



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

(210)

RSA-1845-1999 (O&M)
Date of Decision: **22.04.2026**

SHER SINGH

... Appellant

Versus

KAUSHALYA DEVI

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. S.K. Arora, Advocate
for the appellants.

VIRINDER AGGARWAL, J. (Oral)

1. This Regular Second Appeal (for short to be referred as “RSA”) is directed against the concurrent findings recorded by the Courts below, whereby the learned First Appellate Court, vide judgment and decree dated 14.05.1999, dismissed the appeal preferred by the appellant-plaintiff and affirmed the judgment and decree dated 15.05.1997 passed by the learned Additional Civil Judge (Senior Division), Fazilka, whereby the suit for specific performance of agreement to sell dated 08.10.1987 in respect of land measuring 17 kanals 12 marlas situated in Village Chak Ariyan Wala, or in the alternative for recovery of ₹38,000/- along with interest @ 24% per annum, was dismissed.

2. In a succinct exposition of the foundational facts, the appellant-plaintiff instituted the suit asserting that the respondent-defendant had executed an agreement to sell qua the suit land for a total consideration of ₹18,000/- per acre, out of which a sum of ₹6,000/- was



allegedly paid as earnest money at the time of execution of the agreement dated 08.10.1987. It was stipulated that the balance sale consideration would be paid at the time of execution and registration of the sale deed, which was to be executed within one month of conferment of proprietary rights upon the defendants. It was further pleaded that upon conferment of such rights, the defendants refused to execute the sale deed, necessitating the institution of the present suit.

3. The respondent-defendant contested the suit by specifically denying the execution of any agreement to sell and the alleged receipt of earnest money and prayed for dismissal of the suit.

4. The plaintiff, in replication, categorically traversed the averments and objections raised in the written statement and reaffirmed the pleadings set out in the plaint. Upon a meticulous examination of the pleadings on record and the rival submissions advanced by the parties, the learned Trial Court identified and crystallised the following issues for adjudication, so as to ensure a precise, structured, and legally coherent determination of the controversy, which are as under:-

1. Whether defendant executed agreement to sell dated 8.10.97 in favour of plaintiff for consideration? OPP
2. Whether plaintiff was ready and willing to perform his part of the contract? OPP.
3. Whether plaintiffs entitled to relief of specific performance of agreement to sell?OPP
4. Whether in the alternative plaintiff is entitled to recover the amount of Rs.38,880/-?OPP.
5. Whether suit is barred under order 2 Rule 2 C.P.C. ?OPD.
6. Whether suit is not maintainable? OPD.



7. Whether plaintiff is estopped by his own act and conduct from filing the instant suit ?OPD
 8. Whether suit is time barred ? OPD
 9. Relief.
5. Both parties were afforded full opportunity to lead evidence pursuant to the issues framed. Upon appreciation of the material on record and hearing learned counsel for the parties, the learned Trial Court partly decreed the suit for recovery of earnest money along with interest @ 6% per annum from the date of agreement till realization, while declining the relief of specific performance. The appeal preferred by the appellant-plaintiff was dismissed, thereby affirming the findings of the Trial Court.
- 5.1. Being aggrieved by the concurrent judgments and decrees of the Courts below, the present appeal has been preferred. The appeal was admitted for hearing vide order dated 27.05.2002. Respondent-defendant, despite service, did not enter appearance and was accordingly proceeded ex parte vide order dated 28.09.2001.
6. I have heard learned counsel for the appellant at considerable length and have carefully considered his submissions in the light of the pleadings, the evidence on record, and the concurrent findings returned by the Courts below.
7. The learned First Appellate Court has recorded a categorical finding that the appellant-plaintiff failed to prove his continuous readiness and willingness to perform his part of the contract, which is a sine qua non for grant of specific performance. It has further held that the transaction, as projected, appears inequitable and lacks credibility. The Court has rightly concluded that the evidence on record does not demonstrate any consistent



conduct on the part of the appellant-plaintiff to discharge his contractual obligations.

7.1. It has been observed that had the appellant-plaintiff been genuinely ready and willing to perform the contract, he would have issued a notice calling upon the respondent-defendant to execute the sale deed. Notably, despite the plea that the appellant came to know of the conferment of proprietary rights upon the defendants only about a month and half prior to filing of the suit, no such notice was ever served. The learned First Appellate Court has further rightly noticed that paras 3 and 7 of the plaint are self-contradictory, thereby weakening the plea of readiness and willingness.

7.2. There is also no material on record specifying the dates, occasions, or circumstances when the appellant allegedly approached the respondent for execution of the sale deed, or when and how the respondent refused performance. In the absence of such foundational evidence, the learned First Appellate Court has rightly held that the appellant failed to discharge the burden of proving continuous readiness and willingness to perform his part of the contract.

7.3. The findings recorded by the First Appellate Court are well-reasoned, based on proper appreciation of evidence, and do not suffer from any illegality or perversity warranting interference. The appeal, being devoid of merit, is accordingly **dismissed**.

8. The observations recorded herein are confined strictly to the adjudication of the present controversy and are limited to the scope and purpose of this proceeding. They shall not be construed, expressly or impliedly, as an expression of opinion on the merits of the underlying



dispute. It is further clarified that nothing stated in this order shall prejudice or influence the rights, claims, or contentions of any party in any other proceedings, nor shall it be treated as a conclusive determination of any question of fact or law involved in the main matter.

8.1. In view of the final adjudication of the principal matter, all pending miscellaneous applications, if any, also stand disposed of. No further orders are required.

22.04.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No