



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

132

**RSA-3249-2025 (O&M)
Date of decision : 13.01.2026**

Krishan Lal**..... Appellant**

versus

Umed Singh**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. D.K. Tuteja, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)**CM-114-C-2026**

This is an application for preponing the date of hearing in the main case from 18.02.2026 to an early date.

For the reasons mentioned in the application, the same is allowed. Main case is taken on Board today itself.

Main case

1. Defendant is in second appeal.
2. Plaintiff filed suit seeking possession by way of specific performance of agreement to sell dated 14.09.2018. As per plaintiff, defendant agreed to sell suit property (as detailed out in the plaint) in his favour for a total sale consideration of Rs.8 lakh. Plaintiff paid an amount of Rs.3.5 lakh as earnest money. Defendant executed a written agreement to sell in his favour. As per which, parties agreed to get the sale deed executed on or before 17.12.2018. Plaintiff claims that he remained present before Sub-Registrar, Rohtak on 17.12.2018 to get the sale deed executed. However, defendant did not turn up to perform his



part. Plaintiff got his presence marked by way of affidavit. Plaintiff claims that a legal notice dated 07.01.2019 was served on the defendant asking him to execute the sale deed in favour of the plaintiff in terms of agreement to sell dated 14.09.2018. Another legal notice dated 22.02.2019 was served upon the defendant calling him to come present before the Sub-Registrar to execute the sale deed on or before 14.03.2019. Plaintiff claims that the defendant having failed to perform his part, he is entitled for decree of specific performance. Suit was instituted on 12.04.2019.

3. Defendant in his written statement denied execution of agreement to sell and receipt of earnest money. He claimed that he was in dire need of money. On his request, plaintiff agreed to pay him an amount of Rs. 3.5 lakh as friendly loan. Amount of Rs. 3.5 lakh was paid by the plaintiff to the defendant as loan. Plaintiff obtained signatures of defendant on blank papers which have been later on misused to project the agreement to sell dated 14.09.2018.

4. Suit was put to trial by the Court of First Instance framing following issues:-

- “1. Whether the plaintiff has entered into an agreement to sell dated 14.09.2018 with the defendant regarding the property mentioned in para No.1 of the plaint and has made payment of Rs.3,50,000/- as earnest money? OPP
2. Whether the plaintiff has remained ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled for relief of specific performance of agreement to sell dated 14.09.2018 along-with consequential relief of possession and permanent injunction? OPP
4. Whether the suit is not maintainable? OPD
5. Relief.”



5. Plaintiff examined scribe Mohan Kumar as PW2. He testified that the agreement to sell Ex.P1 dated 14.09.2018 was scribed by him on the asking of the defendant. Attesting witness Rajbir and Krishan were examined as PW3 and PW4. Both of them testified on the lines of plaint. Trial Court decreed the suit filed by the plaintiff holding him entitled for main relief of specific performance.

6. In appeal preferred by the defendant, the findings stand affirmed.

7. Learned counsel for the appellant while assailing the findings recorded by the Courts below submits that statement of plaintiff PW1 is against the pleadings raised in the plaint. He submits that the plaintiff in his statement while appearing as PW1 propounded an earlier agreement to sell dated 15.12.2017 and Rs. 1.5 lakh paid to the defendant in lieu thereof. He submits that the said statement made by the plaintiff in his cross examination is beyond pleadings. Earlier agreement to sell dated 15.12.2017 admitted by the plaintiff proves falsity of his claim. The same proves that on 14.09.2018 Rs.3.5 lakh was not paid by the plaintiff to the defendant. This falsifies the statement made by attesting witnesses. Mr. Tuteja further submits that the evidence adduced by the plaintiff does not exhibit his financial preparedness. Plaintiff failed to prove his readiness which is a pre-requisite to claim main relief of specific performance. In order to hammer forth his contentions, he relied upon ratio of law laid down by Supreme Court in the case of ***Basant Ram (Died) through LRs and others vs. Sukhbir Singh and others in Civil Appeal No.4667 of 2025, U.N. Krishnamurthy (since deceased) thr. Lrs. vs. A.M.***



Krishnamurthy, reported as **2023(11) SCC 775**.

8. I have heard counsel for the appellant and have carefully gone through the records of the case.

9. Argument raised regarding statement of the plaintiff propounding an earlier agreement to sell is misconceived. The argument raised by Mr. Tuteja cannot be entertained for more than one reason. Mr. Tuteja admits that in the subsequent agreement to sell dated 14.09.2018 agreement to sell dated 15.12.2017 finds mentioned. Agreement to sell dated 14.09.2018 was produced before the Trial Court along with the plaint. Plaintiff has based suit on the same. Section 62 of the Contract Act, 1872 deals with novation and the same reads as under:-

“Section 62. Effect of novation, rescission, and alteration of contract.

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

Illustrations

(a) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.”

10. As per the bare provision of law, it is the novated contract which needs to be specifically enforced. In the present case, novated



agreement is dated 14.09.2018. The plea raised with respect to payment of earnest money of Rs.3.5 lakh has also dashed to the ground in view of the specific pleading raised in the written statement, wherein defendant accepted monetary transaction of Rs.3.5 lakh. Defendant admitted of having received an amount of Rs.3.5 lakh from the plaintiff, but claimed that it was not on account of agreement to sell, but was a friendly loan. Scribe has produced his register Ex.P10 on which there is entry with respect to agreement to sell propounded by the plaintiff and the same bears signatures of defendant. This has remained unexplained.

11. In view thereof, this Court finds that no exception can be taken to the finding of fact recorded by the Courts below with respect to execution of agreement to sell Ex.P1 by defendant. The same is affirmed.

12. Coming on to the issue of readiness and willingness, trite it is that there is no hard and fast formula to ascertain readiness and willingness of the vendee-plaintiff. The same has to be fathomed from the facts and circumstances of each case. The plaintiff in order to prove his readiness, is required to evince his financial capacity to pay the remaining amount. Plaintiff is required to plead and prove readiness and willingness *dehors* the defence pleaded by the defendant. In the present case, out of Rs.8 lakh of total sale consideration, plaintiff had already paid almost half of the total sale consideration at the time of execution of agreement to sell. He proved his presence before the Office of Sub-Registrar on the appointed date. He proved on record that immediately after agreed date of execution of sale deed, he served legal notice calling upon the defendant to come present before the Office of Sub-



Registrar. Legal notice was served upon the defendant twice. Barely within 04 months of the appointed date, the present suit was filed seeking decree of specific performance. Considering all this facts, this Court finds that the Courts below rightly held plaintiff to be ready and willing to perform his part and correctly granted him main relief of specific performance.

13. Finding no merits in the present appeal, the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

13.01.2026
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No