



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

RSA-880-2005 (O&M)

Reserved on :-13.03.2026

Date of Pronouncement:-18.03.2026

Uploaded on:-19.03.2026

Surti (Deceased) Through her LRs

... Appellants

Versus

Daulat Ram (Deceased) Through his LRs and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. S.S. Salar, Advocate
Mr. Tisha Joshi, Advocate
for the appellants.

Ms. Sarika Gupta, Advocate with
Mr. Esh Gupta, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The instasnt Regular Second Appeal ("RSA" for short) has been preferred by the appellant–defendant assailing the judgment and decree dated 31.01.2005, whereby the learned First Appellate Court reversed the judgment and decree dated 04.08.1994 passed by the learned Trial Court and consequently decreed the suit instituted by the respondent–plaintiff for specific performance of the agreement to sell in question.

2. At the outset, it may be noted that the respondent–plaintiff instituted a suit seeking possession by way of specific performance of the



agreement to sell dated 12.11.1988 in respect of the suit property measuring 08 *bighas* 19 *biswas*. It was pleaded that the said agreement to sell had been executed in favour of the respondent–plaintiff by the attorney of the appellant–defendant, pursuant to which a sum of ₹10,000/- was received as earnest money. It was further averred that the sale deed was agreed to be executed on 31.01.1989 upon payment of the remaining sale consideration and that the respondent–plaintiff had always been ready and willing, and continued to remain ready and willing, to perform his part of the contract. In the alternative, the plaintiff also sought recovery of ₹20,000/- along with interest at the rate of 12% per annum.

3. The appellant–defendant contested the suit by filing a written statement, inter alia, raising a preliminary objection that the suit was barred under Order II Rule 2 read with Section 11 of the Code of Civil Procedure, 1908, on the ground that the respondent–plaintiff had earlier instituted a suit for permanent injunction on the basis of the same agreement to sell, which came to be dismissed on 22.03.1990, and that the present suit had been instituted thereafter. On merits, while the execution of the agreement to sell and receipt of earnest money were admitted, it was contended that the power of attorney in favour of Hari Ram had been revoked vide a revocation deed dated 20.01.1989, and that due notice of such revocation had been conveyed to the plaintiff. It was further pleaded that the power of attorney was revoked because defendant No.2 was not willing to alienate the suit land and that the agreement to sell executed with the respondent–plaintiff had been entered into without the consent or permission of the true owner. On these premises, dismissal of the suit was prayed for.



4. The respondent–plaintiff filed a replication controverting the averments made in the written statement and reiterating those contained in the plaint. Upon a careful and comprehensive consideration of the pleadings, documents, and submissions advanced by the parties, the learned Trial Court framed the following issues for adjudication so as to enable a proper and effective determination of the controversy between the parties:-

1. Whether the agreement to sell dated 12.11.1988 was executed in favour of the plaintiff? OPP
2. Whether the plaintiff has been ready and willing to perform his part of the agreement to sell? OPP.
3. Whether the plaintiff is entitled to recover Rs.20,000/- as an alternative relief? OPP,
4. Whether the plaintiff is entitled to the permanent injunction prayed for? OPP
5. Whether the suit is barred U/O 2 Rule 2 read with Section 11 of the CPC? OPD.
6. Whether the plaintiff is estopped by his Act and conduct to file the present suit? OPD.
7. Whether the suit is barred for misjoinder and non-joinder of necessary parties? OPD.
8. Relief.

5. Initially, the learned Trial Court dismissed the suit instituted by the respondent–plaintiff. Aggrieved by the said judgment and decree, the respondent–plaintiff preferred an appeal, which came to be allowed by the learned Additional District Judge, who set aside the judgment and



decree of the Trial Court and decreed the suit vide the impugned judgment and decree dated 31.01.2005.

6. Dissatisfied with the aforesaid judgment and decree, the present appeal has been preferred by the appellant–defendant. The appeal was admitted for hearing vide order dated 06.01.2006, inter alia, on the grounds that the respondent–plaintiff had failed to establish his readiness and willingness to perform his part of the contract and that the alleged compromise (Ex.DW2/A) had not been duly considered while decreeing the suit in favour of the respondent–plaintiff.

7. 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.

8. I have heard learned counsel for the parties at considerable length and have accorded anxious and thoughtful consideration to their respective submissions, in the light of the pleadings of the parties, the evidence available on record, and the findings recorded by the Courts below.



9. Learned counsel for the appellant contended that the learned First Appellate Court has failed to properly appreciate the pleadings and evidence on record and has recorded findings based on surmises and conjectures. It was argued that the material on record does not establish that the respondent–plaintiff remained ready and willing to perform his part of the contract continuously till the passing of the decree, particularly when the compromise Ex.DW2/A was not duly taken into consideration while adjudicating the said issue. Learned counsel further submitted that the agreement in question was executed in the year 1988 and the relief of specific performance is being pursued in the year 2026, i.e., after a lapse of nearly thirty-eight years. During this prolonged period, the value of the land has increased manifold and, therefore, grant of specific performance at this stage would operate inequitably against the appellant–defendant, compelling him to part with his property at a grossly undervalued consideration.

10. Conversely, learned counsel for the respondent–plaintiff contended that the learned First Appellate Court has correctly appreciated the pleadings as well as the evidence on record and has rightly concluded that the respondent–plaintiff remained ready and willing to perform his part of the contract throughout. It was further submitted that the compromise Ex.DW2/A is alleged to have been executed between defendant No.1 Hari Ram and the respondent–plaintiff. Admittedly, Hari Ram had entered into the agreement to sell with the respondent–plaintiff in the capacity of an attorney of defendant No.2; however, the said power of attorney stood revoked by defendant No.2. Consequently, after such



revocation, Hari Ram was not legally competent to enter into any compromise on behalf of the appellant–Surti, nor did he possess any right, title or interest in the suit property. It was, therefore, contended that the learned First Appellate Court has rightly declined to rely upon the alleged compromise, particularly when the same was never acted upon by defendant Hari Ram.

11. The principal controversy between the parties pertains to the readiness and willingness of the respondent–plaintiff to perform his part of the contract. In this regard, the learned First Appellate Court has recorded its findings in para No.17 of the impugned judgment, which reads as under:-

17. *“Point no 2 The plaintiff/ appellant has fully proved his readiness and willingness to perform his part of contract. the case this power of was In revoked by attorney defendant/respondent no 2 on 20.01.1989 and the notice is Ex D 1 Hari Ram and is dated which bears the thum impression of 20.01.1989. Then after that the plaintiff/appellant filed a suit for permanent injunction against the defendant/respondents on 25.01.1980 and on the stipulated day i.e. 31.01.1989 he remained present in the office of Sub Registrar Kharar to perform his part of contract. To show his presence his application is Ex P 2 and affidavit of the same day is Ex P 3 and notice issued to the defendants/respondents is Ex P 4 and the present suit was filed on 23.12.1989. The plaintiff while appeared as PW 3 has clearly stated that he is always remained ready and willing and is still ready and willing to perform his part of contract. The plaintiff appellant has pleaded his readiness and willingness in his plaint. Moreover, the conduct of the*



defendants/respondents proves that they are conniving with each other to set aside the agreement dated 12.11.1988. So the plaintiff/appellant was ready and willing to perform his part of contract, so the findings of ld trial Court on issue no 2 are hereby reversed and issue no 2 is decided in favour of the Plaintiff/appellant and against the defendants/respondents.”

11.1. It stands duly established on record that the respondent–plaintiff remained present in the office of the Sub-Registrar, Kharar on the stipulated date, i.e., 31.01.1989, for the purpose of performing his part of the contract. In support thereof, he has produced on record the application moved before the Sub-Registrar (Ex.P2) and has deposed that the Sub-Registrar declined to entertain the same. Consequently, the respondent–plaintiff got an affidavit attested on the very same day before the Oath Commissioner, which has been exhibited as Ex.P3. Thereafter, a legal notice was issued to the appellant–defendant, a copy whereof has been placed on record as Ex.P4. The present suit was instituted on 23.02.1989. Thus, the material available on record clearly demonstrates that the respondent–plaintiff continuously remained ready and willing to perform his part of the contract. He was present in the office of the Sub-Registrar along with the balance sale consideration, and upon the failure of the appellant–defendant to appear, he promptly moved application Ex.P2, got his affidavit attested as Ex.P3, and issued notice Ex.P4, though without eliciting any response.

11.2. Learned counsel for the appellant–defendant has contended that the mere service of a notice or the attestation of an affidavit does not, by itself, establish readiness and willingness on the part of the respondent–



plaintiff. In support of this contention, reliance has been placed upon the judgment of the Hon'ble Apex Court in *Sangita Sinha vs. Bhawana Bhardwaj and Others, AIR 2025 (SC) 1806*. However, the facts of the said case are clearly distinguishable. In that matter, the earnest money had been refunded to the plaintiff, and the plaintiff had encashed a substantial portion of the amount so returned. In those circumstances, the Hon'ble Apex Court held that the conduct of the buyer in encashing the demand drafts unequivocally established that she was not willing to perform her part of the agreement and proceed with the execution of the sale deed. It was further held that once the buyer's unwillingness to perform the contract stood established, the fact that the entire advance consideration had not been returned was immaterial. The factual matrix of the present case, however, does not attract the ratio of the aforesaid decision.

12. Learned counsel for the appellant–defendant has also placed reliance upon the alleged compromise Ex.DW2/A, which is stated to have been executed on 30.05.1990. According to the said document, defendant No.1 Hari Ram and the respondent–plaintiff purportedly entered into a compromise with the intervention of the Panchayat, whereby Hari Ram allegedly agreed to refund the earnest money to the plaintiff, and the plaintiff in turn agreed to withdraw the suit. It was further stipulated that the compromise would be produced before the Court on the next date of hearing, i.e., 11.06.1990, and the suit would accordingly be withdrawn.

12.1. The contention raised on behalf of the appellant is that the learned First Appellate Court failed to consider this compromise, which clearly indicates that the respondent–plaintiff had agreed to abandon his



claim for specific performance. However, this contention cannot be accepted. The alleged compromise is stated to have been executed between Hari Ram and the respondent–plaintiff, whereas the appellant–Surti, who is the true owner of the suit property and on whose behalf Hari Ram had earlier executed the agreement to sell as attorney, was not a party thereto. It is an admitted position that the power of attorney granted in favour of Hari Ram had already been revoked by the appellant– Surti prior to the alleged compromise. Consequently, on 30.05.1990, Hari Ram had no authority whatsoever to enter into any compromise on behalf of the appellant.

12.2. Thus, the compromise Ex.DW2/A cannot be treated as an agreement between the appellant– Surti and the respondent–plaintiff. Hari Ram had no independent right, title or interest in the suit property and was merely acting in a representative capacity. Upon revocation of the power of attorney, he ceased to possess any authority to bind the appellant in any manner. Moreover, although the alleged compromise is stated to have been executed during the pendency of the suit, it was never produced before the Court for implementation on the stipulated date. Significantly, the compromise itself contemplated that Hari Ram would refund the earnest money to the respondent–plaintiff. Plaintiff would withdraw the suit. There is no evidence on record to show that Hari Ram ever refunded the earnest money in terms of the alleged compromise. In these circumstances, the compromise Ex.DW2/A was never acted upon and was, therefore, rightly disregarded by the learned First Appellate Court.

13. Learned counsel for the appellant has further contended that the relief of specific performance is discretionary and equitable in nature. It



has been argued that the agreement to sell was executed in the year 1988, and if the decree for specific performance is enforced after nearly 38 years, it would operate harshly and inequitably against the appellant–Surti, who would be compelled to part with her land for a consideration that has become grossly inadequate due to the manifold increase in land prices over the years.

13.1. There is considerable force in the submission advanced by learned counsel for the appellant that the value of the land has increased substantially since the execution of the agreement to sell. If the contract were to be enforced strictly on the original terms, it may operate inequitably against the appellant. Therefore, in order to balance the equities between the parties and to do complete justice, it would be appropriate that the decree for specific performance be maintained subject to the condition that the respondent–plaintiff pays the balance sale consideration along with interest at the rate of 12% per annum from the date of the agreement to sell until the date of the decree passed by this Court and some was also the decree under appeal.

14. Consequently, the appeal preferred by the appellant–defendant stands **dismissed**, and the judgment and decree passed by the learned First Appellate Court are affirmed. The suit of the respondent–plaintiff for specific performance of the agreement to sell stands decreed. The respondent–plaintiff shall deposit the balance sale consideration along with interest at the rate of 12% per annum, as directed here-in-above and as granted by the Court below. Upon such deposit, the appellant–defendant shall execute the sale deed in respect of the suit land in favour of the



respondent–plaintiff and deliver vacant possession thereof. In the event of failure on the part of the appellant–defendant to do so, the respondent–plaintiff shall be at liberty to have the sale deed executed through the process of the Court. The appellant–defendant is further restrained from alienating or transferring the suit property in favour of any person other than the respondent–plaintiff. The interest payable shall run up to the date of the decree passed by this Court.

15. Consequent upon the final adjudication of the principal matter, all pending miscellaneous application(s), if any, arising out of or connected with the present proceedings, shall stand disposed of by necessary implication. In view of the conclusions recorded here-in-above, no separate orders are required to be passed with respect to such applications, as the same have become wholly infructuous.

18.03.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

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