of agreement to sell, but admitted their signatures on the document. Scribe of the document, namely Motilal Gupta appeared as PW1 and testified regarding scribing of agreement to sell on instructions of defendant No.1 and testified on oath. The defendant No.1 thumb marked agreement to sell in his presence.

16. In the considered opinion of this Court, in view of afore stated evidence on record, Trial Court rightly held that the execution of



agreement to sell stands proved. The findings recorded by Lower Appellate Court on issue No.1 to 3 are hereby reversed. Findings recorded by Court of First Instance on the said issues are restored.

17. In order to claim decree of specific performance, plaintiff is under statutory obligation to approve readiness and willingness in terms of Section 16 (c) of Specific Relief Act, 1963. As per the pleaded case of the plaintiff, the parties agreed to get the sale executed on or before 15.06.1988. As per him, he appeared before Registrar on 15.06.1988. Due to election duty, nobody was present in the office and hence the sale deed could not be executed. He further claims to have appeared before Registrar on 18.06.1988 and got his presence marked vide Ex.PW4/3.

18. Mr. Jain counsel for the plaintiff relies upon statement made in Ex.PW4/3 that plaintiff was in possession of balance sale consideration on said date and is entitled for decree of specific performance. Present suit was instituted by plaintiff on 20.07.1989. Plaintiff has no explanation for having kept mum for 13 months. Even on 18.06.1988, apart from bald assertion made in affidavit Ex.PW4/3, there is no evidence on record that plaintiff had financial capacity to pay balance sale consideration and registration expenses.

19. In view of the above, this Court finds that plaintiff miserably failed to prove his readiness and willingness in terms of Section 16(c) of 1963 Act and is not entitled for the main relief of specific performance. The present appeal is accordingly accepted in part. Plaintiff is held entitled for alternate relief of recovery of ₹20,000 paid by him, earnest money along with interest at the rate of 9% per



annum from the date of execution of agreement to sell till the date of actual realisation.

20. Disposed off, accordingly.

(PANKAJ JAIN)
JUDGE

29.01.2026
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes