



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

(108)

RSA-2507-2025 (O&M)
Date of Decision:-**10.02.2026**

Kulwant Kaur @ Kulwant Kaur Masuta

... Appellant

Versus

Dhian Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Mitul Singh Rana, Advocate
for the appellant.

VIRINDER AGGARWAL, J. (Oral)

CM-8583-C-2025

1. The applicant/appellant has preferred an application under Section 5 of the Limitation Act, 1963 read with Section 151 of the Code of Civil Procedure, seeking condonation of a delay of 21 days in filing the appeal.

2. In view of the grounds set forth in the application, the same is allowed, and the delay of 21 days in instituting the appeal is hereby condoned, subject to all just exceptions.

3. The application is accordingly disposed of.

CM-8584-C-2025

1. The applicant/appellant has moved an application under Section 151 of the Code of Civil Procedure seeking condonation of a delay of 68 days in re-filing the appeal.



2. For the reasons stated in the application, the same is allowed, and the delay of 68 days in re-filing the appeal is hereby condoned, subject to all just exceptions.

3. The application is accordingly disposed of.

Main Appeal

1. The present Regular Second Appeal (hereinafter referred to as the “RSA”) has been preferred by the appellant–plaintiff assailing the judgment and decree dated 04.12.2024 passed by the learned Additional District Judge, Hoshiarpur, whereby the judgment and decree of the trial Court was affirmed in toto. The trial Court, vide judgment and decree dated 28.11.2017 had partly decreed the suit filed by the appellant–plaintiff. Aggrieved by the concurrent findings recorded by both the Courts below, which are asserted to be legally untenable and factually unsustainable, the appellant has instituted the present appeal.

2. The brief facts, as pleaded, are that defendant No.1, being the owner of the suit property, executed an agreement to sell dated 22.09.2010 in favour of the plaintiff for a consideration of ₹80,000/-, pursuant to which possession was delivered and the entire sale consideration paid. Despite this, defendant No.3, claiming to be an attorney, illegally sold the property to defendant No.2, though the power of attorney stood cancelled. The plaintiff has always been ready and willing to perform her part, but the defendants are unlawfully interfering with her possession, necessitating the present suit.

3. Upon notice, defendant No.1 filed a written statement admitting the agreement to sell dated 22.09.2010, delivery of possession to



the plaintiff, and cancellation of the power of attorney in favour of Kartar Singh on 06.08.2010, alleging that subsequent sale deeds were fraudulently executed without authority. He expressed readiness and willingness to perform but was later proceeded *ex-parte*. Defendants No.2, 4, 5, and 6 contested the suit on maintainability and merits, claiming title through registered sale deeds, denying plaintiff's possession and rights, and seeking dismissal of the suit.

4. Upon due consideration of the pleadings and the contentions of the parties, the learned trial Court framed the following issues for determination:—

1. *Whether the plaintiff is entitled to confirmation of possession by way of specific performance of agreement to sell dated 22.09.2010? OPP*
2. *Whether in the alternative, plaintiff is entitled to recovery of the earnest money? OPP*
3. *Whether the plaintiff is entitled to relief of declaration as prayed for?OPP*
4. *Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP*
5. *Whether the suit is not maintainable?OPD*
6. *Whether the plaintiff has no locus-standi to file the present suit? OPD*
7. *Whether the plaintiff has not come to the Court with clean hands? OPD*
8. *Whether the present suit is under valued for the purpose of Court fee and jurisdiction?*
9. *Whether the present suit is barred under Order 2 Rule 2 CPC? OPD*



10. Whether the present suit is bad for mis-joinder of necessary parties?OPD

11. Relief.

5. Both parties were afforded adequate opportunity to lead their respective evidence pursuant to the framing of issues. Upon due appreciation of the entire material on record, the learned trial Court **partly decreed** the suit for refund of sale consideration with interest as agreement was inexecutable.

5.1. The appeal preferred by the appellant–plaintiff came to be **dismissed** by the learned First Appellate Court. Aggrieved by the concurrent findings recorded against her, the appellant has approached this Court by way of the present Regular Second Appeal.

6. Through the instant appeal, the appellant has assailed the concurrent judgments and decrees passed by the learned Courts below. This Court has considered it appropriate to hear learned counsel for the appellant prior to issuance of notice to the respondents.

7. I have heard learned counsel for the appellant at length and have bestowed anxious and careful consideration upon his submissions, keeping in view the pleadings of the parties, the evidence brought on record, and the concurrent findings returned by the Courts below.

8. Learned counsel for the appellant submitted that once Dhian Singh had unequivocally admitted the execution of the agreement to sell, receipt of the entire sale consideration, and delivery of possession, the learned Courts below erred in law in failing to appreciate that such admissions constituted conclusive proof of the transaction. It was further contended that the appellant–plaintiff had duly established her continuous



readiness and willingness to perform her part of the contract and was, therefore, entitled to protection of her lawful possession even in the absence of execution of a registered sale deed. Learned counsel further argued that the subsequent sale deeds were executed with *mala fide* intent to defeat the vested rights of the plaintiff and could not operate to her prejudice. On these premises, it was prayed that the impugned judgments and decrees be set aside and the appeal be allowed.

9. The learned Courts below have concurrently recorded a finding that defendant No.1-Dhian Singh, was not competent to enter into an agreement to sell in respect of 5 marlas of the suit land, as he was not the owner thereof. The *jamabandi* placed on record as Ex.DX establishes that defendant No.1 held only a 1/12th share out of the ½ share of Budh Singh in land measuring 5 kanals 3 marlas, thereby rendering his share slightly more than 4 marlas and conferring upon him the status of a co-sharer in joint possession. The learned First Appellate Court has, therefore, correctly observed that defendant No.1 lacked exclusive title to the extent claimed. It further stands proved that defendant No.1, acting through his attorney, had already executed a registered sale deed in favour of defendant No.2 on 04.08.2010 in respect of land measuring 1 kanal 19 marlas, which transaction preceded both the agreement to sell in dispute and the cancellation of the general power of attorney vide deed dated 06.08.2010. In view thereof, the learned Courts below have rightly concluded that the agreement in favour of the appellant–plaintiff was not capable of specific performance, rendering the suit for such relief



untenable. The grant of alternative relief by way of refund of consideration money along with interest is thus legally justified.

9.1. In light of the foregoing, no illegality or perversity is discernible in the impugned judgments and decrees, and the appeal, being devoid of merit, stands **dismissed**.

10. In view of the fact that the principal matter stands finally adjudicated, all pending miscellaneous applications, if any, also stand disposed of accordingly. No further orders are required to be passed in that regard.

10.02.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No9