

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****243****RSA-5694-2015 (O&M)****Date of decision: 11.05.2026****Ran Singh through LRs****...Appellant(s)****Vs.****Jai Parkash through LRs****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Deepak Balyan, Advocate with
Mr. Vicky Chauhan, Advocate
for the appellant.

Mr.S.P.Chahar, Advocate with
Mrs. Sarita Chahar, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant against the concurrent judgments and decrees of the learned District Courts, whereby the suit filed by the respondent/plaintiff for possession by way of specific performance of contract and permanent injunction, has been decreed for specific performance by both the District Courts.

2. It was the pleaded case of the plaintiff/respondent that defendant is owner in possession of a residential plot measuring 225 sq.yds. On 01.11.2007, defendant had entered into an Agreement to Sell qua the said plot with the plaintiff for a total sale consideration of Rs.3,80,000/-; of which an amount of Rs.1,50,000/- was received in cash by the defendant from the plaintiff by way of earnest money in the presence of the witnesses. It was alleged that as per the terms of the



Agreement, defendant or his nominee had to make payment of balance amount of Rs.2,30,000/- on or before 15.01.2008, which was a target date set for execution of Sale Deed. It was alleged that after multiple requests by plaintiff, on 30.12.2007, defendant had agreed to execute the Sale Deed within 10 days. However, when defendant did not show up, plaintiff served a legal notice dated 12.01.2008 upon the defendant calling upon him to be present on 15.01.2008 before Sub Registrar. Plaintiff was present at the office of Sub Registrar on 15.01.2008 with the balance sale consideration. However, defendant did not turn up. Hence, the present suit was filed on 31.07.2009.

3. Upon appraisal of the pleadings and the evidence led by the parties, the Id. Civil Judge (Junior Division), Bahadurgarh had decreed the suit of the plaintiff vide judgment and decree dated 22.04.2014 as follows:

“17.In view of issue-wise aforesaid discussion with reasons thereof, this court is of the view that suit of the plaintiff succeeds. Therefore, a decree for specific performance of the agreement to sell dated 1.11.2007 is hereby passed in favour of the plaintiff and against the defendant. The plaintiff is entitled to the possession of suit property through specific performance of contract and the defendant is directed to execute the sale deed of the suit property in favour of plaintiff on receipt of balance sale consideration within a period of 3 months, failing which the plaintiff is entitled to get sale deed executed through assistance of court. The plaintiff shall be liable to bear the expenses required for execution and registration of sale deed. Decree sheet be drawn accordingly. File be consigned to the record room after due compliance.”



4. The Civil Appeal filed by the defendant was dismissed by the learned Additional District Judge, Jhajjar vide judgment and decree dated 19.08.2015. Hence, the present second appeal by the appellant/defendant.

5. It is *inter alia* submitted by learned counsel for the appellant that in decreeing the suit of the plaintiff, learned Trial Court has failed to consider that the plaint filed by the plaintiff is not in accordance with the agreement. Even the description of the property mentioned in the plaint, is not as per the property mentioned in the Agreement.

6. It is further submitted by learned counsel for the appellant that in his written statement, appellant had duly raised a specific objection that the suit of the plaintiff is not maintainable. On the basis of the pleadings of the parties, learned Trial Court had also framed a specific issue No.4 in this regard i.e. *"4. Whether the suit of the plaintiff is not maintainable in the present form?OPD"* However except issue No.4, learned Trial Court has given a finding in respect of all issues. Learned counsel argues that in terms of Order 14 Rule 2 (1) CPC, learned Trial Court is to decide all issues with reference to evidence. It is submitted that the impugned judgments and decrees suffer from material legal defect and are therefore unsustainable.

7. Learned counsel for the appellant further submits that suit property is a residential plot and, therefore, cannot be partitioned.

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



9. *Per contra*, learned counsel for the respondent/plaintiff vehemently opposes submissions advanced on behalf of the appellant/defendant and submits that under Order 41 Rule 24 CPC, this Court can decide all issues. It is further submitted that the appellant is barred from raising the above plea as no such objection was taken by the appellant in his Grounds of Appeal filed before the learned First Appellate Court. Said objection has been taken by the appellant only before this Court. Moreover, there is no evidence led by the respondent to show that the present suit is not maintainable. It is contended that the very fact that the civil suit has been decided on merits by both the District Courts shows that suit has been found to be maintainable.

10. Learned counsel for the respondent/plaintiff further submits that in respect of the contention of the appellant that the suit property is a residential plot, both the District Courts have given a cogent finding in this regard in their respective judgments. He accordingly prays for dismissal of the present Appeal.

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

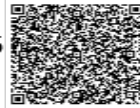
12. The record reveals that Agreement to Sell dated 01.11.2007 was duly proved by the plaintiff by examining PW1 Ragubir Singh and PW2 Anand, attesting witnesses who deposed in favour of the Agreement and stated that defendant had entered into Agreement to Sell in respect of the disputed plot and Rs.1,50,000/- was paid by the plaintiff to the defendant in



the presence of witnesses. Plaintiff had also examined PW3 Jai Bhagwan who proved that the defendant Ran Singh had bought stamp of Rs.100/- in favour of the plaintiff. Plaintiff himself has appeared as PW4 and deposed in support of the plaint. The original Agreement to Sell was duly produced as Ex.PW4/B; and Receipt Ex.PW4/C. What clinches the issue is that the defendant in his cross-examination as DW1 has admitted that he has executed Agreement dated 01.11.2007; and has admitted Receipt dated 01.11.2007 whereby he had received an amount of Rs.1,50,000/- as earnest money.

13. Furthermore, readiness and willingness of the plaintiff to perform the contract was also proved by producing his application dated 15.01.2008 Ex.PW4/D and Affidavit of Attendance Ex.PW4/E. Furthermore, Ex.PW4/E is duly attested by Executive Magistrate on 15.01.2008. Non-presence of the defendant shows that defendant has failed to perform his part of contract. Thus, there was no reason to deny discretionary relief of specific performance to the plaintiff.

14. As regards objection of the appellant in respect of Order 14 Rule 2(1) CPC, a perusal of Grounds of Appeal filed by the appellant before the First Appellate Court shows that no such objection has been raised therein by the appellant before the First Appellate Court. Moreover, as pointed by learned counsel for the respondent, under Order 41 Rule 24 CPC, this Court can decide the said issue. In any event, from the very fact that the judgments of both the District Courts have been passed on merits of the matter, shows that suit of the plaintiff was held to be maintainable.



No other inference can be drawn. As such, this argument of the appellant is without merit.

15. Before parting, it may also be pointed out that although the defendant had executed the Agreement to Sell by claiming himself to be owner in possession of the plot, but in his written statement, defendant has stated that he is not the owner in possession of the disputed house and one Chanderwali and Ranbir are co-owners of the disputed house being LR's of father of defendant. In support of the said contention, defendant had produced Ex.D2 viz copy of Mutation No. 2881 showing Chanderwali, Ran Singh and Ranbir Singh as owners in possession of land measuring 46K-14M upto the extent of 1/5th share. However, learned District Courts have held that document Ex.D2 does not relate to the disputed land. In the written statement, defendant has not mentioned actual khata No. of the land in dispute. Thus, Ex.D2 cannot be read into evidence. The defendant did not lead any other evidence to show that Chanderwali and Ranbir are also co-owners of the suit property. Mutation No. 2881 Ex.D2 does not show that the said document is in respect of the same suit land. Moreover, in cross-examination of PW4, no suggestion has been put to the plaintiff by the defendant regarding the same. Thus, defendant failed to prove that the suit property is owned and possessed by the defendant alongwith Ranbir Singh and Chanderwali.

16. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

17. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts. The present Regular Second Appeal is hereby **dismissed**.
18. Pending applications, if any, stand disposed of.

11.05.2026

Divyanshi

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No