2026:PHHC:067912

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

i) RSA-1281-2026

Guriqbal Singh and others **...Appellants**

Versus

Ravinder ...Respondent

ii) RSA-1349-2026

Guriqbal Singh and others **...Appellants**

Versus

Ravinder ...Respondent

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Reserved on: 30.04.2026
Pronounced on: 04.05.2026
Pronounced fully/operative part: Fully

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CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by: Mr. Vikas Singh, Sr. Advocate with
Mr. Harmeet Singh, Advocate and
Ms. Anamika Sheoran, Advocate
for the appellant.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Vishal Pundir, Advocate and
Mr. Anmol Rattan, Advocate
for the respondent.

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DEEPAK GUPTA, J.

The present two Regular Second Appeals arise out of a common judgment dated 20.01.2026 rendered by the learned first Appellate Court, whereby the judgment & decree dated 21.01.2020 passed by the learned Civil Judge (Senior Division), Karnal were set aside.

2. By the judgment of the Trial Court, the suit filed by Ravinder (hereinafter referred to as "the vendee") seeking declaration and recovery

of earnest money was dismissed, whereas the suit filed by Guriqbal Singh and others (hereinafter referred to as "the vendors") for specific performance and consequential relief was decreed. The Appellate Court reversed the said findings, giving rise to the present appeals at the instance of the vendors.

3. As it emerges on perusal of the record, the genesis of the dispute lies in an oral agreement to sell dated 06.06.2013, the terms whereof were reduced into writing on 17.08.2013, whereby the vendors agreed to sell land measuring approximately 20.5 acres situated in village Munak, Sub Tehsil Ballah, District Karnal, to the vendee at the rate of ₹97,00,000/- per acre. An amount of ₹2 crores was admittedly paid as earnest money. The date fixed for execution and registration of the sale deed was 06.12.2013.

4. According to the vendee, the vendors represented themselves to be exclusive owners of the entire land comprised in four Khewats as mentioned in the agreement and further assured that the land was free from all encumbrances. Acting upon such representation, the vendee paid a substantial amount of ₹2 crores. However, when he sought to verify the title and revenue record, he was supplied only incomplete documents. Upon independently obtaining the Jamabandi shortly before the target date, he discovered that (i) the land was not confined to four Khewats but spread across several Khewats, (ii) there were multiple co-sharers, and (iii) parts of the land were mortgaged by some of the vendees and other co-sharers with financial institutions. On account of these facts, which according to him were concealed, he issued a legal notice dated 02.12.2013, prior to the target date, seeking refund of earnest money with interest and damages. When no payment was made, he instituted a suit for declaration that the agreement was void on account of fraud, and for recovery of ₹2,78,00,000/-.

5. The vendors, on the other hand, took a categorical stand that

the agreement was validly executed with full knowledge of the vendee. They asserted that they were co-sharers and competent to sell the agreed extent of land. It was further pleaded that a minor portion of the land was under mortgage, but the same stood redeemed prior to the due date. The vendors alleged that they remained present before the Sub Registrar on 06.12.2013, 10.12.2013 and 23.01.2014, but the vendee failed to appear and perform his part of the contract. According to them, the vendee committed breach and, therefore, the earnest money stood forfeited. On this premise, they filed a suit for specific performance and consequential injunction.

6. Both suits were consolidated by the Trial Court. Necessary issues were framed and parties led evidence in support of their respective stands.

7. The vendee Ravinder examined himself as PW1 and reiterated the allegations of fraud and concealment. He produced the agreement to sell (Ex.P1), legal notices and replies (Ex.P10 & P17), FIR and proceedings arising therefrom (Ex.P18 onwards), revenue records including Jamabandis (Ex.P57 to Ex. P68), and various bank documents (Ex.P41, Ex.P52, etc.) to establish that the land was encumbered and not exclusively owned by the vendors, as had been claimed by the vendors in the agreement. The testimony of PW2, an Agricultural Field Officer, and PW3, a Patwari, was relied upon to substantiate the existence of mortgage and the nature of title.

8. On the other hand, one of the vendors Guriqbal Singh examined himself as DW1 and supported the case set up in the written statement. Vendors also produced Jamabandis (Ex.D1, D2) to show ownership, bank certificates (Ex.D3 to D10) to establish redemption of mortgage, and affidavits Ex.D11, D13, D15 evidencing their presence before the Sub Registrar on the relevant dates.

9. The Trial Court, upon appreciation of the evidence, returned a

finding that the vendee had failed to prove fraud or concealment. It held that the vendors were ready and willing to perform their part of the contract and that the vendee was in breach. Consequently, the suit filed by the vendee was dismissed and the suit filed by the vendors was decreed.

10. However, the first Appellate Court, on re-appraisal of the entire evidence, recorded contrary findings. It noticed discrepancies in the description of property, existence of encumbrances, and absence of cogent proof of readiness and willingness on the part of the vendors. It further held that forfeiture of ₹2 crores was legally unsustainable. Accordingly, it set aside the decree for specific performance, and granted relief of recovery to the vendee.

11. Assailing the aforesaid reversal, Learned senior counsel for the appellants-vendors contended that the Appellate Court misread the evidence and ignored material documents showing that the mortgage had been cleared before the due date. It was argued that the vendee had full knowledge of the nature of title and that he failed to appear before the Sub Registrar despite repeated opportunities. It is contended that earnest money is liable to be forfeited, when the purchaser commits breach.

12. Per contra, learned senior counsel for the respondent-vendee supported the judgment of the Appellate Court and argued that the vendors had suppressed material facts regarding title and encumbrances. It was contended that the very foundation of the contract was vitiated by misrepresentation, and therefore, the vendee was justified in seeking refund. It was further submitted that forfeiture of such a huge amount without proof of loss is impermissible in law. Reliance is placed on ***Moideenkutty vs. Abraham George, 2026 AIR Supreme Court 162***; and ***Kailash Nath Associates vs Delhi Development Authority, (2015) 4 SCC 136***.

13. Having heard learned counsel for the parties and perused the record, this Court finds that the controversy mainly revolves around three issues: (i) whether there was concealment of material facts relating to title

and encumbrances, (ii) whether the vendors proved their readiness and willingness, and (iii) whether forfeiture of earnest money was legally justified.

14. Concealment and nature of title : A careful examination of the agreement to sell (Ex.P1) reveals that the property was described as falling within four specified Khewats, thereby conveying an impression that the vendors had a definite and identifiable title over a consolidated parcel of land. However, the revenue record brought on record by the vendee, particularly the Jamabandis (Ex.P57 to Ex.P68), paints a materially different picture. The land in question was, in fact, spread across multiple Khewats and was jointly held along with several co-sharers, who were not parties to the agreement. This discrepancy is not merely a technical variation in description but goes to the root of the title and the capacity of the vendors to convey the entire agreed property.

15. Further, the documentary evidence led by the vendee, including bank records and mortgage deeds (Ex.P41, Ex.P52 and connected documents), establishes that portions of the property were subject to subsisting encumbrances in the form of mortgages with financial institutions. Although the vendors attempted to explain that such mortgages were of a minor nature and were redeemed prior to the stipulated date for execution of the sale deed, such an explanation does not satisfactorily address the core issue, namely, the non-disclosure of these encumbrances at the time of entering into the agreement. The obligation of the vendor is not merely to clear encumbrances at a later stage but to make full and frank disclosure of all material facts affecting title at the inception of the contract.

16. The cumulative effect of these circumstances indicates that the vendee was not disclosed the complete and accurate information regarding the title of the property at the time, when he parted with a substantial amount of ₹2 crores. The misdescription of the extent and nature of

ownership, coupled with the non-disclosure of encumbrances, materially affects the very foundation of the agreement.

17. It is a settled proposition of law that suppression or concealment of material facts which have a direct bearing on the subject matter of the contract, vitiates the transaction and disentitles the defaulting party from seeking equitable relief.

18. In ***S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1***, the Hon'ble Supreme Court held that a litigant who approaches the Court with unclean hands and suppresses material facts is not entitled to any relief, much less an equitable relief like specific performance. Similarly, in ***R.C. Chandiok v. Chuni Lal Sabharwal, (1970) 3 SCC 140***, it was emphasized that a vendor seeking enforcement of an agreement must be in a position to convey a clear, marketable and unencumbered title.

19. More recently, in ***Moideenkutty vs. Abraham George (supra)***, the Hon'ble Supreme Court reiterated that concealment of a subsisting mortgage or defect in title is a material circumstance which justifies refusal of specific performance and entitles the vendee to seek refund of the advance amount.

20. Applying the aforesaid principles to the facts of the present case, this Court finds that the vendors failed to establish that they had made a full and candid disclosure of all material aspects relating to title and encumbrances at the time of execution of the agreement. The discrepancies in the description of the property, the existence of co-sharers, and the presence of encumbrances, collectively establish that the vendee was induced to enter into the agreement without complete knowledge of essential facts.

21. The finding recorded by the first Appellate Court that there was material non-disclosure on the part of the vendors is thus based on a correct appreciation of evidence and settled legal principles. Consequently,

the vendors, having failed to approach the Court with clean hands and being unable to show a clear and marketable title at the relevant time, are not entitled to the discretionary relief of specific performance.

22. Readiness and willingness: The obligation to establish continuous readiness and willingness to perform the contract squarely rests upon the party seeking specific performance. In the present case, the vendors have mainly relied upon affidavits purporting to show their presence before the office of the Sub Registrar on the relevant dates. However, such affidavits, being self-serving in nature, cannot by themselves be treated as conclusive proof of readiness and willingness, particularly when the surrounding circumstances cast serious doubt on their capacity to perform their part of the contract, namely, to convey a clear and marketable title.

23. In ***N.P. Thirugnanam v. Dr. R. Jagan Mohan Rao, (1995) 5 SCC 115***, the Hon'ble Supreme Court has authoritatively held that readiness and willingness must be continuous, genuine and established by conduct of the party throughout. The requirement is not a mere formality, but a substantive condition precedent for grant of equitable relief of specific performance.

24. Tested on the touchstone of the aforesaid principle, the conduct of the vendors in the present case does not inspire any confidence. The material on record reveals that prior to the stipulated date for execution of the sale deed, the vendee, upon discovering discrepancies in the title and existence of encumbrances, issued a legal notice dated 02.12.2013 (Ex.P2), clearly expressing his inability to proceed with the transaction and calling upon the vendors to refund the earnest money. Significantly, despite receipt of the said notice, the vendors did not furnish any reply controverting the allegations regarding defective title or subsisting encumbrances. Instead, after the lapse of time, the vendors issued a subsequent notice dated 13.01.2014 (Ex.P10), calling upon the vendee to

perform the agreement. This sequence of events assumes importance, as it reflects that the vendors failed to promptly address the objections raised by the vendee with regard to title and encumbrances, the issues which go to the root of the contract.

25. The silence of the vendors in response to the notice dated 02.12.2013, followed by a delayed assertion of readiness, undermines their plea of continuous readiness and willingness. Mere presence before the Sub Registrar, unsupported by proof of clear and marketable title and unaccompanied by bona fide efforts to resolve the objections raised, cannot satisfy the mandate of Section 16(c) of the Specific Relief Act.

26. In view of the above, this Court is of the considered opinion that the vendors have failed to establish their continuous readiness and willingness to perform their part of the contract. The findings recorded by the first Appellate Court on this issue are well-reasoned and in consonance with settled principles of law, and therefore warrant no interference.

27. Forfeiture of earnest money : The question of forfeiture of earnest money in the present case assumes considerable significance, as the amount paid by the vendee is ₹2 crores, which constitutes a substantial portion of the total sale consideration. Such a large sum cannot be treated as a nominal token or security deposit in the ordinary sense, and its forfeiture must, therefore, withstand strict scrutiny on the touchstone of settled legal principles.

28. It is by now well settled that forfeiture of earnest money is not automatic upon breach of contract and is subject to the overarching requirement of reasonableness and proof of loss. In ***Fateh Chand v. Balkishan Dass, AIR 1963 SC 1405***, the Hon'ble Supreme Court held that a stipulation for forfeiture is in the nature of a penalty and that the party seeking to forfeit such amount must establish that reasonable compensation is justified, which in turn must bear nexus with the loss suffered. The Court categorically observed that forfeiture cannot be

enforced in terrorem.

29. This principle has been reiterated and further clarified in ***Kailash Nath Associates v. DDA (supra)***, wherein it was held that in the absence of proof of actual loss or damage, forfeiture of earnest money is impermissible. The Supreme Court emphasized that even where a contract provides for forfeiture, such a clause cannot override the mandate of Section 74 of the Indian Contract Act, 1872, which limits recovery to reasonable compensation.

30. Similarly, in ***Satish Batra v. Sudhir Rawal, (2013) 1 SCC 345***, it was observed that earnest money can be forfeited only when it is a genuine pre-estimate of damages and is reasonable in proportion to the total consideration. Where the amount is disproportionately large, the Court is duty-bound to examine its reasonableness.

31. Applying the aforesaid principles to the facts of the present case, it is evident that the vendors have neither pleaded nor led any evidence to show that they suffered any loss on account of the alleged breach by the vendee. There is no material on record to show decrease in value of the property, loss of opportunity, or any other quantifiable damage. In such circumstances, forfeiture of an amount as substantial as ₹2 crores would be wholly arbitrary and in the nature of a penalty, which is impermissible in law.

32. Moreover, the surrounding circumstances, as already discussed, indicate that the transaction itself was clouded by issues relating to title and encumbrances. In such a situation, the vendors cannot be permitted to retain a disproportionately large sum under the guise of forfeiture, particularly when they themselves have failed to establish full compliance with their contractual obligations.

33. In view of the above discussion, this Court holds that the forfeiture of ₹2 crores by the vendors is legally unsustainable. The finding

recorded by the first Appellate Court setting aside the forfeiture is in consonance with the settled principles governing Section 74 of the Indian Contract Act and does not call for any interference.

34. Conclusion : Consequent to entire discussion as above, this Court is of the opinion that the findings recorded by the first Appellate Court are based on proper appreciation of evidence and settled legal principles. No perversity or illegality has been shown so as to warrant any interference in exercise of jurisdiction under Section 100 CPC.

35. Both the Regular Second Appeals are dismissed. The judgment and decree passed by the first Appellate Court are affirmed. The decree of the Trial Court granting specific performance in favour of the vendors, stands set aside. The respondent-vendee shall be entitled to a refund of earnest money in terms of the decree passed by the Appellate Court, along with such interest as awarded therein. No order as to costs. A photocopy of this order be placed on the file of connected case.

04.05.2026 **(DEEPAK GUPTA)**
Yogesh **JUDGE**

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No

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