



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

RSA-2847-2001 (O&M)

Reserved on :-20.02.2026

Date of Pronouncement:-26.02.2026

Uploaded on:-26.02.2026

Dharam Pal

... Appellant

Versus

Baldev Gir @ Daya Ram and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Vijay Lath, Advocate with
Mr. Ajay S. Dhiman, Advocate
for the appellant.

Mr. Paramveer Singh, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter referred to as the “RSA”) has been instituted by the appellant–plaintiff assailing the judgment and decree dated 02.06.2001 rendered by the learned Additional District Judge, Rupnagar. By virtue of the impugned judgment, the learned First Appellate Court partly allowed the appeal preferred by the respondent–defendants and consequently declined the principal relief of specific performance of the agreement to sell as sought by the appellant–



plaintiff, thereby modifying the judgment and decree dated 04.08.1997, passed by the learned trial Court to that extent.

2. Briefly stated, the case of the plaintiff is that an agreement to sell dated 11.10.1985 was executed by defendant No.1 in his favour in respect of the suit land measuring 4 Kanals 16 Marlas for a total sale consideration of ₹6,000/-. At the time of execution of the agreement, a sum of ₹5,000/- was paid as earnest money, and the balance amount of ₹1,000/- was agreed to be paid at the time of execution and registration of the sale deed.

2.1. It was further stipulated between the parties that since defendant No.1 had succeeded to the suit property upon the demise of his father, the sale deed would be executed and registered within one month from the date of sanction of the mutation of inheritance in favour of defendant No.1. However, defendant No.1 failed to inform the plaintiff about the sanction of the said mutation. Upon independently learning of the mutation having been sanctioned, the plaintiff approached defendant No.1 and called upon him to execute the sale deed in terms of the agreement. Despite repeated requests, defendant No.1 not only declined to honour his contractual obligations but also threatened to alienate the suit property in favour of third parties.

2.2. The plaintiff has consistently averred that he has always been ready and willing to perform his part of the contract and continues to remain so. It is alleged that defendant No.1, with mala fide intent, deliberately evaded execution of the sale deed, thereby compelling the



plaintiff to institute the present suit seeking specific performance of the agreement to sell.

3. Upon service of summons, defendant No.1 entered appearance and filed a written statement, wherein he categorically denied the execution of any agreement to sell in favour of the plaintiff. However, thereafter, defendant No.1 failed to contest the proceedings and was accordingly proceeded against ex parte.

3.1. During the pendency of the suit, the plaint was amended upon the plaintiff discovering that immediately upon the sanction of mutation in his favour, defendant No.1 had alienated the suit property in favour of defendants No.2 to 5. Consequently, defendants No.2 to 5 were impleaded as parties to the suit. It was specifically pleaded that the sale deed executed in their favour was illegal, null and void, and incapable of conferring any lawful right, title, or interest, particularly in view of the prior agreement to sell in favour of the plaintiff. It was further asserted that defendants No.2 to 5 had knowledge of the subsisting agreement and, therefore, could not claim protection as bona fide purchasers.

3.2. Defendants No.2 to 5 contested the suit by filing a joint written statement, raising preliminary objections *inter alia* regarding the maintainability of the suit.

3.3. On merits, the answering defendants denied that defendant No.1 had ever agreed to sell the suit land to the plaintiff and alleged that the purported agreement relied upon by the plaintiff was fabricated and manipulated. It was pleaded that the suit land had been agreed to be sold to them vide agreement dated 08.04.1993 and that the plaintiff had



knowledge thereof. Pursuant to the said agreement, a registered sale deed dated 24.04.1993 was executed in their favour. The answering defendants thus asserted that they were *bona fide* purchasers for valuable consideration without notice of any prior agreement.

4. In replication, the plaintiff specifically denied the preliminary objections and substantive pleas raised in the written statements and reaffirmed the averments made in the plaint. Thereafter, the learned trial Court, for the purpose of delineating the real controversy between the parties and ensuring an orderly adjudication of the *lis*, framed the following issues for determination:-

1. Whether Baldev Gir @ Daya Ram defendant No.1 entered into an agreement to sell 4 kanals 16 marlas land bearing 1/4 share of total land measuring 19 kanals 5 marlas, as fully detailed in the head note of the plaint and executed an agreement to sell dated 10.11.85 in favour of the plaintiff after receiving Rs.5,000/- as earnest money? OPP
2. Whether the plaintiff was ready and willing and still ready and willing to perform his part of the contract of the agreement dated 11.10.85? OPP
3. Whether the plaintiff is entitled to the possession of land in suit by way specific performance of the agreement sell dated 11.10.1985 with consequential relief of injunction or in the alternative suit for recovery of Rs.10,000/- as alleged? OPP.
4. Whether the suit is not maintainable and competent against defendants No.2 to 5? OPD 2 to 5
5. Whether defendants No. 2 to 5 are *bona fide* purchasers of the suit land for consideration? OPD 2 to 5.
6. Relief.



5. Upon completion of the pleadings, both parties were afforded full, fair, and adequate opportunity to adduce oral as well as documentary evidence in substantiation of their respective claims and defences. After the conclusion of trial and upon hearing learned counsel for the parties at length, the learned Trial Court, on a comprehensive appraisal of the evidence on record, **decreed** the suit in favour of the plaintiff.

6. Aggrieved by the said judgment and decree, the respondents—defendants preferred an appeal before the learned Additional District Judge, Rupnagar. The learned First Appellate Court **partly allowed** the appeal. While affirming the findings of the learned Trial Court with regard to the due execution of the agreement to sell in favour of the appellant—plaintiff and his continuous readiness and willingness to perform his part of the contract, the learned First Appellate Court nevertheless concluded that the contesting defendants were *bona fide* purchasers for valuable consideration without notice. On that premise, the relief of specific performance was declined, and the plaintiff was held entitled only to refund of the earnest money along with interest.

6.1. Assailing the aforesaid findings and conclusions of the learned First Appellate Court, the appellant—plaintiff has instituted the present RSA. Upon admission, notice was issued to the respondents, who have since entered appearance through counsel and have contested the appeal. The records of the Courts below are available on the Digital Management System (DMS) and have been perused for the purpose of comprehensive adjudication.



7. I have heard learned counsel for the parties at considerable length and have meticulously examined the entire record.

8. 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.

9. Learned counsel appearing on behalf of the appellant–plaintiff vehemently contended that the impugned judgment rendered by the learned Additional District Judge, Rupnagar, suffers from patent illegality and is vitiated by findings founded upon surmises and conjectures rather than cogent evidence on record. It was submitted that the conclusion recorded by the learned First Appellate Court holding the respondent–defendants to be bona fide purchasers for valuable consideration is wholly unsupported by admissible evidence and is, therefore, perverse in the eye of law. Such a finding, being contrary to the material on record, is amenable to interference in the exercise of jurisdiction under Section 41 of the Punjab Court Act. On these premises, it was urged that the impugned judgment and decree deserve to be set aside and the appeal be allowed.



10. Per contra, learned counsel for the contesting respondents assailed the findings recorded by the Courts below insofar as they relate to the execution of the agreement to sell in favour of the plaintiff. It was contended that the alleged agreement was not executed by a legally competent person and that the plaintiff has failed to establish, either in pleadings or in evidence, that he remained continuously ready and willing to perform his part of the contract, as mandatorily required under Section 16(c) of the Specific Relief Act, 1963, read with Order VI Rule 3 CPC and Form No. 47 appended thereto. It was further submitted that notwithstanding the absence of any cross-appeal or cross-objections, the respondents are entitled, by virtue of the provisions of Order XLI Rule 33 CPC, to assail findings which have been recorded against them in the appeal preferred by the opposite party.

11. Elaborating further, learned counsel contended that there is no substantive material on record to demonstrate the plaintiff's continuous readiness and willingness, emphasizing that the concepts of "readiness" and "willingness" are distinct and must be independently established. According to him, the plaint lacks the requisite particulars and the evidence led is equally deficient in this regard. It was, therefore, argued that the findings of the learned First Appellate Court declaring the contesting respondents as bona fide purchasers for consideration are well-reasoned, grounded in the evidence on record, and do not warrant any interference. Accordingly, dismissal of the present appeal was prayed for.

12. I have considered the rival submissions advanced at the Bar and have meticulously examined the entire record. Insofar as the



entitlement of the contesting respondents to challenge adverse findings is concerned, the issue is no longer res integra. The Hon'ble Supreme Court in ***Ravinder Kumar Sharma vs. State of Assam, AIR 1999 SC 3571*** has authoritatively expounded the scope and ambit of such a right. The relevant extract is reproduced here-in-below:—

"Respondent-defendant in an appeal can without filing cross-objection can attack the adverse finding upon which a decree in part has been passed against the respondent, for the purpose sustaining the decree to the extent the lower Court had dismissed the suit against the defendants-respondents. The filing of cross-objection after 1976 Amendment is purely optional and not mandatory."

12.1. This Court has also held in ***Jeevan Lal vs. Tejo and Others, 2021(4) PLR 275***, as under:-

"Although, the defendant has not filed any appeal or cross-objections, however, this Court in exercise of powers under Order 41 Rule 33 CPC has the duty to look into the facts of the entire case and thereafter arrive at a right conclusion irrespective of the fact whether the defendant has filed a cross-appeal or not."

13. In view of the settled and authoritative exposition of law on the subject, it stands unequivocally established that the contesting respondent-defendants are well within their legal right to assail and impeach the adverse findings recorded against them, while advancing submissions in the appeal preferred by the appellant-plaintiff, even in the absence of any independent cross-appeal or cross-objections.

14. Developing his submissions further, learned counsel for the contesting respondents contended that the very substratum of the plaintiff's case, namely, the alleged agreement to sell, stands vitiated on account of



want of lawful execution. It was argued that the agreement dated 11.10.1985 was not executed between the plaintiff and defendant No. 1, inasmuch as the plaintiff himself is not a signatory thereto. Rather, the document purports to bear the signatures of the plaintiff's father. Consequently, it was submitted that there existed no privity of contract between the plaintiff and defendant No. 1, and the alleged agreement cannot be said to have been executed by a legally competent person on behalf of the plaintiff.

15. It was further pointed out that the Special Power of Attorney (Ex.P2), relied upon by the plaintiff to validate the act of his father, was executed only on 11.05.1993, nearly eight years subsequent to the date of the agreement to sell. Thus, on the date of the alleged execution of the agreement, the plaintiff's father did not possess any authority, either express or implied, to enter into a binding contract on behalf of the plaintiff. The Power of Attorney (Ex.P2), it was emphasized, is a special and limited authority conferred solely for the purpose of instituting the present suit and cannot, by any stretch of legal reasoning, operate retrospectively so as to validate an agreement purportedly executed in 1985.

16. In support of the aforesaid proposition, learned counsel placed reliance upon the judgment of the Hon'ble Supreme Court in ***S. Abdul Khader vs. Abdul Wajid (dead) by LRs and Others***, 2008(4) Civ.CC 431, wherein the legal position with respect to execution of agreements by persons lacking authority has been authoritatively delineated. The relevant extract therefrom is reproduced hereunder:—



20. On the merits of the case of the parties, it is clear that when the first Agreement for Sale was executed by respondent No. 1 in favour of the petitioner, he did not possess any power to enter into the agreement with the petitioner. For a brief period such power was given to him but was again withdrawn. Accordingly, on the two dates which are relevant for our purpose, namely, 21st February, 1995 and 18th May, 1995, the respondent No. 1 had no legal right in respect of the suit property. Consequently, the agreement executed by the respondent No. 1 in favour of the petitioner on 21st February, 1995, had no legal sanction and the suit for specific performance on the basis thereof was incompetent.
- 16.1. Reliance has further been placed upon the judgment rendered by the Indore Bench of the Hon'ble Madhya Pradesh High Court in ***Navneet Das vs. Smt. Kamla Bai, Law Finder Document ID #1596842***, wherein the legal position governing the controversy at hand has been lucidly enunciated and expounded in the following terms:—
13. Therefore, in view of the aforesaid two conditions, defendant no.2 was given Power of Attorney to sale but when defendant no.1 requires some money. Hence absolute right to sale was not given to defendant no.2. He was also not given any right to enter into an agreement to sale. Defendant no.2 has been given authority only to sign the document on behalf of defendant no.1 in case of sale for want of money. The agreement to sale ought to have been executed with defendant no.1. The Power of Attorney was given only for limited purpose. No absolute right was given to sell or execute the agreement to sale with anyone, therefore, on the basis of Power of Attorney, defendant no.2 has wrongly executed the agreement to sale with the plaintiff. Discretion to sell of house was with



defendant No.1 not with defendant no.2 P.O.A. Watch. Therefore, the learned District Judge has rightly granted the decree of return of money by defendant no.2 to the plaintiff. If it has been held above that the Power of Attorney was not given to sale of the house to defendant no.2, therefore. whether it has been cancelled or not, is not required to be considered in this appeal.

17. It is, indeed, not in dispute that the agreement to sell, forming the substratum of the present *lis*, was executed on behalf of the plaintiff by his father, the plaintiff himself not having appended his signatures thereto. The earnest money stipulated under the agreement was likewise tendered by the father, acting for and on behalf of the plaintiff at the time of its execution.

17.1. However, the authorities cited and pressed into service by learned counsel for the contesting respondents are manifestly distinguishable on facts and are inapplicable to the controversy at hand. Those precedents pertain to situations where an agreement was purportedly executed on behalf of a landowner by an unauthorized individual, and the landowner subsequently repudiated such authority, thereby disputing the very validity of the contract. In contradistinction, the present case concerns a purchaser who has neither repudiated nor disowned the authority of his father. On the contrary, the plaintiff has unequivocally affirmed and adopted the agreement in question. He has, in express terms, owned the transaction and further executed a Special Power of Attorney (Ex.P2) in favour of his father, authorizing him to institute proceedings for specific performance on the strength of the said agreement.



17.2. The factual matrix thus clearly establishes ratification by the plaintiff of the acts performed by his father in negotiating and executing the agreement to sell with defendant No.1 on his behalf. Such ratification, in law, relates back to the date of the original act and validates the transaction as if it had been performed with prior authority. Consequently, it cannot be sustained that no valid and binding agreement to sell came into existence between the plaintiff and defendant No.1.

17.3. Learned counsel for the contesting respondents has further assailed the concurrent findings recorded by the Courts below with respect to the plaintiff's readiness and willingness to perform his part of the contract. It is contended that the appellant-plaintiff has neither pleaded nor proved the essential ingredients necessary to demonstrate continuous readiness and willingness, as mandatorily required under Section 16(c) of the Specific Relief Act. Emphasis has been laid on the well-settled distinction between the concepts of "readiness" and "willingness," it being urged that both elements must be specifically averred and substantiated through cogent evidence for the grant of the equitable relief of specific performance.

17.4. In support of the aforesaid submissions, reliance has been placed upon the judgment of a Co-ordinate Bench of this Court in ***Usha Rani vs. Shakuntla and Others, 2025 NCPHHC:40715***, as well as upon the pronouncements of the Hon'ble Supreme Court in ***Padmakumari and Others vs. Dasayyan and Others, 2015 INSC 288*** and ***Shenbagam and Others vs. K.K. Rathinavel, 2022 INSC 75***, wherein the contours and



mandatory nature of the requirement of readiness and willingness have been elaborately delineated.

18. Per contra, learned counsel appearing on behalf of the appellant–plaintiff has vehemently contended that the subsequent purchasers are wholly bereft of locus standi to assail the maintainability of the suit on the premise that the plaintiff was not ready and willing to perform his part of the contract. It is urged that the plea of absence of readiness and willingness is intrinsically personal to the contracting parties and cannot be invoked by transferees pendente lite or subsequent purchasers, who merely step into the shoes of the vendor. In support of this proposition, reliance has been placed upon the authoritative pronouncement of the Hon’ble Supreme Court in ***Jugraj Singh and Another vs. Labh Singh and Others, AIR 1995 SC 945.***

18.1. It has been further contended that, even otherwise, the evidentiary record unmistakably establishes that the appellant–plaintiff had continuously remained ready and willing to perform his contractual obligations. The duly constituted attorney of the appellant–plaintiff entered the witness box and categorically deposed that the plaintiff had always been, and continues to be, ready and willing to discharge his part of the agreement. Significantly, this assertion was not subjected to any effective cross-examination. The absence of challenge on this material aspect, it is submitted, renders the testimony unimpeached and worthy of due credence.

18.2. In rejoinder thereto, learned counsel for the contesting respondents has argued that a Power of Attorney holder is legally incompetent to depose in respect of matters which fall within the exclusive



personal knowledge of the principal. It is contended that readiness and willingness being matters of intention and conduct, the principal himself ought to have entered the witness box. In aid of this submission, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Mahender Kaur vs. Sant Paul Singh*, 2019 INSC 1105.**

18.3. I have bestowed my thoughtful consideration upon the rival submissions and have carefully examined the authorities cited at the Bar. In **Mahender Kaur's case** (supra), the Hon'ble Apex Court, in paragraph 6 of the judgment, has delineated the scope and limitations governing the evidentiary competence of a Power of Attorney holder, observing as under:—

6. In Janki Vashdeo (supra), it was held that a power of attorney holder, who has acted in pursuance of the said power, may depose on behalf of the principal in respect of such acts but cannot depose for the principal for the acts done by the principal and not by the power of attorney holder. Likewise, the power of attorney holder cannot depose for the principal in respect of matters of which the principal alone can have personal knowledge and in respect of which the principal is entitled to be cross-examined. In our opinion, the failure of the presumption against him as further observed therein as follows:-

15. Apart from what has been stated, this Court in the case of vidhyadhar v. Manikrao observed at SCC pp. 583-84, para 17 that:

17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct....".



19. Undoubtedly, it is a well-settled principle that a Power of Attorney holder cannot depose on behalf of the principal in respect of matters which lie exclusively within the personal knowledge of the principal. However, the application of this principle is necessarily contingent upon the factual matrix of each case. In the present matter, the attorney is none other than the father of the plaintiff, who not only actively participated in the transaction but had, in fact, executed the Agreement to Sell (Ex.P1) on behalf of the plaintiff even prior to the formal execution of the Power of Attorney. In such circumstances, it would be wholly misconceived to contend that the attorney lacked personal knowledge of the material facts, particularly with regard to the plaintiff's readiness and willingness to perform his part of the contract.

19.1. A careful scrutiny of the terms and conditions embodied in the Agreement (Ex.P1) reveals that the contract was to become executable upon the sanctioning of the mutation of inheritance in favour of defendant No. 1, and that the sale deed was to be executed within one month from the date of such sanction. It is an admitted position on record that immediately upon the mutation being sanctioned, and without any intimation whatsoever to the appellant-plaintiff, defendant No. 1, on the very next day, executed a sale deed in favour of defendants No. 2 to 5. The execution of the sale deed in favour of the contesting defendants was thus effected even before the appellant-plaintiff could be apprised that the agreement had become enforceable.

20. In effect, therefore, the agreement remained capable of performance for no more than a fleeting interlude of a single day, during



which the appellant–plaintiff was neither notified nor afforded an opportunity to perform his obligations. The breach, thus, emanates squarely from the conduct of defendant No. 1. In this factual backdrop, the reliance placed by the contesting respondents upon precedents governing the evidentiary limitations of a Power of Attorney holder is clearly distinguishable and inapposite.

21. The pleadings in the plaint, read conjointly with the unshaken testimony of the attorney, sufficiently establish that the appellant–plaintiff had consistently remained ready and willing to perform his contractual obligations, and that it was defendant No. 1 who, in derogation of the subsisting agreement, chose to alienate the property clandestinely and in undue haste. The foundational requirement under Section 16(c) of the Specific Relief Act thus stands duly satisfied.

22. Learned counsel for the appellant has further assailed the findings recorded by the learned Additional District Judge holding the contesting respondents to be bona fide purchasers for valuable consideration without notice, contending that such findings rest upon surmises and conjectures and are unsupported by cogent, credible, and legally admissible evidence on record.

23. Per contra, learned counsel for the contesting respondents has submitted that the jurisdiction of this Court in a second appeal under Section 41 of the Punjab Courts Act is circumscribed and does not extend to re-appreciation of findings of fact, even if such findings are alleged to be grossly erroneous. In support of this submission, reliance has been placed upon the judgment of the Hon’ble Supreme Court in *M/s Shivalik*



Enterprises vs. Smt. Godawari (deceased) Through LRs and Others, 2022 INSC 952, wherein the scope and limitations of interference in second appeal have been delineated as under:-

15. “It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”

23.1. The statutory mandate embodied in Section 41 of the Punjab Courts Act, which delineates the contours and limitations of the jurisdiction exercisable in a RSA, reads thus as under:—

"41. Second appeals (1) An appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely:

(a) the decision being contrary to law or to some custom or usage having the force of law:

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law:

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 [V of 1908], or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;

[Explanation A question relating to the existence or validity of a custom



or usage shall be deemed to be a question of law within the meaning of his section:]

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.”

24. Learned counsel for the appellant has emphatically contended that while findings of fact recorded by the learned First Appellate Court ordinarily fall beyond the pale of interference in a Regular Second Appeal under Section 41 of the Punjab Courts Act, such immunity does not extend to findings which are demonstrably perverse, patently erroneous, or founded upon no evidence whatsoever. It is submitted that where a conclusion is not merely incorrect but is unsupported by any legal evidence and rests solely upon surmises and conjectures, this Court would be well within its jurisdiction to re-examine and set aside the same. According to the appellant, the impugned findings squarely fall within this exceptional category and are, therefore, liable to be reversed.

25. Upon a careful and comprehensive scrutiny of the judgment rendered by the learned First Appellate Court, it emerges that the conclusions regarding the contesting defendants being *bona fide* purchasers for valuable consideration without notice have been recorded in the absence of any substantive evidence. The learned First Appellate Court has observed that the Agreement to Sell (Ex.P1) was unregistered, that possession had not been delivered pursuant thereto, and that no overt acts or celebrations were undertaken by the plaintiff to publicize the transaction. It further noted that defendants No. 2 to 5 were residents of Nangal Township and, despite inquiries, could not have become aware of the prior agreement. Significantly, however, the learned First Appellate



Court expressly acknowledged that no evidence had been adduced by the defendants to establish their status as *bona fide* purchasers. Notwithstanding this categorical observation, the Court proceeded, on a consideration of surrounding circumstances alone, to hold them to be *bona fide* purchasers. Similarly, with respect to consideration, although no witness was examined to prove the execution of the sale deed or the actual passing of consideration, the mere production of the sale deed (Ex.D1) on record was treated as sufficient proof thereof.

26. The findings so recorded are manifestly unsustainable in law. The learned First Appellate Court has itself observed that the defendants led no evidence to substantiate their plea of bona fide purchase, nor did they establish, through cogent proof, that the consideration recited in the sale deed had in fact passed. Yet, by drawing inferences from extraneous factors, such as the lapse of time in enforcement of the agreement, its non-registration, absence of delivery of possession, and the lack of public celebration, the Court concluded that the defendants were bona fide purchasers. These considerations, in the absence of affirmative evidence of due inquiry and good faith, cannot substitute for proof.

27. There is no material on record to demonstrate that the contesting defendants undertook any bona fide inquiry into the title or prior contractual obligations relating to the suit property. On the contrary, the evidence indicates that the contesting respondents were carrying on business in close proximity to the suit land, situated only a few yards away. The observation that they were residents of Nangal Township appears to have been recorded without due regard to the evidence establishing their



commercial presence adjacent to the property in question. Furthermore, the execution of the sale deed on the very next day following the sanction of mutation in favour of defendant No. 1, coupled with the complete absence of evidence of any bona fide inquiry, militates against the conclusion that the defendants acted in good faith.

28. As regards consideration, the mere exhibition of the sale deed as Ex.D1 does not, *ipso facto*, establish that the consideration recited therein was actually paid. It was incumbent upon the defendants to lead affirmative evidence to prove both execution and passing of consideration. Admittedly, no such evidence has been brought on record. The conclusions drawn by the learned First Appellate Court are, therefore, founded not upon legal evidence but upon conjectural reasoning. In these circumstances, where the findings are demonstrably based upon no evidence and are the product of surmise rather than judicial evaluation of proved facts, consequently, the impugned findings recorded by the learned First Appellate Court on Issues No. 2, 3 and 5 are accordingly reversed.

29. Consequently, the appeal preferred by the appellant stands **allowed**. The judgment and decree passed by the learned First Appellate Court is set aside, and those of the learned Trial Court is restored. The suit of the plaintiff is decreed for possession of the suit land measuring 4 Kanals 16 Marlas, fully detailed in the head-note of the plaint, by way of specific performance of the agreement to sell dated 11.10.1985, along with consequential relief of permanent injunction restraining the defendants from alienating the suit land or creating any encumbrance thereon.



30. The plaintiff shall deposit the balance sale consideration in the Court within a period of two months from the date of this judgment. Upon such deposit, the defendants shall execute the sale deed in favour of the plaintiff within a further period of two months of deposit and shall deliver vacant physical possession of the suit land to the plaintiff. In the event of failure on the part of the plaintiff to deposit the balance consideration within the stipulated period, the suit shall stand dismissed automatically. Conversely, if the defendants fail to comply with the decree, the plaintiff shall be entitled to have the sale deed executed through the process of the Court, and the Court shall ensure delivery of possession in accordance with law.

31. Consequent upon the final adjudication of the principal controversy, all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, shall stand disposed of by necessary implication, no independent orders being warranted thereon in view of the conclusions herein recorded.

26.02.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No