IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

218 **RSA-1839-2013 (O&M)**
Date of decision: 28.04.2026

Dinesh Kumar **...Appellant(s)**

Vs.

Hansraj and others **...Respondent(s)**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. P.R.Yadav, Advocate and
Mr. Jayant Yadav, Advocate
for the appellant.

Mr. S.M.Sharma, Advocate
for respondents No.1 and 2.

Mr. Pritam Singh Saini, Advocate and
Ms. Parul Saini, Advocate
for respondent No.3.

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NIDHI GUPTA, J.

Present second appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned District Courts, whereby the suit filed by the appellant for specific performance of contract dated 24.08.2005, has been dismissed by both the District Courts.

2. Brief facts of the case are that the appellant/plaintiff had filed instant suit seeking specific performance of contract dated 24.08.2005 executed in his favour by defendants No.1 and 2. It was pleaded case of the appellant that Durga Parshad/defendant No.3 had executed an

Agreement to Sell dated 03.04.1996 in favour of defendants No.1 and 2 for sale of disputed plot for a total sale consideration of Rs.92,000/-. Defendants No.1 and 2 had made full and final payment to defendant No.3 and had received possession of suit plot. Thereafter, defendants No. 1 and 2 had executed instant Agreement to Sell dated 24.08.2005 in favour of the plaintiff for total sale consideration of Rs.3,28,500/-; of which they had received Rs.85,000/- as earnest amount. It was alleged that possession of suit property was given to the appellant at the time of execution of Agreement to Sell. Target date for execution of Sale Deed was fixed for 15.05.2006. On 15.05.2006, defendants No.1 and 2 had shown their inability to appear before the Sub Registrar. Hence, the present suit was filed on 22.05.2006.

3. Upon notice, defendants No. 1 and 2 had appeared and filed written statement pleading therein that they had entered into an Agreement dated 03.04.1996 to purchase the suit plot from defendant No.3 for total sale consideration of Rs.92,000/-. However, despite the fact that they had paid Rs.60,000/- as earnest money they could not get the Sale Deed executed in their favour. Thus, the agreement executed in their favour by defendant no.3 became cancelled when they could not get the sale deed executed within time. The possession was also restored in favour of defendant no.3. It is claimed that they had not executed any agreement in favour of the plaintiff. They had not received any earnest money from the plaintiff. Therefore, the question of giving possession to the plaintiff did not arise. Thus, suit filed by the plaintiff is liable to be dismissed.

4. The defendant no.3 had filed a separate written statement. He claimed that the plaintiff has no locus standi to file the present suit against him. There is no privity of contract between the plaintiff and defendant no.3. The suit against him is not maintainable and bad for misjoinder of parties. On merits, it was claimed that the defendant no.3 has already cancelled his deal with defendants no.1 and 2 because they could not honour their promise to get the sale deed executed within time. Therefore, the contract dated 03.04.1996 was cancelled. The plaintiff has no cause of action against the defendant no.3 so the suit filed by the plaintiff is liable to be dismissed.

5. Replication was filed wherein plaintiff reiterated the averments made in the plaint and denied those made in the written statements.

6. On the basis of pleadings of the parties, following issues were framed vide order dated 10.01.2008: -

> *"1. Whether the defendants entered into an agreement to sell with the plaintiff on 24.08.2005 regarding the suit property? OPP*
>
> *2. Whether the plaintiff is entitled to get possession of the suit property by way of such a performance of the agreement to sell dated 24.08.2005?OPP*
>
> *3. Whether the plaintiff has been ready and is still ready and willing to perform his part of contract? OPP*
>
> *4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD*
>
> *5. Whether the plaintiff has no locus standi to file the present suit?OPD*
>
> *6. Relief."*

7. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Senior Division), Rewari had dismissed the suit of the plaintiff vide judgment and decree dated 01.08.2011 primarily on the ground that Agreement to Sell dated 24.08.2005 is an unregistered document and, therefore, the same is neither admissible in evidence for recovery of consideration money nor for specific performance nor for any collateral purpose. The Civil Appeal filed by the plaintiff was dismissed by the Addl. District Judge, Rewari vide judgment and decree dated 31.01.2013.

8. Hence, the present second appeal by the plaintiff.

9. It is *inter alia* submitted by learned counsel for the plaintiff that a perusal of the Agreement to Sell dated 03.04.1996 Ex.PX clearly shows that the entire sale consideration of Rs.92,000/- stood paid by defendants No.1 and 2 to defendant No.3. It is submitted that this is evident from the writing in the Agreement to Sell dated 03.04.1996 itself, to the effect that amount of Rs.60,000/- had been paid as earnest money; and balance sale consideration of Rs.32,000/- was shown to be paid as per endorsement dated 21.07.1996 borne in the said Agreement to Sell to the effect that the remaining amount of Rs.32,000/- was also paid by defendants No. 1 and 2 to Durga Parshad on 21.07.1996. Defendants have not disputed endorsement dated 21.07.1996.

10. Thus, sole contention of defendants No.1 and 2 that present Agreement to Sell dated 24.08.2005 had been executed by them only

because amount of Rs.60,000/- was to be recovered from defendant No.3, is without merit.

11. It is further submitted that reasoning of learned District Courts that Sale Deed has never been executed in favour of defendants No.1 and 2 and, therefore, they were not competent to execute Agreement to Sell dated 24.08.2005, is also without merit as, Section 15 (b) of the Specific Relief Act deals with assignment. Learned counsel contends that plaintiff is an assignee of defendants No.1 and 2; and defendant No.3 only has to come to Court to get the Sale Deed executed in favour of the appellant.

12. It is submitted that the appellant has duly proved execution of Agreement to Sell by examining the two marginal witnesses to the Agreement. Even the Stamp Vendor has been examined, who had duly deposed that the stamp paper had been purchased by defendants No.1 and 2. Plaintiff himself has stepped into witness box to prove his case. Plaintiff had even served legal notice upon the defendants to which defendant No.3 had replied. However, no reply thereto was given by defendants No.1 and 2. Plaintiff has duly proved his readiness and willingness to perform the contract by appearing in the Tehsil office on the target date. Plaintiff has also brought on record his passbook and withdrawal slip to show that he was in possession of balance sale consideration. It is contended that thus, there is no ground whatsoever to deny specific performance to the plaintiff.

13. Learned counsel for the appellant further argues that the reasoning of the learned District Courts in non-suiting the appellant for want of registration of Agreement dated 24.08.2005, is also unsustainable,

as despite the fact that Agreement to Sell dated 24.08.2005 was not registered, the same can still be relied for collateral purpose. It is argued that if anyone disturbs possession of the appellant then, the Agreement to Sell dated 24.08.2005 being not registered, the appellant could not have protected his possession. But in the present case, possession of the appellant has not been disturbed and, therefore, Agreement dated 24.08.2005 despite being unregistered can be relied upon for collateral purpose.

14. In support, ld. counsel for appellant has relied upon judgment of Hon'ble Supreme Court in **Shyam Singh v. Daryao Singh, (SC) : Law Finder Doc Id # 117579.** The relevant paras of the said judgment are as under:-

> *"2. The only legal question involved is whether the terms of the agreement of repurchase dated 4-2-1971 contain any implied prohibition on the original contracting parties (particularly defendants 2 to 4) from transferring or assigning their rights in favour of third party?*
>
> *XXX XXX XXX*
>
> *12. Clearly in this case under the terms of the document dated 4-2-1971 Ex. 4, there is no express prohibition against assignment or transfer of the right of repurchase by the original party in favour of the third party. Learned counsel appearing for the contesting respondent (defendant No. 1) very strenuously urged that in the recitals of the document at the appropriate place there is mention of the parties and their heirs but there is no mention of the transferees or assignees of the contracting parties. This omission is a clear*

indication of implied prohibition against transfer or assignment of any right by the original contracting party.

13. We find it difficult to accept this proposition. True, it is that there is no clear stipulation permitting assignment or transfer of right of the purchaser by original party in favour of the third party but both contracting parties would be presumed to have been alive to the legal provisions contained in Section 15(b) of the Specific Relief Act. The two documents - one of sale and the other of repurchase - were executed on the same day. As the sale and agreement of repurchase are contained in two separate documents although contemporaneously executed, the transaction cannot treated to be a 'mortgage' as defined in Section 58(c) read with proviso thereunder of the Transfer of Property Act but it seems to be a transaction akin to a 'mortgage' - if not 'mortgage proper.' From the tenor and contents of the two documents contemporaneously executed, it seems that the defendants Nos. 2 to 4 to raise money, sold the property but with a right of repurchase on return of the money. A long period of ten years for obtaining reconveyance was agreed between the original contracting parties to indicate the nature of transaction to be one to satisfy the monetary need of the transferer. Initial period of five years was stipulated for obtaining reconveyance mutually, failing which after expiry of the period of five years, reconveyance could be obtained through Court within an outer limit of ten years from the original date of the execution of the document. It seems unjust to construe the terms of the document to mean that though the original transferers of the property are unable to raise requisite money within the initial period of five years and thereafter continue to be incapable financially to approach Court for seeking reconveyance, they would have *no right to assign or transfer their right on value to others. This would result in deprivation of the property or competitive value altogether to the original owners.*

XXX XXX XXX XXX

17. From the statement of law as has been approved and followed by this Court in the two decisions in Habiba Khatoon and T.M. Balakrishna Mudaliar (supra) unless the contents of the document in question and evidence in relation thereto are so clear to infer a prohibition against assignment or transfer, the right of repurchase has to be held to be assignable or transferable and cannot be treated as personal to the contracting parties."

15. Ld. counsel for the appellant has also relied upon judgment of Hon'ble Supreme Court in **Indira Devi v. Veena Gupta (SC) : Law Finder Doc Id # 2259856.**

16. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of learned District Courts be set aside; and the suit of the plaintiff be decreed in toto.

17. *Per contra,* learned counsel for defendant No.3 has argued that Agreement to Sell dated 03.04.1996 executed by defendant No.3 in favour of defendants No.1 and 2 created no title and, therefore, they were not competent to further sell the suit plot to the plaintiff. Further, there was no privity of contract between the plaintiff and defendant no.3, therefore, agreement executed between the plaintiff and defendants No.1 and 2 cannot be enforced against defendant No.3; and defendant No.3 never authorized defendants No.1 and 2 to further create any charge on his

property by entering into an agreement to sell with the plaintiff. She argued that the agreement between defendant no.3 and defendants No.1 and 2 has already been cancelled. She further argued that defendant No.3 had entered into an agreement with defendants No.1 and 2 on 3.4.1996 and the plaintiff has filed the present suit on 22.5.2006 i.e. after a period of more than ten years and as such, the suit is barred by limitation. Moreover, the agreement does not create any right or title in favour of defendants no.1 and 2 and the agreement is unregistered and unstamped agreement is neither admissible in evidence for recovery of consideration money nor for specific performance nor for any collateral purposes. Thus, plaintiff cannot get any relief on the basis of the alleged agreement executed by defendants No.1 and 2 in his favour. Accordingly, dismissal of the present Appeal is prayed for.

18. Learned counsel for respondents/defendants No.1 and 2 submits that Agreement dated 24.08.2005 was executed between the plaintiff and defendants No.1 and 2 only for recovery of Rs.60,000/- paid by defendants No.1 and 2 to defendant No.3 by way of earnest money at the time of execution of Agreement dated 03.04.1996. It is submitted that no Sale Deed was executed by defendant No.3 in favour of defendants No.1 and 2; and therefore, they had no title to transfer. It is however admitted that possession was handed over to them by defendant no.3. Dismissal of the present Appeal is prayed for.

19. I have heard learned counsel for the parties and perused the case file, as also the District Court records in minute detail. I find merit in the submissions advanced on behalf of the appellant/plaintiff.

20. The chronological sequence of events is recapitulated briefly: –

03.04.1996 (Ex.PX): Defendant No.3-Durga Prasad entered into an agreement to sell of a plot of land with Defendants No.1 and 2 (Hansraj and Subhash Chand both sons of Tota Ram). Total Sale consideration was Rs.92,000/- and Rs.60,000/- was paid on the date of agreement.

21.7.1996: Remaining sale consideration of Rs.32,000/- was paid to Defendant No.3 by Defendants No.1 and 2 and an endorsement to that effect was made by Defendant No.3 duly signed by him. He admits the above facts while appearing as DW1. Possession is also delivered.

24.08.2005 (Ex.PW1/B): Defendants No.1 and 2 (Hans Raj and Subhas Chand) enter into an agreement to sell with the plaintiff of the above-mentioned plot measuring 219 sq. yard at the rate of Rs.1500/- per sq. yard. The total sale consideration was Rs.3,28,500/-. Plaintiff paid Rs. 85,000/- in cash and remaining amount of Rs. 2,43,500/- was to be taken at the time of registry and the sale deed was to be got registered within two months after opening of registration in Rewari.

21. It is important to note that in the above agreement there was specific reference to agreement dated 03.04.1996 (Ex.PX); and that defendants No.1 and 2 were in possession of the plot; and the possession was also handed over to the plaintiff; and it was further mentioned that it

would be responsibility of defendants No.1 and 2 to bring defendant No.3 for registration of sale deed.

14.03.2006: Legal notice (at page 257 of LCR) was served upon the defendants to get the sale deed executed on 15.05.2006 or prior to it.

15.05.2006: Plaintiff appeared before the Sub-registrar Rewari alongwith balance money of Rs.2,43,500/- as well as expenses of registry and remained there for the whole day and thereafter got his presence marked by way of affidavit Ex.PW1/C.

22.05.2006: Plaintiff filed the suit for specific performance of contract of agreement dated 24.08.2005; seeking further direction to defendant No.3 to get the sale deed executed as he had received the entire sale consideration. The plaintiff specifically pleaded readiness and willingness.

14.09.2006: Defendant No.1 and 2 filed written statement denying the agreement to sell dated 24.08.2005 and taking the plea that the said agreement was done only for the purpose of recovery of their Rs.60,000/- which had been forfeited by defendant No.3 as per agreement dated 03.04.1996.

14.09.2006: Defendant No.3 filed his written statement taking the stand that he had no privity of contract with the plaintiff and that the suit was time barred.

09.05.2007: Plaintiff filed replication to the written statements of defendant No. 1 and 2 as well as to the written statement of defendant No.3 and controverted the wrong facts pleaded in their written statements.

<u>10.01.2008</u>: Issues were framed.

<u>1.8.2011:</u> The learned Civil Judge (Senior Division), Rewari had dismissed the suit of the plaintiff vide judgment and decree dated 01.08.2011 primarily on the ground that Agreement to Sell dated 24.08.2005 is an unregistered document and, therefore, the same is neither admissible in evidence for recovery of consideration money nor for specific performance nor for any collateral purpose.

<u>31.1.2013:</u> The Civil Appeal filed by the plaintiff was dismissed by the learned Addl. District Judge, Rewari vide judgment and decree dated 31.01.2013.

22. Hence present second appeal by the plaintiff.

23. A perusal of the record of the case shows that there are concurrent findings of fact that plaintiff has succeeded in proving Agreement to Sell dated 24.08.2005 Ex.PW1/B executed by defendants No. 1 and 2 in favour of the appellant. Appellant had duly examined 2 attesting witnesses being PW2 Naresh Kumar and PW6 Rajesh Kumar. Both of them proved the execution of agreement as well as payment of earnest money of Rs.85,000/-. Besides that, plaintiff has also examined PW1 Sunil Kumar Gupta, Deed Writer and PW3 Rattan Lal Stamp Vendor to prove endorsement on the Stamp Paper (Ex.PW3/B) and photocopy of register is Ex.PW3/A. All of whom had deposed in favour of the said Agreement to Sell dated 24.08.2005. Moreover, defendants No.1 and 2 had not specifically denied their signatures on the Agreement dated 24.08.2005. Defendants No. 1 and 2 had not even specifically denied

receiving of Rs. 85,000/- as earnest money. As such, execution of Agreement to Sell dated 24.08.2005 Ex.PW1/B stood proved in accordance with law.

24. Plaintiff himself appeared as PW5 and proved the agreement; as well as his readiness and willingness. Plaintiff proved that he had appeared before the Sub-registrar Rewari alongwith balance money of Rs.2,43,500/- as well as expenses of registry and remained there for the whole day and thereafter got his presence marked by way of affidavit Ex.PW1/C. Plaintiff also proved his financial capacity by producing photocopy of his passbook of Central Co-operative Bank Rewari and photocopy of withdrawal slip as Mark PA (available from pages 265 to 269 of LCR). He had brought the original passbook and, on that basis, photocopy was exhibited. Thus, the Agreement as well as readiness and willingness of the plaintiff to perform the contract was proved.

25. Furthermore, it was also proved on record that possession of the suit plot was handed over by defendants No.1 and 2 to the plaintiff. Plaintiff had claimed that he had taken possession of the suit plot when the Agreement to Sell dated 24.08.2005 was executed in his favour. While appearing as PW5, plaintiff has admitted that he is in exclusive possession of the plot in question. The defendants led no contrary evidence. Thus, possession of the plaintiff over the suit property is also proved on record.

26. Despite the above facts, appellant has been non-suited by learned District Courts only on the ground that once possession is delivered to the appellant then as per provision of Registration Act 1908, registration

of the Agreement to Sell dated 24.08.2005 is necessary. The relevant reasoning of the learned Additional District Judge, Rewari in judgment and decree dated 31.01.2013 is as follows: -

> *"17. It is the case of the plaintiff that he had executed an agreement dated 24.8.2005 with defendants No.1 and 2 and had paid Rs.85,000/- to defendants No.1 and 2 as earnest money at the time of execution of the agreement. Execution of agreement dated 24.8.2005 has not been denied by defendants No.1 and 2. Though defendants No.1 and 2 have denied having received any earnest money of Rs.85,000/- but the plaintiff has proved the same by examining the witnesses. The plaintiff has claimed that the possession of the suit property was delivered to him by defendants No.1 and 2 at the time of execution of agreement dated 24.8.2005 Ex.PW1/B is agreement dated 24.8.2005. The same is unregistered. In* ***Avinash Kumar Chauhan's case (supra)*** *it has been held by Hon'ble Supreme Court that unstamped document is neither admissible in evidence for recovery of consideration money nor for specific performance nor for any collateral purpose. In these circumstances, learned trial court has rightly held that the agreement executed between plaintiff and defendants No.1 and 2 cannot be taken into consideration for recovery of consideration money or for specific performance or for any collateral purpose. The proposition of law laid down in the authorities relied upon by learned counsel for the appellant is not disputed but the same is not applicable to the present case as facts are not identical. There is no illegality or infirmity in the findings recorded by learned Civil Judge (Sr. Division) Rewari and the same are upheld."*

In holding as above, learned District Courts have relied upon judgment of Hon'ble Supreme Court passed in **Avinash Kumar Chauhan vs. Vijay Krishna Mishra (SC), Law Finder Doc ID # 178470 decided on 17.12.2008**. However, as per most recent judgment of Hon'ble Supreme Court in **R. Hemalatha v. Kashthuri (SC): Law Finder Doc Id # 2187918 decided on 10.04.2023**, it has been held that:

> *"Unregistered Agreement to Sell in suit for specific performance admissible.*
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> *A. Registration Act, 1908, Section 17(1)(g), 49(a) and (c) and 54 - Admissibility of unregistered Agreement to Sell in suit for specific performance - As per proviso to section 49 of Registration Act, unregistered document affecting immovable property and required by Registration Act or Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of Registration Act - It is not case on behalf of either of parties that document/Agreement to Sell in question would fall under category of document as per Section 17(1A) of Registration Act - Therefore, High Court rightly observed and held relying upon proviso to section 49 of Registration Act that unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and proviso is exception to first part of Section 49."*

The relevant para of the said judgment is as under:-

> *"13. Under the circumstances, as per proviso to section 49 of the Registration Act, an unregistered document affecting*

immovable property and required by Registration Act or the Transfer of Property Act to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter-II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document/ Agreement to Sell in question would fall under the category of document as per Section 17(1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49."

27. Thus, the sole ground on which appellant has been non-suited by learned District Courts, does not stand to scrutiny.

28. I also find merit in the submissions advanced on behalf of the appellant to the effect that appellant was assignee of defendants no.1 and 2. As far as assignment of agreement dated 03.04.1996 (Ex.PX) is concerned the same being not personal between defendant No. 3 and defendants No.1 and 2; and so as per Section 15(b) of the Specific Relief Act the plaintiff as assignees of defendants No.1 and 2 could seek enforcement of right and interest in the property. The above position is also fortified by the above, referred judgment of the Hon'ble Supreme Court in **Shyam Singh supra** wherein it has been categorically held that

when the right was not personal and not specifically making prohibition in the agreement/document the said provision of prohibition cannot be read into the document. The above judgment has been followed by the Hon'ble Supreme Court in the case of **Indira Devi supra.** The relevant paras of the said judgment are as under:-

> *"20. In **Kapilaben and Ors.'s case (supra)** this Court had considered that assignment of a contract might result in transfer of either rights or obligations thereunder. The transfer of obligations is not possible without the consent of the other party. The transfer of right is permissible except in cases where the contract is of personal nature. Relevant paras thereof are extracted below:-*
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> *"24. It is well-settled that the term "representative-in-interest" includes the assignee of a contractual interest. Though the provisions of the Contract Act do not particularly deal with the assignability of contracts, this Court has opined time and again that a party to a contract cannot assign their obligations/liabilities without the consent of the other party. A Constitution Bench of this Court in **Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd. AIR 1962 SC 1810**, has laid out this principle as follows :*
>
> *"19. ... An assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognised distinction between these two classes of assignments. As a rule obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. On the other hand, rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties."*
>
> *x x x x*
>
> *27. Even in a case of assignment of rights simpliciter, such assignment would necessarily require the consent of the other party to the contract if it is of a "personal nature". This is*

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elucidated by the learned authors Pollock and Mulla in their commentary on The Indian Contract and Specific Relief Acts (R. Yashod Vardhan, and Chitra Narayan, Eds., 15th Edn., Vol. I) at p. 730:

"A contract which is such that the promisor must perform it in person viz. involving personal considerations or personal skill or qualifications (such as his credit), are by their nature not assignable. The benefit of contract is assignable in `cases where it can make no difference to the person on whom the obligation lies to which of two persons he is to discharge it'. The contractual rights for the payment of money or to building work, for e.g. do not involve personal considerations."

21. It can be summed up from the aforesaid judgments that the condition of right to repurchase in sale deed will not be personal to the vendor unless the terms in the documents specifically state so. Such a right can always be assigned and the contract containing such condition shall be enforceable. The only exception being that such a right should not be personal in nature. The assignment of obligations in a document is not possible without the consent of the other party. No implied prohibition of transfer or assignment can be inferred in a document. The benefit of contract is assignable in cases where it does not make any difference to the person on whom the obligations lies, to which of two persons he is to discharge.

(Emphasis added)

29. Thus, the appellant being assignee of defendants No.1 and 2 is entitled to decree of specific performance of contract and defendant No.3 is also liable to get the sale deed executed in favour of the plaintiff.

30. Further, perusal of Agreement to Sell dated 03.04.1996 Ex.PX (at page 243 of the LCR) also shows that as per endorsement dated

21.07.1996, remaining consideration amount of Rs.32,000/- has been received by defendant No.3. The plea taken by defendants No.1 and 2 is shattered by the evidence of DW1 Durga Prasad who admits about payment of Rs.32,000/- on 21.07.1996 and also that he was always ready and willing till date to get the sale deed executed. Thus, palpably false plea has been taken by defendants No. 1 and 2 to defeat the rights of the plaintiff.

31. In this regard, the relevant findings of the First Appellate Court are in para No. 16 of the judgment dated 31.01.2023, which read as follows:

> *"16 While having due regards to the contentions of learned counsel for both parties, it is observed that it is not in dispute that defendant no.3 Durga Parsad had executed an agreement to sell dated 3.4.1996 in respect of the suit property in favour of defendants No.1 and 2 for total consideration of Rs.92,000/- He had received Rs.60,000/- at the time of execution of the agreement. Vide agreement dated 3.4.1996, sale deed was agreed to be executed and registered within two months from the agreement. It is the case of defendants No.1 and 2 that since they could not arrange, the balance sale consideration for the purpose of execution and registration of the sale deed within time fixed for execution of the sale deed, therefore, the agreement dated 3.4.1996 was cancelled by defendant No.3 and earnest money of Rs.60,000/- paid by them was forfeited by defendant No.3. However, on agreement dated 3.4.1996 Ex.PX, there is a writing that Rs.32,000/- (total Rs.92,000/-) have been received on 21.7.1996 and the same is signed by Durga Parsad. When stepped into the witness box as DW1, Durga Parsad in his cross- examination has admitted that he had received Rs.32,000/- lateron. He has also admitted*

endorsement on the said agreement regarding receipt of Rs. 32,000/-, total of Rs.92,000/- to be in his own hand writing on 21.7.1996. He has also admitted that nothing remained due as per the agreement. He volunteered that cost of boundary wall on the plot in question was due. This, defendant No. 3 had accepted the balance sale consideration after expiry of the date fixed for execution and registration of the sale deed in view of the agreement dated 3.4.1996. After acceptance of the balance sale consideration, no limitation for execution and registration of sale deed was fixed. No sale deed was executed by defendant No.3 in favour of defendants no.1 and 2. Defendants No.1 and 2 have not filed any suit against defendant No.3 for specific performance of the agreement dated 3.4.1996. Thus, defendants No.1 and 2 have not become owner of the suit property on the basis of the agreement dated 3.4.1996 as an agreement does not create any title. There is no nominee clause in the agreement dated 3.4.1996 in favour of defendants No.1 and 2. Defendants No.1 and 2 were not authorized by defendant No.3 to create any charge on the suit property by entering into an agreement to sell with the plaintiff."

32. Consequentially, the sole ground on which defendants were resisting the Agreement to Sell dated 24.08.2005, stands negated.

33. Learned counsel for the respondents are unable to controvert or dispute the above said factual and legal position.

34. In view of the above, the present Regular Second Appeal is **allowed**; and suit of the plaintiff stands decreed.

35. Pending applications, if any, stand disposed of.

28.04.2026 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

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