



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

RSA-900-2021(O&M)
Reserved on: 13.01.2026
Pronounced on: 13.02.2026

Partap Singh (deceased) through LR's and others

... Appellants

Versus

Suresh Kumar (deceased) through LR's

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Aashish Gupta, Advocate,
for the appellants except appellant No.1(e).

Mr. Rakesh Sangwan, appellant No.1(e)-in-person.

Mr. Akshay Bhan, Senior Advocate, with
Mr. Santosh Sharma, Advocate, and
Mr. Varun Sandhu, Advocate,
for the respondent.

VIKRAM AGGARWAL, J.

This is defendants' appeal against judgment and decree dated 16.07.2021 passed by the Court of Additional District Judge, Charkhi Dadri, dismissing the appeal filed against judgment and decree dated 26.02.2018 passed by the Court of Additional Civil Judge (Sr. Divn.), Charkhi Dadri, vide which the suit filed by the respondent/plaintiff (Suresh Kumar) for possession by way of specific performance and consequential relief of permanent injunction was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. Plaintiff (Suresh Kumar) instituted a suit for possession by way of specific performance of agreement to sell dated 30.07.2009, executed by



defendant No.1 (Partap Singh) in favour of the plaintiff in respect of shop bearing No.181, situated at New Grain Market, Charkhi Dadri, District Bhiwani (hereinafter referred to as, '**the disputed shop**'), directing to execute the sale deed in his favour. Consequential relief of permanent injunction restraining the defendants from alienating the disputed shop by way of sale/mortgage/gift/lease was also sought.

3.1 It was averred that defendant No.1 (Partap Singh) had applied for allotment of a shop in New Grain Market, Charkhi Dadri, vide application dated 07.07.2009. Draw of lots was conducted on 29.07.2009 by Haryana State Agricultural Marketing Board. The total sale consideration was Rs.8,25,000/-. A sum of Rs.2,62,500/- was to be deposited towards the bid money. Since defendant No.1 could not arrange the said amount, he approached the plaintiff, pursuant to which agreement to sell dated 30.07.2009 was executed.

3.2 By way of the said agreement, defendant No.1 agreed to sell the disputed shop to the plaintiff for a total sale consideration of Rs.14,50,000/-. A sum of Rs.2,25,000/- was paid as earnest money to defendant No.1, which was deposited in the office of the Market Committee, Charkhi Dadri, vide receipt No.39/248 dated 29.07.2009. It was averred that agreement to sell dated 30.07.2009 was executed in the presence of witnesses Anil Kumar and Prakash. Further, a sum of Rs.6,25,000/- was received by defendant No.1. The agreement to sell was also attested by one Jagdev Singh Shivran, Notary Public, Charkhi Dadri.

3.3 It was agreed that after the payment of Rs.2,25,000/- and Rs.6,25,000/-, the balance amount of Rs.6,00,000/- would be deposited by



the plaintiff in installments, and that after deposit of the total amount of allotment, the defendants would be liable to transfer the disputed shop in favour of the plaintiff.

3.4 It was averred that in addition to the sum of Rs.8,50,000/-, the remaining amount, details of which were given in the plaint, was also deposited from 2009-2012. It was averred that receipts of the same were in possession of the plaintiff.

3.5 It was further averred that in this way, the total price of the disputed shop was paid up to 03.08.2012, after which defendant No.1 was requested to get the disputed shop transferred in favour of the plaintiff.

3.6 However, since defendant No.1 refused to get the sale deed executed, a legal notice dated 30.08.2012 was issued by the plaintiff to defendant No.1 calling upon him to get the sale deed executed.

3.7 Since the same was not done, another legal notice dated 17.09.2012 was got issued to defendant No.1 calling upon him to get the sale deed executed within ten days. Defendant was asked to come present in the office of Sub Registrar Charkhi Dadri on 01.10.2012, for execution and registration of the sale deed.

3.8 It was averred that on 01.10.2012 at 9:00 am, the plaintiff remained present in the office of Sub Registrar, Charkhi Dadri along with the witnesses and the expenses of stamps, registration fee etc. but the defendant did not turn up. Consequently, the plaintiff got his affidavit attested from the Executive Magistrate/Sub Registrar, Charkhi Dadri for the purpose of marking his presence. It was averred that under the circumstances, the plaintiff had proved that he had always been ready and



willing to perform his part of the agreement but the defendants had failed to perform their part of the agreement.

4. The suit was opposed by the defendants. Certain preliminary objections as regards the plaintiff having not approached the Court with clean hands, non-joinder of necessary parties, the suit being barred under Section 41(h) of the Specific Relief Act, 1963 (for short, '**the 1963 Act**'), cause of action, court-fee having not been affixed and the suit being barred by Section 13 of the Indian Contract Act, were raised.

4.1 On merits, it was admitted that defendant No.1 had applied for a shop in New Grain Market, Charkhi Dadri, vide application dated 07.07.2009. It was denied that the disputed shop had been allotted in the name of defendant No.2 on 29.07.2009 for a consideration of Rs.8,25,000/-. It was averred that the disputed shop was allotted on 03.12.2010 for Rs.10,50,000/-, out of which defendant No.2 had paid Rs.2,62,500/- as earnest money, being 25% amount of the allotment price.

4.2 All averments made as regards execution of the agreement to sell, payment of earnest money of Rs.2,62,500/-, and further a sum of Rs.6,25,000/- and payment of installments etc. were denied.

4.3 It was averred that the plaintiff was known to defendant No.1 and was working in the same vicinity and was a resident of the same locality. Since defendant No.1 was suffering from all old age diseases like Arthritis, Low Vision etc., he entrusted the plaintiff to deposit the money in the account of Market Committee under good faith on every due date after collecting the same from him. It was averred that the plaintiff had turned dishonest and had called upon defendant No.1 to execute a General Power of



Attorney for the purpose of depositing the amount. He was, therefore, made to sign some documents, which were misutilized for framing of the agreement to sell. It was averred that no witness was present when the Power of Attorney was executed and attested.

4.4 It was averred that there was no occasion for defendant No.1 to transfer the disputed shop to the plaintiff as there was no agreement to sell, and that the suit had been filed only with a view to harass defendant No.1 and extort money from him.

4.5 As regards the plaintiff's alleged readiness and willingness to perform his part of the contract, it was submitted that, since there was no agreement between the plaintiff and the defendants, there was no question of being ready and willing to perform any part of the contract.

5. From the pleadings of the parties, the following issues were framed by the trial Court:-

“1. Whether the defendants are owner in possession of the suit property covered by agreement to sell dated 30.07.2009, if so to its effect? OPP

2. Whether defendants had entered into an agreement to sell dated 30.07.2009 with the plaintiff, if so to its effect? OPP

3. Whether plaintiff has been/is willing to perform his part of agreement dated 30.07.2009? OPP

4. If issue No.1 and 3 are proved, whether the plaintiff is entitled for the relief of specific performance of agreement to sell dated 30.07.2009 with consequential relief of permanent injunction? OPP

5. Whether plaintiff paid Rs.12,06,975/- as consideration to market committee? OPP



6. *Whether the plaintiff paid Rs.6,25,000/- as sale consideration to defendant No.1? OPP*
7. *Whether plaintiff is in possession of all receipts? OPP*
8. *Whether the present suit is not maintainable in the present form? OPD*
9. *Whether the suit is not maintainable on account of mis-joinder and non-joinder of parties? OPD*
10. *Whether the suit is barred under Section 41(h) of Specific Relief Act? OPD*
11. *Relief.”*

6. Parties led their respective evidence.

7. The trial Court decreed the suit filed by the plaintiff and the appeal preferred against the said judgment and decree was dismissed by the first appellate Court leading to filing of the present second appeal.

8. I have heard learned counsel for the parties.

9. It was submitted by learned counsel for the appellant(s) and appellant No.1(e), who appeared in person, that the impugned judgments and decrees are not sustainable. It was submitted that the agreement to sell was allegedly executed on 30.07.2009, whereas the allotment of the disputed shop was made on 03.12.2010. It was submitted that once the allotment had been made on 03.12.2010, and on 29.07.2007 only the auction had taken place, there was no occasion for the appellants/defendants to have executed the agreement to sell.

9.1 It was submitted that the case set up by the plaintiff that a sum of Rs.2,62,500/- had been paid as earnest money, followed by a payment of Rs.6,25,000/-, and thereafter Rs.6,00,000/- in installments, was false and merely an oral version, and that no proof whatsoever was produced to prove



making of such payments. It was further submitted that it was unbelievable that someone would make all payments in cash and not obtain any receipt as regards the same. It was also submitted that no evidence was produced by the plaintiff to show the source from which the said funds were arranged. No evidence, such as bank statements, was produced to show withdrawal of the said amounts and, therefore, under the circumstances, it cannot be said that the said payments were made by the plaintiff.

9.2 It was submitted that Section 13 of the 1963 Act was erroneously invoked by the trial Court and that the same would not come to the rescue of the plaintiff. Learned counsel referred to the judgment of the trial Court as also the judgment of the first appellate Court and submitted that both Courts proceeded on a completely wrong premise and erroneously decreed the suit.

9.3 It was submitted that no mandatory injunction was sought by the plaintiff to compel defendant No.1 to execute the conveyance deed, and that once the conveyance deed itself had not been executed and defendant No.1 had not become owner of the disputed shop, no decree of specific performance could have been passed.

9.4 It was submitted that the Market Committee, which had allotted the disputed shop, was not arrayed as a party and that now in execution proceedings, the plaintiff has impleaded the Market Committee. It was, therefore, submitted that the suit was bad for the non-joinder of a necessary party. It was further submitted that though issue No.9 was framed as regards the maintainability of the suit, no finding was returned on the same. It was also argued that the allotment was in favour of the partnership firm and not



in favour of the proprietorship firm. Reference was made to documents Ex.DW3/A and Ex.DW3/B in this regard.

9.5 It was submitted that both Courts had not considered the issue of readiness and willingness from the correct perspective. It was argued that the allotment was made on 03.12.2010, whereas the first legal notice was issued on 30.08.2012, the second legal notice on 17.09.2012, and the suit was instituted in August 2013. It was submitted that this, by itself, shows that the plaintiff had not been ready and willing to perform his part of the contract.

9.6 It was further submitted that as per condition No.15 of the allotment letter (Ex.P1), transfer of the disputed shop was not permitted before the expiry of five years. It was argued that no permission was sought by defendant No.1 and, therefore, this fact shows that no agreement to sell had been executed.

9.7 It was further argued that in any case, the agreement to sell was a void agreement in terms of the provisions of Section 20 of the Indian Contract Act, 1872 (for short, 'the Contract Act').

9.8 It was also argued that although the agreement to sell referred to the total price of the disputed shop as Rs.8,25,000/-, but the same was actually Rs.10,50,000/-. It was submitted that this itself shows that the plaintiff was not even aware of the basic details and that a false and frivolous suit was filed.

9.9 It was argued that documents were produced on record to show that M/s Chunni Lal Ranbir Singh was a partnership firm and not a proprietorship firm. It was submitted that a mere admission by a witness that



it was a proprietorship firm would not change the nature and character of the firm, and that the documents produced on record clearly shows that it was a partnership firm.

9.10 It was submitted that both Courts erroneously placed reliance upon the receipts produced by the plaintiff to hold that the installments had been paid by him, whereas the said receipts could have been proved only by the banker or by the Market Committee. It was argued that since the receipts had not been proved in accordance with law, no reliance could have been placed upon them.

10. Per contra, learned Senior counsel representing the respondent submitted that there was no illegality in the findings recorded by both Courts. It was submitted that no objection as regards the firm having been impleaded as proprietorship firm had been taken in the written statement. It was further submitted that once such an objection had not been taken in the written statement, it was not open to the appellants to now contend that the firm was a partnership firm.

10.1 It was submitted that the draw of lots took place on 29.07.2009 and that the agreement to sell was executed on 30.07.2009. It was argued that to prove the due execution of the agreement to sell, the attesting witness, the scribe, the Notary Public who attested the agreement to sell, and even an expert were examined, whereas the stand taken by the defendant(s) was merely that the documents had been obtained by fraud, on the premise that the plaintiff knew defendant No.1, and on that account, defendant No.1 had authorized him to deposit the installments, and for the said purpose, the plaintiff allegedly obtained the signatures of defendant No.1 on some blank



papers and misused the same for drawing up an agreement to sell. Learned Senior counsel submitted that no evidence was led, even *prima facie*, to prove this allegation.

10.2 It was submitted that, in fact, by admitting his signatures on the agreement to sell, the defendant(s) had admitted the execution of the agreement to sell.

10.3 It was submitted that all amounts had been deposited by the plaintiff and that even the receipts issued by the Market Committee were produced by the plaintiff before the trial Court during the course of evidence. It was further submitted that apart from the oral version given by defendant No.1, no evidence was led to substantiate his version.

10.4 It was averred that the question of readiness and willingness did not arise, as the entire amount stood deposited by the plaintiff, and that it was only because defendant No.1 was not getting the sale deed executed, legal notices were issued on 30.08.2012 and 17.09.2012. It was submitted that the last installment was paid on 03.08.2012, the first legal notice was issued on 30.08.2012 and the suit was instituted in August 2013 after making efforts for registration of the sale deed. Learned Senior counsel submitted that under the circumstances, it was duly proved that the plaintiff had already been ready and willing to perform his part of the contract.

10.5. Learned Senior counsel submitted that both Courts have recorded concurrent findings of fact in favour of the plaintiff, and that even under Section 41 of the Punjab Courts Act 1918, interference in a regular second appeal is permissible only in case of a procedural irregularity.



10.6 As regards the provisions of Section 13 of the 1963 Act, it was submitted that the defence referred to under the said Section was available only to a purchaser and not to a seller.

10.7 It was argued that Section 20 of the Contract Act would also not be applicable, since none of the parties were mistaken about any fact essential to the agreement.

10.8 As regards clause 15 of the allotment letter, it was submitted that it was not open for the defendant(s) to plead the said fact, and that this objection, if at all, could be raised only by the Market Committee. It was further submitted that in any case, no such stand was taken in the written statement and, therefore, it would not be open for the defendant(s) to raise the said argument for the first time in the second appeal.

10.9 In support of his contentions, reliance was placed upon the decisions rendered by the Hon'ble Supreme Court in M/s Shivali Enterprises v. Smt. Godawari (Deceased) Thr. Lrs. And others, 2022(4) RCR (Civil) 325; U.N. Krishnamurthy (Since Deceased) Thr. Lrs. v. A.M. Krishnamurthy, 2023 (11) SCC 775; Grasim Industries Ltd. & Anr. v. Agarwal Steel, 2010(1) SCC 83, this Court in Sandeep Jaglan v. M/s Malik Petroleum (RSA-3704-2023, decided on 13.08.2025), and the Hon'ble Andhra Pradesh High Court in Mir Abdul Hakeem Khan v. Abdul Mannan Khadri, 1972 AIR (Andhra Pradesh) 178.

11. I have considered the submissions made by learned counsel for the parties and have also perused the record. After analyzing the matter from all angles, this Court does not find any illegality in the decisions under challenge which may call for interference in second appeal.



12. The agreement to sell dated 30.07.2009 was produced on record as Ex.P3. To prove the execution of the same, the plaintiff, apart from himself appearing as PW1, examined its attesting witness Anil Kumar as PW5, who duly deposed about the agreement to sell having been executed and he having signed as an attesting witness along with one Parkash. He deposed about the amounts having been paid as well, as claimed by the plaintiff. The plaintiff examined one Jagdev Singh, Notary Public, as PW3, who had attested the agreement to sell. He deposed about parties having appended their signatures in his Register and also deposed that the agreement to sell had been read over to the parties and thereafter the parties had appended signatures in his presence. Stamp Vendor Ran Singh Sheoran, was also examined as PW4, who deposed about the stamp paper worth to Rs.10/- having been purchased by defendant No.1 (Pratap Singh) from him qua which an entry was made at serial No.8411, dated 30.07.2009, in his Register. The said stamp paper was purchased by Pratap Singh and his signatures were also present. To top it all, a Handwriting and Finger Prints Expert Shamsheer Singh Malik was examined as PW9, who deposed about the signatures of defendant No.1 being present on the agreement to sell.

13. The defendants denied the execution of the agreement to sell, and at the same time stated that defendant No.1 had appointed the plaintiff to deposit fee/installments with the Market Committee, as he was known to defendant No.1. A stand was taken that on the pretext of making a power of attorney, some signatures were obtained on blank papers, and defendant No.1 was taken to some Advocate also. A plea of fraud was, therefore, raised. Once signatures on blank papers were stated to have been appended,



the execution of the agreement to sell was, in a way, admitted. Be that as it may, as noticed, despite that, the plaintiff led cogent evidence to prove the execution of the agreement to sell. Coming to the element of the alleged fraud, no particulars were given in the written statement. No evidence worth its name was led to prove that fraud had been played by the plaintiff upon the defendant No.1. It is well settled that a fraud has to be pleaded and proved by leading cogent evidence, and a vague plea of fraud not supported by evidence, is of no worth.

13.1. Under the circumstances, no illegality is found with the findings that the execution of the agreement to sell dated 30.07.2009 stood duly proved.

14. Now, we come to the issue of readiness and willingness. The agreement to sell was executed on 30.07.2009. The last installment was paid on 03.08.2012. All original receipts came from the custody of the plaintiff. The first legal notice was issued on 30.08.2012 and the second legal notice was issued on 07.09.2012. The plaintiff remained present before the Sub Registrar on 01.10.2012 along with the balance sale consideration and an affidavit in this regard was also executed, which was duly attested. The suit was instituted on 16.08.2013, i.e. without any delay. Both Courts, therefore, rightly found that the plaintiff had proved that he had always been ready and willing to perform his part of the contract and in fact, it was the defendant, who was not willing to do the same, which is evident from the stand taken and from the evidence produced on record. The argument that all payments were in cash and, therefore, the case was suspicious is not acceptable, since all original receipts were produced by the plaintiff as Ex.P2 to Ex.P8.



15. The defendants raised every possible objection with a view to demolish the case of the plaintiff but, in the considered opinion of this Court, failed to do so. A plea was raised before this Court that it had wrongly been stated in the agreement to sell that allotment of the disputed shop was made on 29.07.2009, whereas actually the allotment letter is of 03.12.2010, and that the total sale consideration was not Rs.8,25,000/-, as was mentioned in the agreement to sell, but was Rs.10,50,000/-, as is evident from the allotment letter. This stand is palpably erroneous and mischievous. PW8 Ram Kishan, Mandi Supervisor, Market Committee, Charkhi Dadri, deposed that the disputed shop had been allotted in the name of defendant No.1 through its Proprietor Pratap Singh on 29.07.2009 for a total sale consideration of Rs.8,25,000/- (Ex.PW8/B), and that thereafter the price of the shop was revised to Rs.10,50,000/- and allotment letter (Ex.P1) was issued. This very statement demolishes the stand taken by the defendants and exposes the falsity thereof.

16. It was then contended that once the defendants were not the owners of the property, since the allotment letter was issued subsequently on 03.12.2010, they could not have transferred a better title than they themselves had. This objection, in the considered opinion of this Court, is not open to be taken by the defendants. The trial Court rightly placed reliance upon Section 13(i)(a) of the 1963 Act in arriving at the conclusion that the defendants were competent to execute the agreement to sell. In the case of **Mir Abdul Hakeem Khan** (*supra*), a Division Bench of the Andhra Pradesh High Court held that a vendor cannot set up defect in his own title as a defence in a suit for specific performance by the purchaser. It was also



held that if a person executes an agreement to sell of a property, he cannot put forward, in a suit for specific performance by the purchaser, the defence that he did not have any title and it would only be for the purchaser to state that the vendor had no title or had a defective title.

17. The argument that as no mandatory injunction had been sought by the plaintiff to compel defendant No.1 to execute a conveyance deed and since the conveyance deed had not been executed, no decree of specific performance could have been passed, is also devoid of merit. If the defendants chose not to get the conveyance deed executed deliberately, it would not be taken to be the fault of the plaintiff and there was no need for the plaintiff to seek a mandatory injunction to compel defendant No.1 to execute the conveyance deed, and the plaintiff could seek specific performance of the agreement to sell executed by the defendants with him.

18. The objection that the Market Committee, which had allotted the disputed shop, was not arrayed as a party is also devoid of merit. The Market Committee had no privity of contract with the plaintiff and no relief was to be sought against the Market Committee. An argument was also raised that the Market Committee has been impleaded in the execution petition. That, in the considered opinion of this Court, would be for the decree-holder to see as to how the possession is to be taken. For the purpose of the suit for specific performance of agreement to sell dated 30.07.2009, the Market Committee was not a necessary party.

19. Yet another argument was raised that as per condition No.15 of the allotment letter (Ex.P1), transfer of the disputed shop was not permitted before the expiry of five years and, therefore, no agreement to sell could



have been executed before the expiry of the said period. This argument is also devoid of merit, as the same cannot be raised by the defendants. If at all, the said clause is to be invoked, it will be for the Market Committee to see, and the defendants, in any case, cannot avoid the agreement to sell on this ground.

20. The argument that the agreement to sell was a void agreement in view of the provisions of Section 20 of the Contract Act, is devoid of merit, as it has not been pointed out as to which facts, essential to the agreement, were both parties under a mistake about. A sweeping contention or a stand taken merely by invoking a statutory provision cannot be accepted unless and until the details thereof are forthcoming. If the intention of the appellants/ defendants is to refer to the clause by virtue of which the suit property could not have been alienated for a period of five years, the same has already been dealt with in the preceding paragraphs.

21. Both Courts concurrently and rightly found that defendant No.1 was a proprietorship firm and not a partnership firm. The allotment was to the firm through its proprietor. No document viz. partnership deed etc., was produced to prove that it was a partnership firm. Everywhere, the word Proprietor was mentioned. Both Courts, therefore, rightly held that it was a proprietorship firm.

22. The argument that the receipts (Ex.P2 to Ex.P8) could have been produced only by the banker or by the Market Committee is correct to some extent. However, they were original receipts, which came from the custody of the plaintiff. The defendants also did not make any effort to examine any person to say that the receipts were not genuine. The



defendants also did not produce any receipts on record to prove that they had made the payments.

23. Last but not the least, both Courts have recorded concurrent findings of facts and law, and in second appeal, keeping in view the law laid down in the case of *Pankajakshi (Dead) Through LRs & Others Vs. Chandrika & Others*, (2016)6 SCC 157, followed by the judgments in the cases of *Kirodi (since deceased) through his LR Vs. Ram Parkash & Ors*, (2019) 11 SCC 317; *Satyender and Ors. Vs. Saroj and Ors.* 2022 (12) Scale 92 and *M/s Shivali Enterprises v. Smt. Godawari (Deceased) Thr. Lrs. And others*, 2022(4) RCR (Civil) 325, there can be no interference in findings of facts. The law is that interference is permissible in a second appeal only when there is a substantial error or defect in the procedure provided under the CPC or any other law in force and where there is a question of law to be considered.

24. In view thereof, the instant appeal is found to be bereft of merit and is accordingly dismissed.

25. Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

February 13, 2026

Rajan

Uploaded on: 13.02.2026

Whether speaking / reasoned:

Yes

Whether Reportable:

Yes