



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

**RSA-6200-2017 (O&M)
Date of decision : 18.03.2026**

Bhagwat Dayal and another

....Appellants

Versus

Desh Raj and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Lokesh Sinhal, Senior Advocate (through V.C.) with
Mr. Ram Lal Yadav, Advocate,
Mr. Brijesh Kr. Jangra, Advocate and
Mr. Sukhdeep Singh, Advocate for the appellants.

Mr. Ashish Gupta, Advocate for respondent No.1.

None for respondent No.2.

Mr. J.P. Rana, Advocate for respondents No.3 & 4.

PANKAJ JAIN, J. (ORAL)

Defendants No.1 and 3 are in second appeal.

2. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position before the Court of the First instance i.e., appellants as ‘defendants No.1 & 3’, respondent No.1 as ‘plaintiff’, respondent No.2 as ‘defendant No.2’ and respondents No.3 & 4 as ‘defendants No.4 & 5’.

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3. Plaintiff filed suit seeking decree of possession by way of specific performance of agreement to sell dated 22.09.2004. As per plaintiff, defendants No.1 to 3/owners of the agricultural land measuring 8 Kanals 3 Marlas as detailed out in the plaint (hereinafter referred to as 'the suit land'), agreed to sell suit land for a total sale consideration of Rs.16,20,000/-. Parties agreed to get the sale deed executed on or before 10.01.2005. Plaintiff paid earnest money of Rs.1,60,000/- to defendants No.1 to 3 on the date of execution of agreement to sell.

3.1. As per plaintiff, he remained present in the office of Sub-Registrar, Sohna on the appointed date i.e.,10.01.2005 along with balance sale consideration and other necessary expenses. Defendants No.1 to 3 failed to turn up to perform their part. Plaintiff approached defendants No.1 to 3 and requested them to execute and register the sale deed in his favour without any success. Plaintiff claims to have served legal notice through his counsel vide Registered AD, dated 19.01.2005 calling upon defendants No.1 to 3 to come present before the Sub-Registrar and to execute the sale deed. As per plaintiff, defendants No.1 to 3/the vendors, vide legal notice dated 24.03.2005, called upon the plaintiff to appear before the office of Sub-Registrar, Sohna on 07.04.2005. He remained present on the said date. However, defendants number 1 to 3 again failed to turn up. Plaintiff claimed to have served another legal notice dated 19.05.2005 upon vendors/defendants No.1 to 3 calling upon them to execute sale deed on 07.06.2005.



On the said date, again the defendants failed to turn up. Defendants No.1 and 2 illegally and unlawfully sold 4 Kanals of land out of the suit land in favour of defendants No.4 and 5 vide sale deed No.333, dated 20.04.2005 for a sale consideration of Rs.4,50,000/-. As per plaintiff, defendants No.1 to 5 apart from being related to each other are neighbours. Sale deed was executed by defendants No.1 and 2 in favour of defendants No.4 and 5 with an intent to defeat the rights of the plaintiff. Plaintiff earlier filed a suit for permanent injunction *qua* the suit land against defendants No.1 to 3. The same was withdrawn vide order dated 11.8.2005 with liberty to file a suit for specific performance. The present suit was instituted by the plaintiff on 27.08.2005.

4. Suit was contested by defendants No.1 and 3 to 5. Execution of agreement to sell dated 29.09.2004 executed by defendants No.1 to 3 in favour of plaintiff, was admitted. It was admitted that defendants agreed to sell suit land in favour of the plaintiff for a total consideration of Rs.16,20,000/-. Out of which, an amount of Rs.1,60,000/- was received as earnest money. Defendants admitted that the parties agreed to get the sale deed executed on 10.01.2005. As per defendants No.1 to 3, they remained present in the office of Sub-Registrar for execution of sale deed in favour of plaintiff. However, plaintiff failed to turn up as he was not possessing sufficient amount to perform his part. Defendants claim that their presence before the Sub-Registrar on the appointed date, is evident from the affidavit

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attested by Sub-Registrar, Sohna. Defendants further admitted of having received legal notice dated 12/19.01.2025 at the behest of plaintiff through his counsel, calling upon them to execute sale deed within 15 days. However, even in the legal notice, plaintiff failed to aver his readiness and willingness to perform his part of the contract. Defendants No.1 to 3 claimed to have met the plaintiff on 02.02.2005. In the said meeting, it was agreed that the sale deed shall be executed on 22.03.2005. Defendants/vendors appeared before Sub-Registrar on the said date. However, plaintiff again failed to turn up. Defendants accordingly, served legal notice dated 24.03.2005 calling upon the plaintiff to come present before Sub-Registrar on 07.04.2005 for execution of the sale deed along with balance sale consideration, clarifying that in the event of his failure to do so, the earnest money paid by him shall stand forfeited and the agreement, in question, would automatically stand cancelled. Plaintiff failed to come present on 07.04.2005. Even though the defendants remained present. Defendants claimed that part of the suit land measuring 4 Kanal was alienated with due notice and knowledge of the plaintiff in favour of defendants No. 4 and 5 vide document bearing No. 333 dated 20.04.2005.

5. The Court of the First Instance framed the following Issues.

- “1. Whether the defendants no.1 to 3 executed agreement of sale in plaintiff’s favour on 22.09.2004 and received Rs.1,60,000/- as earnest money on the same day? OPP

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2. If issue no.1 is proved, whether the plaintiff is ready and willing to perform his part of contract? OPP
3. Whether the plaintiff is entitled for a decree for specific performance of contract, as prayed for? OPP
4. Whether suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD
7. Whether the suit of the plaintiff is barred by the principle of resjudicata? OPD
8. Relief.

6. While deciding Issue No.2, the Trial Court found that the plaintiff failed to prove readiness and willingness to perform his part. As per the Court of the First Instance, plaintiff admitted that he has an account in Gurgaon Gramin Bank in which there is no amount lying deposited during the period from 22.09.2004 to 10.01.2005. He admitted that on 10.01.2005, he did not purchase the stamp duty. He admitted that even on 07.06.2005, he did not purchase any stamp paper. Though Ravinder Kumar (PW-3) cousin brother of the plaintiff, claimed of having given Rs.4,00,000/- to the plaintiff in the year 2004, but admitted that there is no writing to the said effect. Defendants No.1 to 3 on the other hand proved that they remained present before the Sub-Registrar on 10.01.2005 by proving their affidavit Exhibit D1, and on 22.03.2005 by Exhibit D2. Despite the plaintiff having granted repeated opportunities, he failed to perform his part. The Court thus



answered Issue No.2 against the plaintiff and decreed the suit for alternate relief of recovery of Rs.1,60,000/- with interest @12% per annum from the date of agreement to sell dated 22.09.2004 till realization.

7. Unsuccessful plaintiff filed appeal.
8. Learned Lower Appellate Court vide impugned judgment and decree reversed the findings recorded by the Trial Court on Issue No.2 and decreed the suit filed by the plaintiff for the main relief, observing as under:

“40. It is pertinent to mention that the learned Additional Civil Judge (Sr. Division) recorded at page no.32 that total sale consideration falling to the share of the plaintiff when computed for sale deeds, subject matter of mutations Ex.P8 to Ex.P25, the same is around Rs. 16 lacs. However, the defendants during the course of their evidence produced certified copies of sale deeds Ex.DW3/A to Ex.DW3/C which relates to purchases by the plaintiff and total sum of these purchasers comes out approximately Rs. Six lacs.

41. If we take into consideration, this very observation of learned trial judge, then it can be safely said that the plaintiff has proved that he had sufficient amount with him, even prior to the date of agreement and even after the agreement dated 22.09.2004 and if the plaintiff had purchased property subsequently for an amount of Rs. Six lacs, it goes to show that the plaintiff was ready and willing to perform his part of contract. Even the present contract can be specifically performed because the plaintiff had adequate funds with him, even earlier to the agreement of sale, till date.

42. Assuming that he had less sale consideration with him, because he had parted with some of the money by purchasing the property, then this amount should come to Rs. Ten lacs and he had



taken some money from his cousin to the tune of Rs. 4 lacs, then it comes to be Rs. 14 lacs.

43. Moreover, the defendants no.1 and 2 have already sold 4 kanals of the land out of the suit property vide registered sale deed dated 20.04.2005 for a consideration of Rs. 4,50,000/-. the remaining property is 4 kanals 3 marlas, the value of which is more than Rs. 8 lacs whereas the plaintiff is in possession of Rs. 14 lacs, then how it can be said that the plaintiff was not in possession of sufficient funds, therefore, he was not ready and willing to perform his part of contract.”

9. Learned Senior Counsel appearing for the appellants has assailed the findings recorded by the Lower Appellate Court on Issue No.2. He submits that no evidence was led by the plaintiff to prove that his financial capacity to perform his part on the appointed date. A well reasoned finding was recorded by the Trial Court after analyzing the evidence. The learned Lower Appellate Court ignored the evidence on record and reversed the findings recorded by the Trial Court recording findings which are conjectural in nature. In doing so, the Court has even gone to the extent of severing the agreement to sell which is not permissible under law.

10. Per contra, counsel for the respondent No.1/plaintiff submits that the learned Lower Appellate Court has rightly held that the plaintiff was ready and willing to perform his part of the agreement. Plaintiff proved his financial capacity by bringing on record the sale deeds vide which he sold various plots to raise money to perform his part under the agreement in question.



11. I have heard counsel for the parties and have carefully gone through the records of the case.

12. The controversy in the present appeal hinges around the question of readiness of the plaintiff. Both the parties have proved their presence before the Sub-Registrar on the appointed date by tendering in evidence their respective affidavits attested by Sub-Registrar. Thus, the Issues that arises for the consideration of this Court are:

- (i) *whether the plaintiff proved his readiness? and*
- (ii) *whether learned Lower Appellate Court was right in reversing the findings recorded by the Trial Court?*

13. On the appointed date, in order to perform his part, plaintiff was required to pay an amount of Rs.14,60,000/- out of total sale consideration of Rs.16,20,000/- apart from the expenses of stamp duty and registration charges. Plaintiff could prove some sale deeds. As per which, he can be said to be in possession of Rs.10,00,000/- on the said date. He further claims to have arranged a sum of Rs.4,00,000/- from his cousin. Learned Trial Court recorded a well reasoned finding after analysing evidence threadbare. The same has been reversed by learned Lower Appellate Court merely on conjectures and the reasoning which is not sustainable in the eyes of law. On the appointed date, the plaintiff was required to pay sale

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consideration *qua* 8 Kanals 3 Marlas of land and not 4 Kanals of land as has been held by the Lower Appellate Court. Even in the present suit, plaintiff seeks specific performance of agreement to sell dated 29.09.2004 *qua* land measuring 8 Kanals 3 Marlas. Plaintiff having failed to prove his readiness falls short of clearing statutory bar as enumerated under Section 16(c) of the Specific Relief Act, 1963.

14. In view thereof, this Court finds that the view formulated by learned Lower Appellate Court reversing well reasoned findings recorded by the Trial Court, cannot be sustained and is hereby set aside.

15. Accordingly, findings recorded by the Trial Court on Issue No.2 are hereby restored.

16. The judgment and decree passed by the lower Appellate Court decreeing the suit filed by the plaintiff for main relief, is hereby set aside.

17. The judgment and decree passed by the Trial Court is ordered to be restored.

18. Resultantly, the present appeal is allowed.

19. Pending application, if any, shall also stand disposed of.

March 18, 2026

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No