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

(235) **RSA-81-1997 (O&M)**
Reserved on: 22.04.2026
Pronounced on: 29.04.2026
Uploaded on: 29.04.2026

Partap Singh … Appellant

Versus

Harbhajan Singh (Since Deceased) Through His LRs and Others ...Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. B.S.Jaswal, Advocate
for the appellant.

Mr. Parveen Chauhan, Advocate
for the Respondent No.1.

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VIRINDER AGGARWAL,J

1. The present Regular Second Appeal has been preferred by the appellant/defendant No.3 against the judgment and decree dated 08.10.1996 passed by the learned Additional District Judge, Amritsar, whereby the first appeal filed by the appellant/defendant was dismissed, and the judgment and decree dated 22.02.1994 passed by the learned Additional Senior Sub Judge, Ajnala, has been upheld whereby the suit for specific performance filed by the plaintiff-respondent has been decreed.

BACKGROUND FACTS

2. The plaintiff/respondent no.1 instituted a suit for possession by way of specific performance on the basis of an agreement to sell dated 03.06.1991 (Ex.P1) executed by defendants No.1 and 2 in respect of land measuring 38 kanals 17 marlas. An amount of Rs.1,11,500/- was paid as earnest money. It was further stipulated therein that the sale deed was to be executed on "15th Maghar, 1991 Bikrami. Further, it was pleaded that defendant No.2 honoured the

agreement by executing a sale deed qua his share and therefore did not contested the suit, whereas defendant No.1 failed to perform his obligation and, during pendency of the suit, alienated the property in favour of defendant No.3 (present appellant) vide sale deed dated 24.01.1992 (Ex.D1). The plaintiff asserted continuous readiness and willingness to perform his part of the contract and sought enforcement of the agreement. Upon notice, suit was contested by defendant no.1 and appellant/defendant no.3 who filed their separate written statements and denied the allegations made in plaint.

3. Upon a meticulous examination of the pleadings and the competing claims of the parties, the learned Trial Court proceeded to frame the following issues for determination:-

1. *Whether defendants No.1 and 2 agreed to sell the disputed land and executed agreement to sell dated 03.06.1991 in favour of the plaintiff after receiving an amount of Rs.11,500/- as earnest money? OPP*
2. *Whether the plaintiff has always been ready and willing to perform his part of the contract? OPP*
3. *If Issue No.1 is proved, whether execution of agreement dated 03.06.1991 is result of fraudulent/misrepresentation and is without consideration as alleged? OPD*
4. *Is this suit is not maintainable? OPD*
5. *Whether defendant No.3 is a bona fide purchaser of the suit land for valuable consideration without notice and as such is protected u nder Section 41 of the Transfer of Property Act? OPD*
6. *Whether the plaintiff is estopped from filing this suit through his act and conduct? OPD*
7. *Relief.*

4. Both parties were afforded full and adequate opportunity to adduce evidence in support of their respective claims and defences. The learned trial Court, upon a comprehensive evaluation of evidence, held that the agreement to sell stood duly proved and was supported by valid consideration. The plea of fraud was rejected. The plaintiff was found to be continuously ready and willing to perform his part of the contract. The defence of bona fide purchaser set up by defendant No.3 was also negated. Consequently, the suit for specific performance was decreed in favour of plaintiff/respondent no.1. The findings of the learned Trial Court are based on appreciation of both oral and documentary evidence, including the testimony of PW-1 Sawaran Singh, marginal witness to the agreement, and PW-2 Harbhajan Singh (plaintiff), as well as the evidence led by the defendants including DW-4 Vijay Kumar, the stamp vendor, and DW-5 Raghbir Singh (defendant No.1), who, significantly, admitted his thumb impressions on the agreement though attempted to explain the same on grounds of fraud.

5. Aggrieved by the judgment and decree, only defendant No.3 preferred an appeal, which came to be dismissed by the learned Additional District Judge, Amritsar, affirming the findings recorded by the Trial Court. The learned First Appellate Court, while re-appreciating the evidence including Ex.P1 and Ex.D1, concurred with the findings that the agreement stood proved and that the subsequent sale in favour of the appellant did not confer any independent right and the appellant, being a subsequent purchaser, could not claim protection in law. Aggrieved by the concurrent findings, the present Regular Second Appeal has been filed.

<u>CONTENTIONS</u>

6. Learned counsel for the appellant has argued that the appellant is a bona fide purchaser for valuable consideration without notice and is entitled to protection under Section 41 of the Transfer of Property Act. It is further contended that the agreement to sell is vague and unenforceable, particularly on account of ambiguity in the stipulated date of performance described as "15th of Maggar, the year Bikrami of 1991", which, according to the appellant, renders the contract uncertain. It is also argued that the plaintiff failed to prove readiness and willingness, and therefore the decree for specific performance could not have been granted. It has also been faintly argued that the Courts below ought to have exercised discretion in favour of awarding alternative relief of refund rather than decreeing specific performance, particularly in view of the alleged conduct of the parties and surrounding circumstances.

7. Per contra, learned counsel for the plaintiff-respondent has contended that the agreement to sell dated 03.06.1991 stands duly proved and has in fact been partly performed by one of the co-sharers(defendant no.2). It is submitted that the appellant, being a subsequent purchaser during pendency of the suit, is bound by the doctrine of lis pendens and cannot claim to be a bona fide purchaser. It is further argued that the plea of readiness and willingness is not available to a subsequent purchaser and that the Courts below have rightly decreed the suit.

OBSERVATIONS AND FINDINGS

8. I have heard the learned counsels for the parties and perused the record of the case.

9. 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 Punjab Courts Act, 1918 and not under Section 100 of 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.

10. Before adverting to the contentions raised on behalf of the appellant, it is necessary to first examine whether the concurrent findings recorded by both the Courts below on Issues No.1, 2 and 3 suffer from any perversity, illegality or misreading of evidence. Upon a careful scrutiny of the record, this Court finds that both the Courts have undertaken a detailed and proper appreciation of evidence. The execution of agreement to sell dated 03.06.1991 (Ex.P1) stands duly proved through cogent and reliable evidence. The testimony of PW-1 (attesting witness) fully supports execution of Ex.P1, and the same is corroborated by PW-2 (plaintiff). The admission of thumb impression by defendant No.1 on Ex.P1 further lends authenticity to the document. The plea of fraud and misrepresentation set up by defendant No.1 has rightly been disbelieved, as the same is unsupported by any independent or reliable evidence and appears to be an afterthought to wriggle out of contractual obligations. Similarly, the finding of readiness and willingness recorded by both the Courts below is based on consistent conduct of the plaintiff, including tendering of balance consideration and timely institution of the suit. Such findings being purely factual and based on proper appreciation of evidence do not call for interference in second appeal.

11. Now, the principal contention of the appellant revolves around Issue No.5, namely his claim of being a bona fide purchaser under sale deed Ex.D1. It is an admitted fact that the suit was instituted on 23.01.1992 (Ex.P2), whereas the

sale deed in favour of the appellant is dated 24.01.1992 (Ex.D1). Thus, the appellant is clearly a subsequent and purchaser pendente lite. The plea of the appellant that he is a bona fide purchaser for valuable consideration without notice, as raised under Issue No.5, now falls for consideration. It is well settled that the burden to establish such a plea squarely lies upon the person asserting it. In order to succeed, the appellant was required to prove that the purchase under sale deed Ex.D1 was made in good faith, for valuable consideration, and without notice (actual or constructive) of the prior agreement to sell Ex.P1. Both the Courts below, upon appreciation of evidence, have concurrently returned a finding against the appellant on this issue, holding that he has failed to discharge the said burden.

12. Now, the principal question which arises for consideration is whether appellant/defendant No.3, being a subsequent purchaser of the suit property during pendency of the suit, can claim protection either as a bona fide purchaser for value without notice or otherwise resist the decree for specific performance sought by the plaintiff.

13. At the outset, it is necessary to notice that the sale in favour of the appellant is not disputed to have been effected during pendency of the suit instituted by the plaintiff. Such a transfer squarely attracts the doctrine of lis pendens embodied under Section 52 of the Transfer of Property Act, 1882. The doctrine is not based on notice but on the principle that the subject matter of litigation should not be allowed to be altered to the prejudice of the rights of any party.

14. It is trite law that a transferee who acquires rights in immovable property during the pendency of litigation, or one who derives title from a party whose rights are already subject to adjudication, takes such title subject to the outcome

of the pending proceedings. Such a transferee merely steps into the shoes of his vendor and can claim no independent or superior right than that of the transferor himself. His rights are purely derivative in nature. Consequently, a subsequent purchaser cannot be permitted to challenge the legality, validity, or enforceability of the prior transaction from which his vendor's rights already stood circumscribed. Once the transferor is bound, the transferee claiming through him is equally bound.

15. In this context, the Hon'ble Apex Court, in the case of ***Chander Bhan (D) Through LRs vs. Mukhtiar Singh and Others, 2024 AIR (SC) 2267***, has held as follows:-

> *"21. Once it has been held that the transactions executed by the respondents are illegal due to the doctrine of lis pendens the defence of the respondents1-2 that they are bonafide purchasers for valuable consideration and thus, entitled to protection under Section 41 of the Act of 1882 is liable to be rejected."*

16. Further, in ***Shingara Singh vs. Daljit Singh and Another, 2024 (4) RCR (Civil) 553***, the Court observed as under:-

> *"11. In **Usha Sinha v. Dina Ram (2008) 7 SCC 144** this Court held that the doctrine of lis pendens applies to an alienation during the pendency of the suit whether such alienees had or had no notice of the pending proceedings. The following has been held I paras 18 & 23:*
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> ***18.** Before one-and-half century, in Bellamy v. Sabine ((1857) 1 De G & J566 44 ER 842]. Lord Cranworth, L.C. proclaimed that where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding not only on the*

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litigating parties. but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end.

23. *It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent court. The doctrine of "lis pendens" prohibits a party from dealing with the property which is the subject- matter of suit. "Lis pendens" itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance is caused or obstruction is offered by a transferee pendente lite of the judgment-debtor, he cannot seek benefit of Rules 98 or 100 of Order 21."*

17. Therefore, in the present case, the appellant, being a subsequent purchaser during the pendency of the suit, cannot avail the plea of a bona fide purchaser, which, even if assumed, cannot override the statutory mandate of Section 52 of the Transfer of Property Act. Thus, the very foundation of the appellant's argument that he is a bonafide purchaser without notice stands legally neutralized, as absence of notice does not dilute the applicability of Section 52. A transferee pendente lite cannot defeat the rights of a plaintiff in a suit for specific performance and cannot claim equities on the basis of such transfer. Once the transfer is hit by lis pendens, the plea of bona fide purchaser pales into insignificance.

18. Further, in ***Ram Awadh v. Achhaibar Dubey, 2000 (2) SCC 428***, the Hon'ble Supreme Court held that the plea of readiness and willingness is personal to the vendor and cannot be set up by a subsequent purchaser. This completely answers the appellant's attempt to challenge readiness and willingness of the plaintiff. The plea of readiness and willingness is one that arises strictly inter se between the contracting parties. A subsequent purchaser, whose rights are merely derivative, cannot be permitted to raise such a plea, as he cannot contest the enforceability of the contract on grounds personal to the original vendor and vendee. Thus, in the present case, the appellant, deriving title under Ex.D1, cannot be permitted to challenge readiness and willingness which is a matter inter se between the parties to Ex.P1.

19. Turning now to the argument regarding ambiguity in the agreement, it is contended that the stipulation "15th of Maggar, the year Bikrami of 1991" renders the contract uncertain. This contention does not merit acceptance. The law relating to interpretation of contracts mandates that courts must prefer an interpretation which upholds the contract rather than invalidates it. The expressions "Bikrami" (Vikram Samvat calendar) and "Sann" (Gregorian year) represent two distinct calendrical systems, with a difference of approximately 56-57 years. Both cannot logically co-exist to determine a single date. A disparity of such magnitude, extending to more than half a century, cannot by any standard be regarded as a plausible or intended stipulation between prudent parties, particularly in the context of a contract for performance within a reasonable timeframe. Such an interpretation would be wholly inconsistent with ordinary human conduct and commercial probability, as no reasonable person would contemplate performance of a contract to a period which has already elapsed 57 years earlier which is totally unexpected. In such a situation, the Court is required

to adopt a purposive interpretation consistent with the intention of the parties and surrounding circumstances. The Hon'ble Supreme Court in ***Satya Jain v. Anis Ahmed Rushdie, 2013 (8) SCC 131***, has categorically held that Courts must lean in favour of enforcing contracts where parties have clearly intended to enter into binding obligations, rather than defeating them on technical or insignificant grounds. In aforesaid judgment, the Hon'ble Supreme Court has reiterated as under:

> *"22. The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The classic test of business efficacy was proposed by Lord Justice Bowen in* ***The Moorcock, (1889)14 PD 64.*** *This test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended."*

20. In agrarian transactions prevalent in the region, reference to "Sann" carries greater certainty and practical utility for execution of contracts. The mention of "Bikrami" in the agreement appears to be either redundant or a clerical incorporation. Therefore, giving primacy to "Sann" is both legally permissible and commercially sensible. This approach is also in consonance with the settled rule of interpretation that where two constructions are possible, the one which upholds the validity of the instrument must be preferred over the one which defeats it. Thus, the alleged ambiguity in Ex.P1 regarding the date of performance does not render the agreement void or unenforceable, as the

agreement, read as a whole, clearly reflects the intention of the parties and provides a determinable timeframe for performance. It is equally well settled that certainty in a contract does not require absolute precision, and if the essential terms can be ascertained with reasonable certainty from the document and surrounding circumstances, the contract remains enforceable. Thus in present case, minor discrepancies in calendrical expressions cannot render an otherwise valid contract unenforceable, when the conduct of parties, particularly execution of sale deed by one co-sharer (defendant no.2) in part performance, clearly demonstrates that the agreement was understood and acted upon, thereby curing any minor uncertainty. Therefore, the findings recorded by both Courts below are based on proper appreciation of evidence and do not suffer from perversity or illegality. Accordingly, the contention raised by the appellant on the alleged ambiguity in the agreement is found to be wholly misconceived, devoid of merit, and is hereby rejected.

21. Further, the arguments regarding exercise of discretion under the Specific Relief Act and that Ex.D1 should prevail over Ex.P1 is legally untenable, as a subsequent transfer cannot override prior contractual obligations, particularly when hit by the doctrine of lis pendens is equally without merit. Both the Courts below have exercised discretion in favour of specific performance after considering the conduct of the parties and the nature of the transaction. Therefore, no perversity or arbitrariness in such exercise of discretion has been demonstrated so as to warrant interference by this court.

22. In view of the foregoing discussion, this Court finds that the appellant–defendant No.3, being a transferee pendente lite, has no independent or enforceable defence in law to resist the decree for specific performance. The

concurrent findings of the Courts below are in complete consonance with settled law and suffer from no infirmity, warranting no interference by this Court.

23. Accordingly, the present appeal, being devoid of merit, is **dismissed**. The concurrent findings recorded by the Courts below are affirmed, as no ground for interference is made out.

24. Since the main appeals stands decided, pending application(s), if any, also stand disposed of.

(VIRINDER AGGARWAL)
JUDGE

29.04.2026
Saurav Pathania

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