2026:PHHC:005524

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

133 **RSA-4132-2025 (O&M)**
Date of decision :13.01.2026

PUSHKAR RAJ THAKKAR **... APPELLANT**

VERSUS

JAGDISH CHAND SHARMA AND OTHERS **...RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Sukesh Kumar Jindal, Advocate
for the appellant.

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PARMOD GOYAL, J.

1. Defendant No. 2–appellant has preferred the present second appeal, being aggrieved by the judgment and decree dated 10.11.2021 passed by the Civil Judge (Junior Division), Gurugram, whereby the suit filed by the plaintiffs for specific performance of the agreement dated 25.11.2015 and for permanent injunction was decreed, as well as by the judgment and decree dated 02.09.2025 passed by the Additional District Judge, Gurugram, whereby the first appeal preferred by the appellant–defendant No. 2 was dismissed.

2. For the sake of convenience, the parties are being referred to as they were before the Court of first instance.

3. The plaintiffs, in their suit for specific performance of the agreement dated 25.11.2015, asserted that defendant No. 1 had agreed to sell his house/shop bearing No. 440, measuring 40′ × 10′ (i.e. 44 square yards), situated within the

limits of the Municipal Corporation, Gurugram, duly bounded and fully described in the plaint, for a total sale consideration of ₹50,00,000/-. A sum of ₹48,00,000/- was paid as earnest money. It was agreed that the balance sale consideration would be paid at the time of registration of the sale deed. The defendants duly executed the agreement to sell and receipt in the presence of witnesses. It was further agreed that the sale deed would be executed and registered on or before 31.12.2016. The plaintiffs alleged that they approached defendant No. 1 on several occasions for execution of the sale deed, but he kept putting them off on one pretext or the other. In the second week of October, 2016, when the plaintiffs again requested defendant No. 1 to execute the sale deed, they were informed that defendant No. 1 had already executed a sale deed in favour of defendant No. 2 on 16.09.2016. Thereafter, upon making inquiries, the plaintiffs came to know that defendant No. 1 had dishonestly and illegally sold the suit property, which was the subject matter of the agreement, vide sale deed No. 16781 dated 16.09.2016, in favour of defendant No. 2 for a sale consideration of ₹8,00,000/-. It was asserted that defendant No. 2 had full knowledge of the agreement to sell executed by defendant No. 1 in favour of the plaintiffs and that the sale deed so executed was illegal, null and void, ineffective, and not binding on the rights of the plaintiffs. It was further asserted that the plaintiffs had always been ready and willing to perform their part of the contract and to pay the balance sale consideration.

4. The suit was contested by defendant No. 1 by raising preliminary objections. Execution of the agreement to sell and the receipt of earnest money were not denied, however, it was contended that the plaintiffs, along with defendant No. 2, had approached defendant No. 1 in the first week of September, 2016 and requested him to execute the sale deed in favour of defendant No. 2, who was stated to be their nominee. The defence of defendant No. 1 was that the sale deed in favour of defendant No. 2 was executed at the request of the plaintiffs

and that the amount of ₹48,00,000/- paid at the time of the agreement to sell was duly adjusted towards the sale consideration. It was further pleaded that although the actual sale consideration was ₹50,00,000/-, the sale deed was registered for ₹8,00,000/- on the basis of the Collector rates and that, despite objections raised by defendant No. 1, the plaintiffs and defendant No. 2 got the sale deed registered at the said value to avoid payment of stamp duty.

5. Defendant No. 2 also contested the suit by raising several preliminary objections and claimed himself to be a bona fide purchaser for valuable consideration, thereby seeking dismissal of the suit. In the present case, insofar as the agreement to sell and the receipt evidencing payment of earnest money are concerned, the same have been rightly held to be proved by both the Courts below in view of the specific stand taken by defendant No. 1 in his written statement, wherein he duly admitted the execution of the agreement to sell as well as receipt of ₹48,00,000/- as earnest money as well evidence led by plaintiffs.

6. The case set up by defendant No. 1 was that defendant No. 2 was the nominee of the plaintiffs and that the sale deed dated 16.09.2016 was executed in favour of defendant No.2 at the asking of the plaintiffs. On this premise, the defence of defendant No. 1 was that the agreement to sell dated 25.11.2015 stood fully complied with and, therefore, no cause of action survived in favour of the plaintiffs. On the other hand, defendant No. 2 claimed to be a bona fide purchaser for consideration. In these circumstances, the issue regarding due execution of the agreement to sell and the receipt acknowledging payment of earnest money stood proved and could not be doubted.

7. The findings recorded by the learned Courts below on the issue of due execution of the agreement to sell and the receipt showing payment of earnest money, therefore, cannot be faulted with. As regards the readiness and willingness of the plaintiffs, it is evident that a substantial portion of the total sale

consideration had already been paid by way of earnest money. Out of the total sale consideration of ₹50,00,000/-, the plaintiffs had paid ₹48,00,000/-, leaving only ₹2,00,000/- to be paid at the time of execution and registration of the sale deed. It is not the case that the plaintiffs had defaulted in making payment of the balance amount or that they were not ready to get the sale deed executed prior to the stipulated date.

8. As per the agreement, the last date for execution and registration of the sale deed was 31.12.2016. However, prior to the said date, defendant No. 1 executed a sale deed dated 16.09.2016 in favour of defendant No. 2. In these circumstances, the learned Courts below have rightly held that the plaintiffs could not be held to be not ready and willing to perform their part of the contract.

9. The only issue arising for consideration in the present appeal is whether defendant No. 2 is a bona fide purchaser for valuable consideration. Defendant No. 2 appeared as DW-1 and, while deposing, admitted his relationship with defendant No. 1. He categorically denied any acquaintance with the plaintiffs or having any knowledge of the agreement to sell dated 25.11.2015 (Ex. P-1). On the other hand, defendant No. 1 took the stand that defendant No. 2 was a nominee of the plaintiffs. In view of these contradictory and mutually destructive pleas taken by defendant Nos. 1 and 2, the Courts below have rightly held that defendant No. 2 could not be treated as a nominee of the plaintiffs.

10. Further, it has come on record that though in the year 2015 defendant No. 1 had agreed to sell the suit property for a consideration of ₹50,00,000/-, the same property was sold in the year 2016 vide sale deed dated 16.09.2016 for a consideration of only ₹8,00,000/-. There is no cogent evidence on record to establish actual passing of consideration from defendant No. 2 to defendant No. 1. The learned Courts below have rightly observed that the close relationship between defendant Nos. 1 and 2, coupled with the fact that they have taken

diametrically opposite stands, clearly indicates that defendant No. 2 was not a bona fide purchaser and that the sale deed was executed in his favour only to defeat the agreement to sell dated 25.11.2015 executed in favour of the plaintiffs.

11. The facts and circumstances noticed above clearly establish that defendant No. 2 had knowledge of the agreement executed in favour of the plaintiffs and had actively participated with defendant No. 1 in defeating the rights of the plaintiffs arising therefrom. Furthermore, both the Courts below have rightly taken note of the prevailing market rates in the locality, as proved by the plaintiffs by placing on record sale deeds Exs. P-8 and P-9, which show that the prices of similar properties were much higher than the consideration shown in the sale deed executed in favour of defendant No. 2. One such sale deed reflects that similar property was sold for about ₹30,00,000/-, whereas the suit property was allegedly sold to defendant No. 2 for only ₹8,00,000/-. Even otherwise, defendant No. 2, while appearing as DW-1, admitted that the prevailing rate of properties in the locality at the relevant time was approximately ₹1,00,000/- per square yard. By his own showing, the suit property measuring 44 square yards would be worth about ₹44,00,000/-. The fact that defendant No. 2 claims to have purchased the property for nearly one-fourth of its market value further demolishes his plea of being a bona fide purchaser and clearly points towards his prior knowledge of the agreement in favour of the plaintiffs.

12. In view of the above, both the Courts below have correctly appreciated the evidence on record and have rightly rejected the case set up by defendant No. 2-appellant. Defendant No. 2-appellant has rightly been non-suited on proper appreciation of evidence. No substantial question of law arises for consideration in the present second appeal. The appeal is devoid of merit and is accordingly dismissed.

13. Pending miscellaneous application(s), if any, also stand(s) disposed of accordingly.

13.01.2026 **(PARMOD GOYAL)**
manoj **JUDGE**

Whether speaking/reasoned	Yes
Whether reportable	Yes/No