



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

RSA-814-1995 (O&M)

Reserved on :-25.03.2026

Date of Pronouncement:-09.04.2026

Uploaded on:-10.04.2026

Raj Rani (Since Deceased) Through His LRs and Others

... Appellants

Versus

Hari Singh (Since Deceased) Through His LRs and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Kshitij Sharma, Senior Advocate with
Ms. Tamanna Banwala, Advocate
for appellants No.1 and 2.

Mr. Amit Jhanji, Senior Advocate with
Mr. Priyanka Kansal, Advocate
for appellant No.3.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Anmol Ratta S. Dhillon, Advocate and
Mr. Vishal Pundir, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal ("RSA" for short) has been preferred assailing the judgment and decree dated 14.03.1995 passed by the learned District Judge, Karnal, whereby the civil appeal instituted by the respondents–plaintiffs was allowed, while the appeal preferred by the appellant–defendant was dismissed. Consequently, the suit filed by the



respondents–plaintiffs for specific performance of the agreement to sell came to be decreed, albeit by modifying the judgment and decree dated 21.09.1990 passed by the learned trial Court, which had earlier confined the relief to the alternative claim of recovery of ₹1,70,000/-.

2. The brief factual matrix, as emanating from the pleadings, is that the plaintiffs asserted that on 11.02.1985, the appellant–defendant, Rajrani, entered into an agreement to sell the house in question, as fully detailed and described in the headnote of the plaint, for a total sale consideration of ₹3,40,000/-. It was further pleaded that a sum of ₹85,000/- was paid in cash as earnest money, and the sale deed was agreed to be executed and registered on or before 31.12.1985 upon payment of the balance sale consideration. Possession of the property was also agreed to be delivered on the said date.

2.1 The plaintiffs averred that they had always remained ready and willing, and continue to remain ready and willing, to perform their part of the contract. However, the defendant failed to execute the sale deed in terms of the agreement, thereby compelling the plaintiffs to institute the present suit seeking specific performance.

3. The defendant contested the suit by categorically denying the execution of any such agreement to sell and asserted that the alleged transaction was a sham and fictitious arrangement, never intended to be acted upon. It was contended that the defendant’s family had suffered substantial business losses and was under financial distress, with creditors exerting pressure for recovery and threatening liquidation of family assets.



3.1 It was further pleaded that, owing to the trust reposed in the plaintiffs, and upon their suggestion, a nominal and sham transaction was executed in their favour solely to ward off the creditors, without any intention of effecting an actual transfer of the property. The defendant denied having received any sum of ₹85,000/- as earnest money and further disputed the plaintiffs' assertion of readiness and willingness to perform their part of the contract.

4. Upon a comprehensive and meticulous scrutiny of the pleadings on record, coupled with a consideration of the rival contentions advanced by the parties, the learned trial Court deemed it appropriate to crystallize the matters in controversy and, for the purposes of a structured and legally coherent adjudication, proceeded to frame the following issues for determination:-

1. Whether the parties entered into an agreement to sell the suit property for an amount of ₹3,40,000/- on 11.12.1985?OPP.
2. Whether the defendant had received earnest money of ₹85000/- on 11.2.1985?OPP.
3. Whether the plaintiff was always and still willing to perform his part of the contract?OPP.
4. Whether the plaintiff has no *locus standi* to sue?OPD
5. Relief.

5. Upon the framing of issues, both parties were afforded full and adequate opportunity to lead evidence in support of their respective pleadings. Upon a comprehensive evaluation of the evidence adduced and after hearing learned counsel for the parties, the learned trial Court recorded a categorical finding that the appellant–defendant had, in fact,



executed the agreement to sell in favour of the respondents–plaintiffs after receiving earnest money of ₹85,000/-. It was further held that the respondents–plaintiffs had remained ready and willing, and continue to remain ready and willing, to perform their part of the contract.

5.1 Notwithstanding the aforesaid findings, the learned trial Court declined the relief of specific performance and instead decreed the suit for the alternative relief of recovery of ₹1,70,000/-, inter alia, on the ground that enforcement of specific performance would occasion undue hardship to the appellant–defendant and that monetary compensation would constitute an adequate and equitable relief in the facts and circumstances of the case.

5.2 Aggrieved by the judgment and decree so passed, both parties preferred appeals. The learned District Judge, Karnal, vide the impugned judgment and decree, dismissed the appeal preferred by the appellant–defendant while allowing the appeal filed by the respondents–plaintiffs, thereby granting the principal relief of specific performance of the contract.

5.3 Being dissatisfied with the said adjudication, the appellant–defendant has preferred the present Regular Second Appeal. The appeal was admitted for hearing vide order dated 07.04.1995. In terms of the said order, execution of the decree was stayed subject to the deposit of a sum of ₹1,70,000/- before the learned trial Court, which amount was duly deposited by the appellant–defendant. Subsequently, vide order dated 16.01.1998, the learned trial Court was directed to invest the said amount of ₹1,75,000/- in a fixed deposit with a nationalized bank. Notice was duly



served upon the respondents, who entered appearance through counsel, and the record of the Courts below was requisitioned.

6. I have heard learned counsel for the parties at considerable length and have bestowed anxious and thoughtful consideration upon their respective submissions. The pleadings of the parties, the evidence brought on record, and the concurrent as well as divergent findings returned by the Courts below have been meticulously examined to assess the legality, propriety, and sustainability of the impugned judgment and decree.

7. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016) 6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

8. Learned Senior Counsel appearing on behalf of the appellant has vehemently contended that both the Courts below have committed a manifest illegality in recording findings with regard to the execution of the agreement to sell and the readiness and willingness of the respondents—plaintiffs to perform their part of the contract. It is submitted that such findings are based merely on surmises and conjectures, without due



consideration of the credible evidence led by the appellant–defendant, which clearly demonstrated that the alleged agreement was never intended to be acted upon and was, in fact, executed only as a sham transaction to shield the property from the claims of creditors.

8.1 It has been further contended that the Courts below have failed to properly appreciate the evidence on record and have erroneously disregarded material evidence adduced by the appellant. Learned counsel submits that the respondents–plaintiffs have failed to establish their continuous readiness and willingness to perform their obligations under the contract, which is a sine qua non for grant of the relief of specific performance. It is argued that mere presence before the office of the Sub-Registrar does not, by itself, satisfy the legal requirement of readiness and willingness, which encompasses both the financial capacity as well as the genuine intention to perform the contract. In support of these submissions, reliance has been placed upon the judgments of the Hon’ble Supreme Court in *U.N. Krishnamurthy (Since Deceased) through LRs vs. A.M. Krishnamurthy, 2022 SCC OnLine SC 840; C.S. Venkatesh vs. A.S.C. Murthy, (2020) 3 SCC 280; Gurpreet Singh vs. Gurinder Singh and others, AIR 2017 SC 2610; and Vijay Kumar and others vs. Om Prakash, Law Finder ID # 1255016*.

8.2. Learned Senior Counsel has further argued that the alleged agreement is inherently inequitable, inasmuch as the consideration stipulated therein is grossly inadequate when compared with the prevailing market value of the property at the relevant time. It is submitted that the learned trial Court had rightly exercised its discretion in declining the



relief of specific performance and instead granting alternative relief, having regard to the principles governing equitable relief. It is contended that specific performance, being a discretionary remedy, ought not to be granted where enforcement of the contract would result in undue hardship to the defendant, which was not foreseeable at the time of execution of the agreement. In support of these propositions, reliance has been placed upon the judgments of the Hon'ble Supreme Court in ***Jayakantham and others vs. Abhay Kumar, 2017 INSC 161; A.C. Arulappan vs. Smt. Ahalya Naik, 2001(4) RCR (Civil) 109; and Basant Ram (Dead) through LRs vs. Sukhbir Singh and others, Law Finder ID #2796960.***

9. Per contra, learned counsel appearing on behalf of the respondents–plaintiffs has contended that there is no illegality or infirmity in the concurrent findings recorded by the Courts below, and that the same are based upon a proper appreciation of the pleadings and evidence on record. It is submitted that both the Courts have rightly concluded that the agreement to sell was duly executed between the parties and that the appellant–defendant had received earnest money of ₹85,000/-.

9.1 It is further contended that the respondents–plaintiffs have duly established their readiness and willingness to perform their part of the contract. In this regard, reliance has been placed upon the testimony of PW–Prem Chand, one of the plaintiffs, whose statement regarding readiness and willingness remained unchallenged in cross-examination, thereby constituting a deemed admission on the part of the appellant–defendant. It is further submitted that the respondents–plaintiffs have placed on record cogent evidence demonstrating their presence before the



office of the Sub-Registrar on the stipulated date as well as on subsequent dates, and have also proved their financial capacity by way of affidavits and supporting material before the attesting authority.

9.2 Learned counsel has also contended that there was no specific pleading by the appellant–defendant with regard to undue hardship, nor was any issue framed in that regard. In the absence of such foundational pleadings and issues, no finding to that effect could have been recorded by the learned trial Court, and the said error was rightly corrected by the learned First Appellate Court.

10. Insofar as the execution of the agreement to sell is concerned, the pleadings of the parties assume significance. A perusal of the written statement reveals that the appellant–defendant has not categorically denied the execution of the agreement to sell Ex.P1; rather, a specific plea has been taken that the agreement was not intended to be acted upon and was merely a sham transaction devised to frustrate the claims of creditors. The relevant extract from paragraph No.2 of the written statement reads as under:-

"The real facts are that the defendant's family suffered huge losses in business and the creditors were pressing hard for the money and threatening the defendant to get her family assets sold. The plaintiff in whom the defendant reposed confidence suggested that she should execute a sham transaction to sell and in this manner, the demand of the creditors will be frustrated. Consequently, she executed this sham transaction which was never intended to be completed. She did not receive any earnest money as alleged. Even the house in question was not less than



worth ₹4,25,000/-. Since, the agreement was a sham transaction, therefore the conditions mentioned therein were also fictitious."

10.1. In contradiction to the specific pleadings raised by the appellant–defendant, the evidence adduced during trial was clearly beyond the pleadings. The appellant–defendant, while stepping into the witness box as DW–1, deposed that Parshottam Das had initially asked them to alienate the disputed house to some other person; however, she was not willing to sell the said house, it being her only residential accommodation. It was further stated that Parshottam Das advised that the property be transferred in favour of the plaintiffs, who are the brothers-in-law of Parshottam Das, with a view to avoid sales tax recovery. According to her, on one occasion, Parshottam Das obtained her thumb impressions on blank papers under the pretext that the same would assist in avoiding sales tax recovery.

10.2. The appellant–defendant further examined her sister-in-law, namely Sheela Vanti (DW–3) and Shanti Devi (DW–4), who deposed that they were present at the time when Parshottam Das allegedly obtained the thumb impressions of the defendant on blank papers, representing that such execution was necessary for saving the defendant from sales tax recovery through execution of purported documents.

10.3. The learned trial Court as well as the First Appellate Court have, however, rightly disbelieved the testimonies of the appellant–defendant and her witnesses insofar as the manner of execution of the agreement to sell Ex.P1 is concerned, on the ground that the said testimonies are wholly inconsistent with the pleaded case of the appellant–



defendant in her written statement. In the written statement, the appellant–defendant had categorically pleaded that she had reposed trust in the plaintiffs and that, in order to avoid creditors, a sham transaction was executed.

10.4. It is thus evident that it is not the case of the appellant–defendant, as pleaded, that Parshottam Das had obtained her thumb impressions on blank papers and that the agreement to sell was subsequently fabricated thereupon. The admitted position remains that the document was executed; however, it was asserted to be not intended for enforcement and to be merely a sham transaction devised to avoid creditors.

10.5 In view of the aforesaid inconsistency, the evidence led by the appellant–defendant, being contrary to her own pleadings, was rightly discarded by the Courts below. The agreement to sell was duly proved through the testimony of the regular deed writer, who deposed regarding its execution, as well as the marginal witnesses, who confirmed that the agreement was scribed after receipt of earnest money of ₹85,000/- by the appellant–defendant.

10.6 With regard to the contention advanced on behalf of the appellant that the respondents–plaintiffs have failed to prove their readiness and willingness to perform their part of the contract, reliance was placed upon the judgment of the Hon’ble Supreme Court in ***C.S. Venkatesh vs. A.S.C. Murthy (supra)***, wherein in paragraph 16, the Hon’ble Apex Court has held as under:-



“16. The words "**ready and willing**" imply that the plaintiff was prepared to carry out those parts of contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjust whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit along with other attending circumstances. The amount which she has to pay the defendant must be of necessity to be proved to be available. Right from the date of execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The Court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.”

11. The appellant–defendant has further placed reliance upon the judgment of the Hon’ble Supreme Court in *U.N. Krishnamurthy vs. A.M. Krishnamurthy (supra)*, wherein in paragraph 34, the Hon’ble Apex Court has delineated the distinction between “**readiness**” and “**willingness**” and held as under:-

“34. There is a distinction between readiness and willingness to perform the contract and both ingredients are necessary for the relief of Specific Performance. In His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar (1996) 4 SCC 526 cited by Mr. Venugopal, this Court said that there was a difference between readiness and willingness to perform a contract. While readiness means the capacity of the Plaintiff to perform the contract which would include his financial position, willingness



relates to the conduct of the Plaintiff. The same view was taken by this Court in *Kalawati v. Rakesh Kumar* (2018) 3 SCC 658.”

12. In *Vijay Kumar and Others vs. Om Prakash (supra)*, on the basis of evidence, the Hon'ble Apex Court has held that ‘*no evidence has been adduced on behalf of the respondent-plaintiff as to how respondent-plaintiff was in a position to pay or make arrangements for payment of the balance sale consideration within time*’.

13. In the present case, however, there is overwhelming material on record to establish that the respondents–plaintiffs were continuously ready and willing to perform their part of the contract. It has come in evidence that they remained present in the office of the Sub-Registrar along with the balance sale consideration, stamp duty, and registration expenses. In this regard, an affidavit executed by Hari Singh was placed on record, though the same was exhibited only as Mark ‘A’ and not formally proved.

13.1 Subsequently, a notice dated 19.05.1986 was issued calling upon the appellant–defendant to appear before the Sub-Registrar on 27.05.1986 for execution of the sale deed. Pursuant thereto, the respondents–plaintiffs duly attended the office of the Sub-Registrar on the said date along with the requisite balance consideration and necessary expenses, and an affidavit evidencing the same was also executed and exhibited as Ex.P2.

13.2 It further stands proved that even before the Notary Public, the respondents–plaintiffs demonstrated possession of sufficient funds, as they were shown to be carrying 2,000 currency notes of ₹100/- denomination



and 1,100 currency notes of ₹50/- denomination, thereby substantiating their financial capacity.

13.3 Although the notice dated 27.05.1986 was not received by the appellant–defendant, as is evident from the subsequent notice dated 04.06.1986, the appellant–defendant was again called upon to appear before the Sub-Registrar on 17.06.1986 for execution of the sale deed. The respondents–plaintiffs accordingly remained present on the said date as well, and their presence is duly supported by documentary evidence on record.

13.4 Additionally, PW–Prem Chand, while deposing in the witness box, categorically stated that on 31.12.1985 the plaintiffs had reached the Tehsil premises with the balance sale consideration and registration expenses and had waited throughout the day for the appellant–defendant, who failed to appear. Significantly, this testimony remained unchallenged in cross-examination, and it is a settled principle of law that where material testimony is not subjected to cross-examination, the same is deemed to be admitted.

13.5 In cross-examination, the said witness further gave a detailed account of the arrangement of funds, stating that ₹2,00,000/- were arranged from a commission agent at Seema Mandi, Kaithal, ₹50,000/- from Tara Chand, and ₹40,000/- from their uncle Tegh Ram son of Ram Kishan.

13.6 In view of the aforesaid evidence, both documentary and oral, it stands conclusively established that the respondents–plaintiffs were not only ready in terms of financial capacity but were also consistently willing in their conduct to perform their contractual obligations. The findings



recorded by both the Courts below, being based on a proper appreciation of evidence, are thus well-reasoned and call for no interference by this Court.

14. The learned counsel for the appellant has further contended that the Courts below failed to appreciate that the agreement Ex.P1 was inequitable, inasmuch as the sale consideration was grossly inadequate and the appellant–defendant was under financial distress due to severe business losses. Reliance was placed upon the judgment of the Hon’ble Supreme Court in *Jayakantham and Others vs. Abhay Kumar (supra)*, wherein it was observed that in appropriate cases, equitable relief may be moulded.

14.1 However, it is pertinent to note that even in the said judgment, the Hon’ble Supreme Court has categorically held that mere inadequacy of consideration or the fact that the contract is onerous or improvident does not, by itself, constitute an unfair advantage or hardship within the meaning of Section 20 of the Specific Relief Act.

14.2 In the present case, even as per the own pleadings of the appellant–defendant, the value of the property was stated to be ₹4,25,000/-, whereas the agreed consideration under the contract was ₹3,40,000/-. Thus, even on the appellant’s own showing, the consideration cannot be said to be grossly inadequate so as to render the agreement inequitable or unconscionable.

15. The appellant–defendant has also contended that enforcement of the contract would result in undue hardship, as the property in question constitutes her only residential house, and she and her family would be rendered homeless due to alleged financial distress.



15.1 Per contra, learned counsel for the respondents–plaintiffs has submitted that no such plea of undue hardship was specifically raised in the written statement, nor was any issue framed in this regard. It is submitted that in the absence of foundational pleadings and evidence, no finding of undue hardship could be returned.

15.2 In support of this contention, reliance has been placed upon the judgment of the Hon’ble Supreme Court in ***Beemaneni Maha Lakshmi vs. Gangumalla Appa Rao (Since Dead) by LRs, 2019 INSC 656***, wherein it has been held, after relying upon ***A. Maria Angelena vs. A.G. Balkis Bee, AIR 2002 SC 2385***, that a plea of hardship raised for the first time without foundational pleadings or issues cannot be entertained.

16. In ***Prakash Chandra versus Narayan, 2012 (3) RCR (Civil) 335***, the Hon’ble Supreme Court, in paragraph 15, has held as under:-

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The High Court in the second appeal failed to notice that the respondent had not taken any defence of hardship and no such issue was framed and in absence of any such evidence on record, the first appellate court held that he would be landless should the decree for specific performance be granted.

17. In ***Kammana Sambamurthy vs. Kalipatnapu Atchutamma and Others, 2011 AIR (SC) 103***, the facts of the case demonstrate that the plea of hardship was predicated on the contention that enforcement of the contract would render the transaction more onerous and cause undue hardship to the defendant–vendor. In the said context, it was urged that the decree for specific performance would result in grave hardship to the



appellant–defendant. It was further contended that since the vendor and her husband had passed away and their ten daughters were residing in the property in question, such circumstances constituted hardship warranting denial of the relief of specific performance, even qua the vendor’s half share in the property. However, the Hon’ble Supreme Court held that such circumstances, by themselves, do not constitute hardship of such a nature as would justify refusal of the decree for specific performance.

17.1. Applying the aforesaid principles to the present case, the mere fact that the appellant–defendant may lose possession of her residential house cannot, in law, be construed as such undue hardship as would justify denial of specific performance, particularly when such consequence was clearly foreseeable at the time of execution of the contract. It is further evident that no specific pleading has been raised in the written statement to the effect that enforcement of the agreement would result in unforeseeable hardship within the meaning of Section 20 of the Specific Relief Act.

17.2. In the absence of any such foundational pleadings and supporting evidence, the grant of alternative relief of refund of earnest money along with compensation by the learned trial Court was not legally sustainable. In this regard, reliance is placed upon the judgment of the Hon’ble Supreme Court in ***Parshwanth Saha vs. Bandhana Modak (Das) and Another, 2024 INSC 1022***, wherein in paragraphs 34 to 36, it has been held as under:-

“34.The High Court seems to have overlooked the fact that the question of hardship in terms of Section 20(2)(b) of the Act, 1963 read with explanation (2) bears reference to hardship, which the defendant did not foresee at the time of entering into the contract. In other words,



the issue of hardship would come into play only if it is established by cogent evidence that Late Prabha Ranjan Das who executed the Agreement of Sale was unable to foresee the hardship at the time of entering into the contract.

35. The explanation elucidates the point of time at which the hardship has to be determined with reference to the circumstances existing at the time of the contract, except where the hardship has been caused from an act of the plaintiff subsequent to the contract.

36. There is nothing to indicate in the pleadings or evidence that there was a hardship of the kind which Late Prabha Ranjan Das did not foresee at the time he executed the Agreement of Sale or that the hardship which the defendants herein would face is the result of an act of the plaintiff based on his supervening acts.”

18. In the present case as well, there are neither pleadings nor any evidence to establish that the alleged hardship pleaded by the appellant–defendant was not foreseeable at the time of entering into the contract, nor is there any material to show that the same has arisen on account of any supervening act on the part of the respondents–plaintiffs.

19. In view of the settled legal position, and in the absence of any specific pleadings or evidence demonstrating unforeseeable hardship at the time of execution of the contract, the contention raised on behalf of the appellant–defendant cannot be accepted.

20. Accordingly, for the reasons recorded hereinabove, the findings of the Courts below on the issues of execution of agreement, readiness and willingness of the plaintiffs, and absence of undue hardship, are affirmed as being based on correct appreciation of law and evidence.



21. In view of the aforesaid findings, this Court finds no merit in the present appeal, which is accordingly **dismissed**.

21.2. The judgment and decree passed by the learned First Appellate Court is hereby affirmed. The respondents–plaintiffs are held entitled to specific performance of the contract upon payment of the balance sale consideration of ₹2,55,000/- along with interest at the rate of 9% per annum from the date of execution of the agreement to sell till the date of decree passed by this Court. The said direction is also intended to balance equities and compensate the appellant–defendant for the escalation in property prices from the date of execution of the agreement till the date of decree. The balance consideration along with interest shall be paid within a period of two months from the date of this decree, and the appellant–defendant shall execute the sale deed within one month thereafter, failing which the respondents–plaintiffs shall be entitled to seek execution of the sale deed through the process of Court. Defendant shall be entitled to withdraw FDR from the trial Court.

22. Consequently, upon final adjudication of the principal controversy, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, stand disposed of by necessary implication. In view of the conclusions recorded herein, no separate or further orders are required to be passed in respect of such applications, the same having rendered infructuous and academic.

(**VIRINDER AGGARWAL**)
JUDGE

09.04.2026
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No