

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

(202)

RSA-2976-1996 (O&M)

Reserved on: 20.01.2026

Date of Pronouncement: 23.01.2026

Uploaded on: 23.01.2026

Omkar (since deceased) through LRs and another.

.....Appellants

Versus

Dharam Chand

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by: Mr. R.A. Sheoran, Advocate
for the appellants.

Mr. Arvind Kumar Yadav, Advocate
for the respondent.

VIRINDER AGGARWAL, J.

1. The appellants/plaintiffs, aggrieved by the judgment and decree dated 18.07.1996 passed by the learned Additional District Judge, Rewari—which dismissed their appeal—as well as the judgment and decree dated 08.08.1992 of the learned Sub Judge 1st Class, Rewari, respectfully invoke the appellate jurisdiction of this Court through the present Regular Second Appeal (RSA). The appellants originally filed a suit for possession of agricultural land by way of specific performance of an agreement to sell dated 19.06.1986. In the alternative, they prayed for the recovery of ₹20,000/- in earnest money, plus liquidated damages amounting to ₹10,000/-.

2. The sequence of events antecedent to, and culminating in, the present appeal is succinctly set out as follows:

“The plaintiffs’ case is that the defendant, Dharam Chand, is the owner in possession of a half-share of agricultural land totaling 53 kanals and 19 marlas, as described in paragraph 10 of the

plaint. It is alleged that the defendant entered into an agreement to sell the suit land to the plaintiffs on 19.06.1986 for a total consideration of ₹30,000/-. An amount of ₹20,000/- was reportedly paid as earnest money at the time of execution, while the remaining balance of ₹10,000/- was to be paid upon the registration of the sale deed. The agreement stipulated that the defendant would register the land in favor of the plaintiffs on 10.06.1987 (one year after the agreement). Furthermore, it was agreed that should the defendant fail to execute the sale deed by the specified date, the plaintiffs would be entitled to recover the ₹20,000/- earnest money along with ₹10,000/- in liquidated damages or can get the sale registered through Court.”

3. The defendant appeared and contested the suit on the grounds that he is not the exclusive owner in possession of the said half-share. Instead, he contends that he is a co-parcener in the suit property alongside his three sons, who have held birthrights in the land. He specifically denied entering into any agreement with the plaintiffs on 19.06.1986 or receiving any earnest money. The defendant has consistently refuted the execution of the alleged agreement and the subsequent claim for damages. He further pleaded that he is an illiterate person and that Lal Singh (Plaintiff No. 4) had requested him to act as a witness. He alleges that his thumb impressions were obtained on documents under this pretext and were subsequently used to forge the agreement to sell. Maintaining that the document was executed through fraud and misrepresentation, the defendant prayed for the dismissal of the suit.

4. After a careful and exhaustive review of the pleadings, documents, and submissions of both parties, the Court framed issues for adjudication to enable a clear, accurate, and comprehensive determination of the respective claims and defences, which are as under:

- 1. Whether the defendant entered into an agreement to sell the land in dispute to the plaintiffs and received a sum of ₹20,000 on 19.6.86? OPP*
- 2. Whether the plaintiffs were always ready and willing to perform the part of their contract? OPP*
- 3. In case the contract is not capable being specifically performed to what relief the plaintiffs are entitled by way of damages ? OPP*
- 4. Further the land in dispute is joint Hindu co-parcenary property in the hands of dharm chand , if so its effect ? OPP*
- 5. Relief.*

5. Both parties were afforded a full and fair opportunity to adduce evidence in support of their respective claims. Upon conclusion of the trial and after hearing learned counsel for both sides, the learned Trial court proceeded to partly decree the suit with the following observations:

“On the basis of my discussion given on the above issues, the suit of the plaintiff is partly decreed to the effect that the plaintiffs are entitled to recover the earnest money of ₹20,000/- plus liquidated damages of ₹10,000/- from the defendant. However, the prayer of the plaintiff for possession of the suit land by way of specific performance of the agreement fails and to the extent, the suit is dismissed. Decree-sheet be drawn accordingly. File after compliance be consigned to the record room.”

6. Aggrieved by the judgment and decree, the appellants/plaintiffs filed an appeal before the learned Additional District Judge, Rewari, who dismissed the appeal, observing as follows:

“Under the given circumstances it would not be justified to upset the view of the learned trial judge in regards to the relief granted to the

plaintiffs/appellants. The appeal is consequently dismissed leaving the parties to bear their own costs. Decree-sheet be prepared accordingly and file be consigned to records.”

7. Disputing the determination of the learned First Appellate Court, the appellants/plaintiffs filed the present appeal. Upon its admission, notice was issued, following which the respondent, through their counsel, appeared and opposed the appeal. The records of the courts below are accessible on DMS for thorough examination and adjudication.

CONTENTIONS

8. Learned counsel appearing for the appellants/plaintiffs submitted that the learned Trial Court has rightly held issue no 1 in their favour and observed as under:-

“Thus, the plaintiff has duly proved that the defendant had executed an agreement Ex. P1 on 19-6-86 and had received earnest money of ₹20,000/-. Thus issue is therefore decided accordingly in favour of the plaintiff and against the defendant.” Further submits that learned trial court has rightly opined that plaintiffs were willing to perform their part of the agreement so issue no 2 as regards readiness and willingness was decided in their favour and against respondent.

9. Further contended by the appellants/plaintiffs that the learned Trial Court’s finding on issue no 3 and 4 are totally erroneous wherein it was held that suit property is coparcenary property and defendant being karta of the coparcenary property cannot alienate without legal necessity. He further argues that the learned first appellate court has reversed the findings on issue no. 4 in para 10 of the impugned judgment and held that learned trial court has erred in holding that there was defect in the title of the vendor. Further states when the learned first appellate court has reversed findings on issue no 4, then it ought to have granted decree of specific performance and not relief of return earnest money and damages. He further argues that the stipulation in the agreement to

sell regarding damages was mentioned for ensuring the due performance of the agreement.

10. Counsel for appellants/ plaintiffs further argues that first appellate court has erroneously observed that there has been much appreciation in the value of the suit land during this long period as delay is due to act of non performance of agreement to sell by defendant and not on the part of plaintiff as he has not executed the sale deed as per the terms decided in agreement to sell. He places reliance on K. Prakash versus B.R. Sampath kumar Law Finder Doc Id #618763 wherein it has held that subsequent rise in the price will not be treated as a hardship entailing refusal of the decree for specific performance and Parswanath Saha versus Bandhana Modak (Das) and anr Law Finder Doc Id # 2676067.

11. Per contra, learned counsel appearing for the respondent/defendant submitted that there is no illegality or infirmity in the findings recorded by learned First Appellate Court and further contended that the defendant denies the agreement to sell and the receipt of any earnest money. He claims the land is coparcenary property shared with his sons, rather than his exclusive possession. Further that he is the karta and that specific performance of an agreement to sell of ancestral coparcenary property, entered into by a member of the coparcenary or a manager thereof, cannot be enforced because the sale can be challenged by any of the other co-parceners and would be set aside and, therefore, no useful purpose would be served by enforcing such a contract of sale.

Relevant provision of the law

12. The Section 20 The Specific Relief Act ,1963 as it then stood i.e.prior to the 2018 amendment reads as under:

20. Discretion as to decreeing specific performance.—

(1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.

(2) The following are cases in which the court may properly exercise discretion not to decree specific performance:—

(a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or

(b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff; or

(c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1.—Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or

improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2.—The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

(3).The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

(4).The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the party.

ANALYSIS AND FINDINGS

13. I have heard learned counsel for the parties and considered their submissions in conjunction with the pleadings, evidence, and the findings recorded by the courts below. The entire record has been meticulously analyzed to determine whether the impugned judgment and decree suffer from any legal infirmity or error justifying interference by this Court.

14. 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.

15. Upon a meticulous perusal of the record, it is evident that Issue No. 1 (Execution of Agreement) and Issue No. 2 (Readiness and Willingness) were concurrently decided in favor of the appellants/plaintiffs by both the courts below. The respondent's plea of fraud and misrepresentation was rightly discarded as a mere after-thought, lacking any cogent evidence. The primary bone of contention remains the findings on Issue Nos. 3 and 4, which led the courts below to restrict the relief to the refund of earnest money and damages.

16. The learned Trial Court initially declined specific performance on the premise that the suit land was "Joint Hindu Family Coparcenary Property" and that the defendant, as Karta, lacked the "legal necessity" to alienate it. However, the learned First Appellate Court correctly observed in Para 10 of its judgment that such a finding was erroneous. It is a settled principle of law that a Karta can enter into an agreement to sell. Whether such a sale binds other co-parceners is a matter to be agitated by the other co-parceners in independent proceedings; it does not per se render the agreement void or the title so defective as to prevent a decree for specific performance against the executant to the extent of his share or interest.

17. This Court is of the firm view that the plea "I had no right to sell my sons' shares" is a defense that belongs strictly to the sons, not the Karta. It does not lie in the mouth of the vendor to challenge his own competence to enter into

a contract after having received a substantial portion of the sale consideration. The respondent/defendant, having represented himself as the owner in possession and the person competent to enter into the agreement dated 19.06.1986, is now hit by the principle of Estoppel. If the Karta represented himself as the owner or the authorized manager, he is "estopped" from later claiming that he lacked authority to escape the contract. He cannot be permitted to take advantage of his own alleged lack of absolute title to frustrate the rights of a bona fide purchaser.

Effect of Reversal of Finding on Issue No. 4

18. The learned Trial Court initially declined specific performance on the assumption that the land was joint Hindu coparcenary property and could not be sold without legal necessity. However, as rightly pointed out by the counsel for the appellants, the learned First Appellate Court rightly reversed this finding in Paragraph 10 of its judgment, holding that the Trial Court erred in finding a defect in the title of the vendor. Once the First Appellate Court concluded that there was no such defect in title that would bar the sale, it was legally bound to grant the primary relief of specific performance. The failure to do so, by granting the alternative relief of damages, constitutes a failure to exercise judicial discretion in accordance with established legal principles

The Alternative Relief and Liquidated Damages:

19. The courts below fell into error by assuming that because the agreement contained a clause for liquidated damages, the plaintiffs were adequately compensated by such a sum. Section 23 of the Specific Relief Act explicitly provides that a contract may be specifically enforced even though a sum is named in it as the amount to be paid in case of its breach. The naming of a penalty is intended to secure the performance of the contract, not to provide an

"option" to the vendor to back out by paying a sum

Appreciation of Land Value and Delay:

20. The First Appellate Court's observation that the "appreciation in value" during the long pendency of the suit justifies the refusal of specific performance is legally unsustainable. As held by the Hon'ble Supreme Court in ***K. Prakash vs. B.R. Sampath Kumar and Parswanath Saha vs. Bandhana Modak (supra)***, the rise in price of the property during the pendency of litigation is not a valid ground to deny the relief of specific performance. Equity lies with the purchaser who has been ready and willing to pay since 1986. The respondent/defendant cannot be allowed to take advantage of the "law's delay" to frustrate a valid contract and especially when the delay is attributable to the defendant's non-performance and not to any act of the plaintiff. Further, plea of defendant in denial of his absolute title is *mala fide* act on his part and he cannot be allowed to take advantage of his own wrong.

21. It is pertinent to note that under Explanation 2 to Section 20(b) of the Act, the question of hardship must be determined with reference to the circumstances existing at the time of the contract, except in cases where hardship has resulted from an act of the plaintiff. In the present case, no such subsequent act of the plaintiffs has been proven. The mere rise in property value is a global phenomenon and a natural consequence of the passage of time; it does not constitute 'unforeseen hardship' for the vendor as contemplated under the statute.

22. As held in the Supreme Court in the case of ***K. Prakash versus B.R. Sampath kumar Law Finder Doc Id #618763***.

19. Subsequent rise in price will not be treated as a hardship entailing refusal of the decree for specific performance. Rise in price is a normal change of

circumstances and, therefore, on that ground a decree for specific performance cannot be reversed.

*20. However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant-owner of the property. This aspect of the matter is considered by a three Judge Bench of this Court in **Nirmala Anand v. Advent Corporation (P) Ltd. and Others, 2003(2) RCR (Civil) 765: (2002) 8 SCC 146**, where this Court held :-*

"6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree of specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her alone, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as

also the hardship that may be caused to the defendant by directing specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen."

21. As discussed above the agreement was entered into between the parties in 2003 for sale of the property for a total consideration of 16,10,000/-. Ten years have passed by and now the price of the property in that area where it situates has increased by not less than five times. Keeping in mind the factual position we are of the view that the appellant should pay a total consideration of ₹ 25 lakhs, being the price for the said property.

22. We, therefore, allow this appeal and set aside the judgment and order passed by the High Court and restore the judgment and decree of the trial court with the modification that on payment of 25 lakhs, less already paid by the plaintiff, the defendant-owner shall execute a registered sale deed within a period of three months from today

..... Emphasis supplied

Exercise of Discretion

23. The discretion to grant specific performance should not be refused unless the execution of the contract would involve such hardship on the defendant as he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff. In the present case, the defendant has enjoyed the use of the earnest money (Rs. 20,000/- out of a total Rs. 30,000/-) since 1986. Denying the plaintiffs the land they contracted for nearly four decades ago would constitute a miscarriage of justice. Once the First Appellate Court concluded that the Trial Court erred regarding the title (Issue No. 4), the legal impediment to specific performance vanished. Equity lies with the plaintiffs, who paid two-thirds of the consideration (₹20,000/- out of ₹30,000/-) as far

back as 1986. Denying them the land now would be a travesty of justice

24. While balancing the equities, the Court must consider the conduct of the parties. The defendant took a plea of fraud and misrepresentation alleging that his thumb impressions were taken under the guise of being a witness, which was found to be not proved by the courts below. A litigant who takes a plea and denies the execution of a proven agreement does not deserve the exercise of judicial discretion in his favor to deny the primary relief of specific performance.

25. However, the court may take notice of the fact that there has been an increase in the price of the property and considering the other facts and circumstances of the case, this Court while granting decree for specific performance can impose such condition which may to some extent compensate the defendant-owner of the property.

CONCLUSION

26. In light of the above analysis, this Court finds that the appellants/plaintiffs have successfully proven the execution of the agreement, their readiness and willingness, and the validity of the vendor's title for the purpose of this suit.

27. Consequently, the present appeal is **allowed**. The judgment and decree of the learned First Appellate Court and the Trial Court are modified. The suit of the appellants/plaintiffs for possession by way of specific performance of the agreement to sell dated 19.06.1986 is hereby decreed with costs throughout. Decree be drawn accordingly.

28. The appellants/plaintiffs are directed to deposit the remaining sale consideration of ₹10,000/- along with interest at the rate of 12% *per annum*, compounded annually from the date of the decree of the Trial Court until the

date of deposit, within a period of two months from today. Upon such deposit, the respondent/defendant is directed to execute the sale deed in favour of the appellants and shall hand over vacant and peaceful possession of the suit land at the time of registration within subsequent period of one month. If respondent fails to do so, the appellants shall be entitled to get the same executed through the process of the Court.

29. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

23.01.2026
SAURAV PATHANIA

(VIRINDER AGGARWAL)
JUDGE

- (i) Whether speaking/reasoned : Yes/No
- (ii) Whether reportable : Yes/No