

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**RSA-1843-2023 (O&M)
Date of decision: 10.03.2026

Krishan Kumar

...Appellant

Versus

Tajender and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Ashwani Bakshi, Advocate for the appellant

DEEPAK GUPTA, J. (ORAL)

The plaintiff of the case is before this Court in the present Regular Second Appeal assailing the concurrent findings recorded by both the Courts below, inasmuch as the suit filed by him seeking possession of suit land by way of specific performance of agreement to sell was dismissed by the learned trial Court vide judgment and decree dated 03.05.2016, and the appeal preferred by him was dismissed by the learned First Appellate Court vide judgment and decree dated 10.01.2023.

2. Learned counsel for the appellant contends that the Courts below have failed to appreciate the evidence available on record in its proper perspective and have erroneously dismissed the suit of the plaintiff.

3. As per the case set up by the plaintiff–appellant, the defendant had agreed to sell the suit land measuring 47 Kanal 18 Marla vide agreement to sell dated 04.11.2011 for a total sale consideration of ₹59,91,000/-, out of which an amount of ₹53,91,000/- was allegedly paid as earnest money. It was further pleaded that possession of the suit land was delivered to the plaintiff at the time of execution of the agreement. The balance sale consideration was to be paid at the time of execution and registration of the sale deed and 04.12.2011 was fixed as the target date for



execution of the sale deed. Since the said date happened to be a Sunday, the plaintiff claimed that he appeared before the Sub-Registrar on 02.12.2011 as well as on 05.12.2011, but the defendant failed to appear to execute the sale deed.

4. The defendant contested the suit and denied the execution of any agreement to sell or receipt of any earnest money. It was pleaded that an FIR No. 73 dated 20.10.2010 under Sections 147, 148, 323, 325, 307 and 506 IPC at Police Station Satnali had been registered against the defendant at the instance of the plaintiff. According to the defendant, the plaintiff had obtained his signatures on certain documents under the pretext of effecting a compromise in the said criminal case.

5. After considering the pleadings and evidence led by the parties, the learned trial Court dismissed the suit. The trial Court found that the relationship between the parties was admittedly strained due to pending criminal litigation and therefore, the execution of an agreement to sell involving such a huge transaction appeared highly improbable. The Court further noticed that the agreement to sell was allegedly executed on the very day, when the plaintiff appeared as a witness in the criminal case and turned hostile. The attesting witnesses to the agreement were also witnesses in the said criminal case, who subsequently turned hostile. The trial Court also recorded a categorical finding that the alleged payment of earnest money to the tune of ₹53,91,000/- was not proved and that the recital regarding payment of such amount appeared to be fictitious.

6. The learned trial Court further held that the agreement appeared to have been executed in connection with the compromise in the criminal case involving offences including Section 307 IPC, which is a non-compoundable offence, and therefore, the object of such an agreement



was unlawful and hit by Section 23 of the Indian Contract Act, 1872. Consequently, the suit for specific performance was dismissed.

7. The plaintiff preferred an appeal, but the learned First Appellate Court, after re-appreciating the entire evidence on record, affirmed the findings of the trial Court. The First Appellate Court observed that the agreement to sell contained recitals regarding delivery of possession but had not been registered, even though after the insertion of Section 17(1A) of the Registration Act, 1908, such a document required compulsory registration, if it was to be relied upon for the purposes of Section 53-A of the Transfer of Property Act, 1882. Thus, the document itself suffered from a legal defect.

8. The First Appellate Court further found that the circumstances surrounding the execution of the agreement created serious doubt about its genuineness. The plaintiff and the attesting witnesses of the agreement had appeared as witnesses in the criminal case against the defendant and turned hostile, resulting in acquittal of the accused. These circumstances indicated that the alleged agreement was executed as part of an arrangement connected with the compromise in the criminal proceedings.

9. The Appellate Court also noticed that the plaintiff had failed to establish his financial capacity to pay such a large amount as earnest money. The scribe of the agreement admitted in cross-examination that the alleged payment of ₹53,91,000/- was not made in his presence. The plaintiff was unable to show any bank withdrawal, sale of property, loan, or any other credible source from which such a huge amount could have been arranged. Consequently, the Court concluded that the recital regarding payment of earnest money was merely a paper transaction.

10. The First Appellate Court thus held that even if such an



agreement had been executed, the object of the agreement was unlawful, being intended to screen the accused persons from the consequences of a serious criminal prosecution. Such an agreement would clearly fall within the mischief of Section 23 of the Indian Contract Act, which renders void any agreement whose object or consideration is unlawful or opposed to public policy.

11. I have heard learned counsel for the appellant and perused the record of the case.

12. At the outset, it must be noticed that the present appeal is filed under Section 100 of the Code of Civil Procedure, 1908, which confers limited jurisdiction upon this Court. Interference in a second appeal is permissible only where the case involves a substantial question of law.

13. The Hon'ble Supreme Court in a catena of judgments has held that while the first appellate Court is the final Court of facts and is entitled to re-appreciate the evidence on record, the jurisdiction of the High Court in second appeal is limited and interference is permissible only when the findings recorded by the Courts below suffer from perversity or are based on misreading of evidence. The concurrent findings of fact recorded by the Courts below cannot be interfered with in second appeal unless such findings are shown to be wholly perverse or based upon no evidence. Besides, High Court cannot re-appreciate evidence in second appeal merely because another view may be possible.

14. In the present case, both the Courts below have concurrently recorded findings that the alleged payment of earnest money was not proved and that the circumstances surrounding the execution of the agreement clearly indicate that the document was executed in connection with compromise of a criminal case involving serious offences.



15. It is well settled that the burden of proving payment of earnest money and the readiness and willingness to perform the contract lies upon the plaintiff seeking specific performance. In the absence of credible evidence regarding payment of consideration and financial capacity of the plaintiff, the relief of specific performance cannot be granted.

16. Furthermore, an agreement whose object is to defeat the provisions of law or to screen an accused from criminal liability is clearly opposed to public policy and hit by Section 23 of the Indian Contract Act. Such an agreement is void and unenforceable in law. The Courts below have rightly concluded that the alleged agreement falls within the ambit of this provision.

17. The concurrent findings recorded by the Courts below are based upon proper appreciation of the evidence and surrounding circumstances and do not suffer from any illegality, perversity or misreading of evidence so as to warrant interference by this Court.

18. Learned counsel for the appellant has not been able to point out any substantial question of law arising from the impugned judgments.

19. Consequently, finding no merit in the present appeal, the same is dismissed.

10.03.2026

Yogesh

**(DEEPAK GUPTA)
JUDGE**

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No