IN THE COURT OF SIMRAN, CIVIL JUDGE, COURT NO.8, SHIMLA, DISTRICT SHIMLA, H.P.

CNR No.HPSH120030842023
Registration No.1899/2023
Date of Institution: 21.10.2023
Date of Decision: 11.08.2026

In the matter of :
Sh. Krishan Kumar, s/o Lt. Sh. Chatro Ram, R/o Bhadrakali Niwas, near Hotel @ the Dawn Kachighatti, Tehsil & District Shimla, H.P.

…....Plaintiff

Versus

Sh. Sant Ram @ Pampi, s/o Lt. Sh. Najru Ram, R/o Village Bhog, P.O. Anandpur, Tehsil Shimla (rural), District Shimla, H.P.

…....Defendant

SUIT FOR SPECIFIC PERFORMANCE OF AGREEMENT

For the Plaintiff : Sh. Rajiv Chauhan, Ld. Counsel.
Defendant already proceeded against ex-parte vide order dated 17.03.2025.

J U D G M E N T

By way of the present suit, the plaintiff has sought a decree for specific performance of Agreement to Sell dated

03.03.2022 allegedly executed by the defendant in respect of land measuring 2 biswas comprised in Khasra No. 836, Khata/Khatauni No. 67/120 min (old Khata/Khatauni No. 65/117 min), situated at Mohal Bhog, Patwar Circle Anandpur, Tehsil Shimla (Rural), District Shimla, H.P. (hereinafter to be referred as the suit land). Consequential relief of possession and permanent prohibitory injunction has also been prayed for. In the alternative, the plaintiff has sought recovery of ₹6,00,000/- together with interest.

2. The case of the plaintiff, in brief, is that the defendant, being owner/co-owner of the suit property, entered into an Agreement to Sell dated 03.03.2022 whereby he agreed to sell land measuring 2 biswas to the plaintiff for a total sale consideration of ₹4,00,000/-. According to the plaintiff, prior to execution of the agreement, a sum of ₹2,50,000/- had already been paid to the defendant on different dates. At the time of execution of the agreement, an additional amount of ₹50,000/- was paid, making the total amount paid ₹3,00,000/-. The balance consideration of ₹1,00,000/- was agreed to be paid at the time of execution and registration of the sale deed. The agreement stipulated that the sale deed would be executed on or before 01.03.2023. It is pleaded that despite repeated requests and personal visits, the defendant failed to perform his contractual obligations. The plaintiff thereafter served a legal notice calling upon the defendant to execute the sale deed, but to no avail. The plaintiff has specifically pleaded that he has always been ready and willing to perform his part of the contract by paying the remaining sale consideration and has never resiled from the

agreement. Alleging breach on the part of the defendant, the present suit has been instituted.

3. The defendant initially appeared and filed a written statement. The execution of the Agreement to Sell was not denied. However, the defendant pleaded that the amount received from the plaintiff had subsequently been returned and that the agreement consequently ceased to have any effect. It was also pleaded that the plaintiff intended to purchase another parcel of land and, therefore, the transaction in question was not acted upon. The defendant denied the plaintiff's entitlement to the relief claimed and prayed for dismissal of the suit.

4. The plaintiff filed replication denying the allegations made in the written statement and reaffirming the averments contained in the plaint.

5. During the pendency of the suit, despite opportunities, the defendant failed to participate in the proceedings and was ultimately proceeded ex-parte on 17.03.2025. Consequently, the plaintiff led ex parte evidence.

6. From the pleadings of the parties and evidence, the following points arise for determination:

1. Whether the Agreement to Sell dated 03.03.2022 executed between the parties is valid, lawful and specifically enforceable?...OPP
2. Whether the plaintiff has proved that he has always been ready and willing to perform his part of the contract and that the defendant committed breach thereof?...OPP

3. Whether the plaintiff is entitled to a decree for specific performance of the Agreement to Sell dated 03.03.2022 along with possession and consequential reliefs?...OPP
4. Relief.

7. I have heard learned counsel for the plaintiff and have perused the entire case file with minute care. For the reasons to be recorded hereinafter while discussing the aforesaid issues for determination, my issue wise findings are as under:-

Issue No.1: Yes

Issue No.2: Yes

Issue No.3: Yes

Relief : Suit of the plaintiff is **decreed** as per operative part of the judgment.

REASONS FOR FINDINGS

POINT NO.1 to 3

8. All these points are interlinked and interconnected, so they are being taken up together for discussion and disposal in order to avoid repetition of similar evidence.

9. At the outset, it is necessary to observe that although the defendant has been proceeded ex parte, the plaintiff is not entitled to a decree merely because the suit has remained

uncontested. It is a settled proposition of law that even in ex parte proceedings the Court is required to scrutinize the pleadings and evidence and satisfy itself that the plaintiff has succeeded in proving his case in accordance with law. The burden to establish the existence of a valid contract, his readiness and willingness to perform his obligations and the defendant's breach continues to rest upon the plaintiff.

10. Specific performance is a statutory remedy governed by the provisions of the Specific Relief Act, 1963. Following the Specific Relief (Amendment) Act, 2018, the legislative intent is that contracts are ordinarily to be specifically enforced unless their enforcement is barred by the Act or other equitable considerations recognised by law. Nevertheless, the plaintiff must establish the foundational requirements for grant of such relief.

11. The first and foremost requirement for grant of a decree for specific performance is the existence of a valid, lawful and concluded contract between the parties. The jurisdiction of the Court to enforce a contract under the Specific Relief Act can be invoked only when the plaintiff establishes that there existed a binding agreement capable of being specifically enforced in law. Therefore, before examining the subsequent questions relating to readiness and willingness or breach of contract, it is imperative for the Court to first ascertain whether the Agreement to Sell dated 03.03.2022 (Ex. PW-1/B), which forms the very foundation of the plaintiff's claim, was validly executed and constitutes a concluded and enforceable contract between the parties.

12. The foundation of the plaintiff's claim is Agreement to Sell dated 03.03.2022, exhibited as Ex. PW-1/B.PW-1 entered the witness box and proved the original agreement. He categorically deposed that the defendant voluntarily executed the agreement after receiving substantial sale consideration. During his deposition he identified the original agreement and the signatures appearing thereon.

13. His testimony stands fully corroborated by PW-2 Smt. Neelam Kumari, who was one of the witnesses to the agreement. PW-2 specifically deposed that the agreement was executed in her presence and that she witnessed both parties signing the document. She identified the signatures of the plaintiff as well as the defendant appearing on Ex. PW-1/B.

14. The original agreement has been produced before the Court. It bears the signatures of the parties and the attesting witnesses and has also been notarised. There is nothing on record suggesting that the agreement is forged, fabricated or otherwise not genuine.

15. A significant circumstance which strengthens the plaintiff's case is that in the written statement initially filed by the defendant, execution of the agreement was not specifically denied. The defence projected was that the amount received had subsequently been returned and therefore the agreement had become ineffective. Such a plea necessarily proceeds on the premise that the agreement had in fact been executed. Thus, the execution of the agreement substantially stood admitted.

16. Even otherwise, the plaintiff has independently proved the agreement by producing the original document and by examining an attesting witness. Accordingly, this Court has no hesitation in holding that Ex. PW-1/B is a genuine and duly executed agreement between the parties.

17. The Court has carefully examined Ex. PW-1/B.The agreement clearly identifies the vendor and purchaser, describes the property agreed to be sold, specifies its area, records the total sale consideration of ₹4,00,000/-, acknowledges receipt of ₹3,00,000/- and stipulates that the balance amount of ₹1,00,000/- shall be paid at the time of execution of the sale deed. The date by which the sale deed was to be executed is also specifically mentioned.

18. Thus, every essential ingredient of a concluded contract is present. The agreement is neither vague nor uncertain and leaves no ambiguity regarding the obligations of either party. The plaintiff has pleaded that he paid ₹3,00,000/- to the defendant on different dates. This assertion is supported by the recitals contained in Ex. PW-1/B itself. The agreement records receipt of ₹1,20,000/- on 03.10.2021, ₹80,000/- on 11.12.2021, ₹50,000/- on 21. 04.01.2022 and ₹50,000/- on the date of execution of the agreement, totalling ₹3,00,000/-.

19. PW-1 has reiterated these facts in his affidavit. The defendant has not challenged this evidence. More importantly, the agreement itself contains acknowledgment by the defendant

regarding receipt of the aforesaid amount. Such acknowledgment constitutes strong evidence against the executant.

20. Though the defendant pleaded in the written statement that the amount had subsequently been returned, no evidence whatsoever has been led to substantiate that plea. No receipt acknowledging repayment has been produced. No independent witness has been examined. No documentary evidence has been placed on record. The defendant himself abstained from entering the witness box.

21. It is trite that pleadings are not evidence. A plea unsupported by evidence cannot dislodge a written acknowledgment contained in a duly proved document. Consequently, the Court is satisfied that payment of ₹3,00,000/- stands proved.

22. The next and most important requirement is whether the plaintiff has continuously remained ready and willing to perform his part of the contract. Section 16(c) of the Specific Relief Act requires that the plaintiff must plead and prove continuous readiness and willingness to perform his contractual obligations.

23. The plaint specifically contains averments that the plaintiff remained ready and willing to pay the balance sale consideration and requested the defendant on several occasions to execute the sale deed. PW-1 has reiterated these averments on oath. He has further proved legal notice Ex. PW-1/C issued to the

defendant requiring execution of the sale deed along with postal receipt Ex. PW-1/D and delivery report Ex. PW-1/E.

24. The conduct of the plaintiff is also relevant. He had already paid three-fourths of the agreed sale consideration. Thereafter he issued a legal notice before approaching the Court. During the pendency of the suit also he consistently asserted his willingness to pay the balance amount. Nothing has been brought on record to suggest that the plaintiff ever abandoned the contract or expressed unwillingness to perform his obligations. The Court is therefore satisfied that the plaintiff has successfully established continuous readiness and willingness as contemplated under Section 16(c) of the Specific Relief Act.

25. Ex. PW-1/B required the defendant to execute the sale deed on or before 01.03.2023 after receiving the remaining sale consideration. Despite repeated requests and service of legal notice, the defendant failed to perform his obligations. The defendant thereafter chose not to contest the proceedings and did not step into the witness box. No lawful explanation has been offered for non-performance. The inevitable conclusion is that the defendant committed breach of the contract. The only defence taken by the defendant is that the amount received under the agreement had been returned. The burden of proving such repayment was entirely upon the defendant because repayment was a fact especially within his knowledge. No documentary evidence has been produced to prove repayment. No witness has been examined. The defendant himself has not entered the

witness box. Accordingly, the said plea remains a mere assertion and cannot be accepted.

26. The agreement relates to land forming part of a joint khata. The question, therefore, arises whether the absence of partition renders the agreement incapable of specific enforcement. The answer has to be in the negative. It is now well settled that a co-owner is competent to enter into an agreement to sell his undivided share in the joint property. Such an agreement is valid and enforceable to the extent of the executant's share, and the purchaser acquires the right to seek partition and separate possession thereafter. Mere absence of partition does not render the contract void or incapable of specific performance.

27. In **Kammana Sambamurthy (Dead) by LRs v. Kalipatnapu Atchutamma, (2011) 11 SCC 153**, the Hon'ble Supreme Court held that a co-owner can validly agree to transfer his undivided share in joint property and that a decree for specific performance can be granted to the extent of the vendor's share. It was further held that the fact that partition had not taken place is not a legal impediment, and the purchaser may subsequently seek partition and separate possession of the vendor's share.

28. The same principle was reiterated in **Hanumappa Channappa Hullur (Dead) by LRs v. Shivamurthappa Parappa Kalli, (2016) 1 SCC 332**, wherein the Hon'ble Supreme Court held that an agreement executed by one co-owner is enforceable against his own share, though it does not bind the shares of non-signing co-owners.

29. Clause 1 of Ex. PW-1/B records that the defendant represented that the agreed land falls to his share and is under his possession without objection from other co-sharers. The agreement further records that partition had already been settled amongst the co-sharers and that the agreed land falls to the defendant's share.

30. These representations were voluntarily made by the defendant. Having induced the plaintiff to enter into the contract on that basis, the defendant cannot subsequently avoid performance on the ground that the property forms part of a joint holding. No evidence has been produced to show that the agreed land did not fall to the defendant's share or that performance has become impossible. Therefore, the mere fact that the property forms part of a joint khata does not, on the facts of the present case, render the agreement incapable of enforcement. The testimony of PW-1 is natural, cogent and consistent with the pleadings and documentary evidence. PW-2 materially corroborates the execution of the agreement. Their testimonies have remained wholly unrebutted. No circumstance has emerged to create any doubt regarding their credibility. The documentary evidence also lends complete assurance to the oral evidence. The Court, therefore, finds no reason to disbelieve the plaintiff's case.

Consequently, this Court holds that :

31. In view of the foregoing discussion and findings recorded hereinabove, this Court is of the considered opinion that the plaintiff has successfully proved that the defendant entered

into a valid Agreement to Sell dated 03.03.2022 (Ex. PW-1/B) in respect of the suit property after receiving a sum of ₹3,00,000/- towards the sale consideration. The plaintiff has further proved that he remained continuously ready and willing to perform his part of the contract by paying the balance sale consideration of ₹1,00,000/-, whereas the defendant failed to perform his contractual obligation despite repeated requests and service of legal notice. The defendant has failed to substantiate the pleas taken in the written statement and has not produced any evidence to establish that the agreement had become unenforceable or that the amount received by him had been repaid to the plaintiff.

32. The agreement in question is a valid and enforceable contract, and no statutory or equitable ground has been established to deny the relief of specific performance. Consequently, the plaintiff is entitled to enforcement of the Agreement to Sell dated 03.03.2022. Accordingly, Point Nos. 1, 2 and 3 are answered in favour of the plaintiff and against the defendant.

RELIEF

33. In view of my findings and discussions on the aforesaid points, the suit of the plaintiff is ***decreed*** in the following terms:

(i) A decree for specific performance of the Agreement to Sell dated 03.03.2022 (Ex. PW-1/B) is passed in favour of the plaintiff and against the defendant.

(ii) The defendant is directed to execute and get registered, at his own cost and in accordance with law, a sale deed in favour of the plaintiff in respect of land measuring 2 biswas comprised in Khasra No. 836, Khata/Khatauni No. 67/120 min (old Khata/Khatauni No. 65/117 min), situated at Mohal Bhog, Patwar Circle Anandpur, Tehsil Shimla (Rural), District Shimla, H.P., within two months from the date of this judgment, upon receipt of the balance sale consideration of ₹1,00,000/-.

(iii) The plaintiff shall deposit the balance sale consideration of ₹1,00,000/- before this Court within one month from the date of this judgment. Upon such deposit, notice shall be issued to the defendant to execute and register the sale deed within the period stipulated above.

(iv) In the event of failure or refusal of the defendant to execute and register the sale deed within the stipulated period, the plaintiff shall be entitled to have the sale deed executed and registered through the process of the Court in accordance with the provisions of the Code of Civil Procedure, on payment of the requisite stamp duty and registration charges, if not already deposited.

(v) Upon execution and registration of the sale deed, the defendant shall also deliver vacant and peaceful possession of the suit property to the plaintiff, if the same has not already been delivered.

(vi) Till execution and registration of the sale deed, the defendant, his agents, representatives or any person claiming through him are restrained from alienating, transferring, encumbering or creating any third-party interest in the suit property in any manner so as to defeat the rights of the plaintiff arising out of the Agreement to Sell dated 03.03.2022.

(vii) In view of the decree for specific performance, the alternative relief for recovery of ₹6,00,000/- with interest does not survive for consideration and is, accordingly, declined.

(viii) The plaintiff shall also be entitled to the costs of the suit.

Let the decree sheet be prepared accordingly. The file after due completion be consigned to the Record Room.

Announced and signed in the open court on this 11th day of August, 2026.

(Simran)
AT **Civil Judge, Court No.8,**
Shimla, District- Shimla, H.P.

FORM-A

LIST OF WITNESSES

Sr. No.	**Name of Witness**	**Whether the witness of plaintiff or defendant**
PW-1	Sh. Krishan Kumar	Plaintiff's witness

FORM-B

LIST OF EXHIBITS/MARKS

Ex. No/ Marks	**Date**	**Description**
Ex. PW-1/A	03.03.2026	Evidence by way of affidavit.
Ex. PW-1/B	-do-	Agreement to sell
Ex. PW-1/C	-do-	Legal notice
Ex. PW-1/D	-do-	Postal receipt
Ex. PW-1/E	-do-	Track consignment
Ex. PW-1/F	-do-	Jamabandi
Ex. PW-1/G	-do-	Jamabandi

(Simran)

AT **Civil Judge, Court No.8,**

Shimla, District- Shimla, H.P.