

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****109****RSA-149-2022 (O&M)****Date of decision: 11.02.2026****Ram Kishan****...Appellant(s)****Vs.****Vedpal****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Ramesh Malik, Advocate for the appellant.*************NIDHI GUPTA, J.**

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the District Courts; whereby suit filed by the appellant for possession by way of specific performance, has been dismissed by both the District Courts.

2. The pleaded case of the appellant in the plaint was that the defendant is owner in possession of land measuring 30K 2M. It was stated that there are total 9 Agreements to Sell executed between plaintiff and defendant, whereby defendant had agreed to sell 8K of land for total sale consideration of Rs.76 lacs. At time of execution of first Agreement dated 07.08.2013 Ex.P3, plaintiff had paid Rs.5 lacs which was received by the defendant as earnest money; and Receipt dated 07.08.2013 was executed in the presence of sons of the defendant.

3. Date of execution and registration of Sale Deed was fixed as 25.02.2014, which was extended several times and finally extended to 29.09.2017. In this regard, a fresh Agreement dated 29.06.2017 was



executed in which defendant had acknowledged receipt of Rs.40 lacs from the plaintiff which amounts were paid by the appellant during the interregnum. Thereafter, plaintiff had even sent legal notice dated 05.10.2017 to the defendant, however to no avail. Hence, present suit for possession by way of specific performance was filed on 03.11.2017.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Senior Division), Rohtak, had dismissed the suit of the plaintiff vide judgment and decree dated 23.10.2019. The Civil Appeal filed by the plaintiff was dismissed with costs by the learned District Judge, Rohtak vide judgment and decree dated 17.05.2021. Hence, the present second appeal by the plaintiff.

5. It is *inter alia* submitted by learned counsel for the plaintiff/appellant that learned District Courts were in patent error in non-suiting the appellant as they have totally ignored the fact that defendant has admitted Agreement and has also admitted that he has received Rs.40 lacs by way of earnest money. It is contended that it is the respondent who has failed in his duty for registration of Sale Deed. The plaintiff had even called Panchayat in which defendant has admitted Agreement and has admitted that he was not present on target date before the Sub Registrar.

6. Learned counsel submits that learned District Courts have also ignored the fact that PW11 Dilbagh Singh has deposed that Agreement dated 29.06.2017 Ex.P20 and Receipt Ex.P21 bear his signatures as witness. Hari Kishan was the other witness. After the



Agreement was scribed by the Deed Writer, it was produced before the Sub Registrar for registration. Photographs were taken at that time. PW11 has further deposed that his thumb impressions were obtained. On a query, as to how much money defendant has taken, PW11 had replied that defendant had taken Rs.40 lacs. Learned counsel contends that while passing the impugned judgments and decrees, the learned District Courts have ignored the documents Ex.P20 and Ex.P21; and evidence.

7. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned District Courts be set aside.

8. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions of learned counsel for the appellant.

9. Perusal of the record of the case shows that in his written statement, defendant has admitted Agreement to Sell. However, the plaintiff has failed to prove payment of Rs.40 lacs as earnest money. On a Court query, learned counsel for the plaintiff has submitted that the said amount was paid in cash. However, learned counsel is unable to disclose the source of such a huge amount of cash; and rather submits that plaintiff is from a large family all of whom are farmers and for that reason, cash is available as income of the appellant is not taxable.

10. Besides the above, contention of the plaintiff defies belief also on the ground that plaintiff has not adduced any evidence to show that the said amount was received by the defendant in the presence of



any witnesses. Plaintiff has been able to prove only payment of Rs.8 lacs vide Receipts dated 07.08.2013 Ex.P4 and 17.09.2013 Ex.P4/A, which stand admitted by the defendant.

11. Plaintiff has even failed to prove that he was having balance sale consideration to perform the contract. It is to be noted that Agreement dated 29.6.2017 Ex.P20 does not mention about the loan amount allegedly obtained by the plaintiff from the Bank towards payment of remaining balance sale consideration. Thus, plaintiff was unable to prove his readiness to perform the contract. As regards willingness, on a Court query, plaintiff has also admitted that he has no Affidavit of Attendance to prove that he was present in the office of Sub Registrar on the target date of 29.09.2017. Rather, learned counsel for the plaintiff has submitted that the defendant has failed to come present, however admits that he has no Affidavit of Attendance to prove that on 29.09.2017, he was present before the Sub Registrar for registration of Sale Deed. However, a perusal of the record shows that plaintiff has indeed submitted his Affidavit of Attendance Ex.P22 to prove his presence in the office of Sub Registrar on 29.09.2017; Ex.P23 legal notice sent to the defendant; as also Ex.P25 and Ex.P26 which were stamp papers for the registration of Sale Deed. Thus, although plaintiff had proved his willingness to perform the contract however, has failed to prove readiness to perform his part of contract.

12. Case of the plaintiff is cast in doubt, also on account of the fact that admittedly, from the first date of Agreement to Sell i.e.



07.08.2013 till the date of final Agreement to Sell i.e. 29.06.2017, as many as 9 Agreements were executed between the parties in respect of the same suit land. From the said fact, it is clear that it was no intention of the parties to actually enter into Agreement to Sell; and in fact it was only a loan transaction between the parties; and it was only in order to secure loan, that the plaintiff had executed Agreement to Sell. In any event, there is no evidence on record that apart from Rs.8 lacs, plaintiff had paid any other amount to the defendant out of total sale consideration of Rs.76 lacs. Relevant findings of the learned Civil Judge (Senior Division), Rohtak in para 50 and 51 of the judgment dated 23.10.2019 read as under:-

“50. This court is of the view that firstly since, plaintiff has failed to prove payment of Rs.24 lacs as part sale consideration to the defendant, secondly, that he has failed to show the court that he has remaining Rs.36 lacs to make payment to the defendant and thirdly, that series of agreements were executed between plaintiff and defendant, which goes on to show the true intention of the parties which was securing the loan payment, this court is of the view that despite the fact that execution of agreement Ex.P20 has been proved on record, discretionary relief of specific performance can not be granted in favour of plaintiff.

51. The execution of agreement in question i.e. Ex.P20 is proved on record by admission of defendant himself. It is also the case of plaintiff that on date of execution of Ex.P20 no money was paid by him to the defendant. Thus, the receipt Ex.P21 of Rs.40 lacs executed on Ex.P20 does not carry any value by the admission of plaintiff himself. In such circumstances, it was the clear burden of plaintiff only to



prove that before execution of Ex.P20 he had made payment of Rs.40 lacs to defendant. Furthermore, Ex.P20 does not find mention about the loan amount obtained by plaintiff from bank which plaintiff had agreed vide Ex.P20 to repay and to count it towards the remaining balance sale consideration. Also Ex.P20 does not find mention about the remaining sale consideration i.e how much would be paid to the defendant.”

13. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.
14. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned District Courts. The present Regular Second Appeal is hereby **dismissed**.
15. Pending applications, if any, stand disposed of.

11.02.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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