



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

RSA-3010-2008 (O&M)

Date of Decision:12.05.2026

BALBIR SINGH (SINCE DECEASED) THROUGH HIS LRS & ORS.

...Appellants

Versus

PALWINDER KAUR AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Akshay Jain, Advocate and
Mr. Deepak Kumar Jain, Advocate
for the appellants.

PARMOD GOYAL, J. (ORAL)

Present regular second appeal has been preferred by the appellants/defendant Nos.2 and 3 being aggrieved by judgment and decree dated 22.12.2001 passed by learned Civil Judge (Junior Division), Batala whereby, suit for specific performance preferred by respondents-plaintiffs was decreed and appellants/defendant Nos.2 and 3 who had purchased the suit property subsequent to alleged agreement to sell were held not bona fide purchaser and also by judgment and decree dated 07.05.2008 passed by learned Additional District Judge, Gurdaspur whereby first appeal preferred by appellants-defendant Nos.2 & 3 was also dismissed.

2. Facts in the present case are not in dispute. Respondents-plaintiffs had filed suit for specific performance of agreement dated 07.06.1995 claiming that respondent-defendant No.1 had agreed to sell land



measuring 5 kanal 15 marlas situated at village Dharmabad, Tehsil Dera Baba Nanak vide agreement dated 07.06.1995 whereby he agreed to sell land @Rs.1,19,000/- per acre which comes to Rs.69,532/- for 5 kanal 15 marlas and out of said agreed sale amount Rs.16,000/- was paid as earnest money. Last date for execution of sale deed under the agreement was fixed as 05.12.1995. However, as per case of respondents-plaintiffs none appeared on behalf of respondent-defendant No.1 to execute the sale deed and accordingly, respondents-plaintiffs had sought specific performance of agreement dated 07.06.199. In alternative respondents-plaintiffs had sought refund of Rs.16,000/- paid as earnest money along with damages of Rs.16,000/- for failure on the part of respondent-defendant No.1 to execute sale deed.

3. The suit was not contested by respondent-defendant No.1 and he was proceeded *ex parte*. It is worth noticing that vide sale deed dated 22.03.1996 before filing of suit on 10.09.1996, respondent-defendant No.1 had further sold the suit land to appellants-defendant Nos.2 and 3 for total consideration of Rs.1,13,500/- and accordingly, appellants-defendant Nos.2 and 3 had contested the suit claiming themselves to be bona fide purchasers for consideration and had sought dismissal of suit qua specific performance.

4. Both the Courts after appreciation of evidence had concluded that agreement to sell dated 07.06.1995 was duly executed by respondent-defendant No.1. Both the Courts have further held that even the sale deed dated 22.03.1996 was duly executed by respondent-defendant No.1. The only issue which stood disputed was that whether appellants-defendant Nos.2 & 3 are bona fide purchasers for consideration or they were well aware about the execution of agreement to sell in favour of respondents-



plaintiffs, and therefore were not entitled to claim themselves to be bona fide purchasers for consideration. Both the Courts have found that though appellants-defendant Nos.2 and 3 had purchased the suit property on 22.03.1996, they were not bona fide purchasers and had held as under:-

20. *After giving careful consideration to the respective contentions of the learned counsel for the parties, I am of the considered opinion that there is merit in the contention raised by the learned counsel for the plaintiff. The plaintiffs have duly proved the execution of the agreement to sell Ex.P-1 in favor of Raghbir Singh by defendant No.1 Jarnail Singh for sale consideration of Rs.69,532/- out of which Rs.16,000/- was delivered by the plaintiff to defendant No.1 Jarnail Singh at the time of the execution of the agreement to sell on 07.06.1995 while the remaining sale consideration was to be paid to defendant No.1 at the time of execution and registration of the sale deed. The plaintiff has also proved on the file that they have been ready and willing to perform their part of the agreement and are still ready and willing to do so and also proved the affidavit Ex.P-2 in this regard. The contention of the learned counsel for defendant No.2 and 3 is without any merit. The defendants No.2 and 3 being subsequent vendees have not the liberty to raise the plea that plaintiff was not ready and willing to perform his part of the agreement due to which, the defendant No.1 executed the sale deed in their favor. This liberty is only available to defendant No.1 Jarnail Singh. However, defendant No.1 Jarnail Singh failed to adduce any evidence or to appear in the witness box and to controvert the execution of the agreement to sell in favor of the plaintiff. The non appearance of the DW Jarnail Singh in the witness box speaks volume that he was not ready to face the test of cross examination regarding the execution of the agreement to sell in favor of the plaintiff. A very perusal of agreement to sell Ex.P-1 reveals that DW-1 Jarnail Singh has put his thumb impressions*



on the same which could have been easily verified and compared with his standard thumb impressions but due to non appearance of defendant No.1 in the witness box, adverse inference is drawn against him. Further more, it is observed that plaintiffs have duly proved vide Ex.P-2 that they were ready and willing to perform their part of the agreement to sell and are still ready and willing to do so. Accordingly, all these issues are decided in favor of the plaintiff and against the defendants.

23. *However, it is opined there is no merit in the contention raised by the learned counsel for defendant No.2 and 3. PW-4 Palwinder Kaur plaintiff has categorically stated that defendant No.2 and 3 were very much aware of the agreement to sell Ex.P-1 in favor of the plaintiff when they allegedly got the sale deed Ex.D-1 executed in their favor from defendant No.1. She clearly stated that defendants are residing in the same village, one house away from their house and were aware of the agreement to sell in their favor.*
24. *Besides this, it is admitted by defendant No.2 Balbir Singh that village Dharmabad is having about 70/80 houses and only one Lambardar Tej Singh. It is common knowledge that in such a small village, defendant No.2 and 3 must have been aware of the execution of the agreement to sell Ex.P-1 by defendant No.1, when they were having their residence close to the house of the plaintiff. Moreover, no cross examination was conducted on PW-4 Palwinder Kaur on the point that defendant No.2 and 3 were not residing one house away from their house. It is settled proposition of law that if no cross examination is conducted on any fact alleged in the examination in chief that the same stands admitted.*
25. *Apart from that it is observed that DW-1 Ajaib Singh and Sucha Singh vendee and attesting witness and Teja Singh were all close relatives, which only goes to give credence to the*



contention of the learned counsel for the plaintiff that all the defendants in collusion and conspiracy with each other executed the sale deed Ex.D-1 in favor of defendant No.2 and 3. Furthermore, it is observed that defendant No.2 and 3 have failed to prove that any consideration passed prior to or at the time of the execution of the sale deed Ex.D-1 between the parties. While there is a recital in the sale deed Ex.D-1 that the sale consideration was already received by Jarnail Singh prior to the execution of the sale deed, however, DW-2 Balbir Singh defendant testified that sale consideration was delivered to vendor Jarnail Singh in the presence of sub registrar. But the endorsement made on the back of the sale deed Ex.D-1/A and the recital of the sale deed goes to controvert the defendant that any sale consideration was passed between the parties in the presence of sub registrar. So, it is observed that defendants have failed to prove that they paid Rs.1, 13,500/- prior to and at the time of the execution of the sale deed. Therefore, it is opined that defendant No.2 and 3 have failed to prove that they are bonafide purchaser for consideration without any notice. The defendants being neighbors of plaintiff must have the knowledge regarding the agreement to sell Ex.P-1 in favor of the plaintiff at the time of the execution of the sale deed, but they in collusion and conspiracy with defendant No.1 got the sale deed Ex.D-1 executed in their favor from defendant No.1. Hence this present issue is decided against the defendant No.2 and 3 and in favor of the plaintiff.

5. Learned Appellate Court had concurred with the findings given by learned Court of First Instance.
6. Learned counsel for the appellants-defendant Nos.2 & 3 has argued that learned Courts below have erred in accepting oral testimony of PW-4-Palwinder Kaur/respondent-plaintiff that appellants-defendant Nos.2 and 3 were aware about the agreement to sell dated 07.06.1995. He submits



that there was no way to find that respondent-defendant No.1 had already agreed to sell the suit property in favour of respondents-plaintiffs. That Balbir Singh/appellant-defendant No.2 appearing as DW-2 had stated that the agreement to sell was secret pact between the respondents-plaintiffs and respondent-defendant No.1 and despite making reasonable queries they were not aware about the alleged agreement to sell between respondents-plaintiffs and respondent-defendant No.1 and they had also purchased the suit property prior to filing of the present suit for specific performance and had duly paid the sale consideration to respondent-defendant No.1, and payment of consideration has never been denied by respondent-defendant No.1.

7. On the other hand, learned counsel for the respondents-plaintiffs had defended the conclusion drawn by learned Courts below and stated that learned Courts on appreciation of evidence have rightly concluded that appellants-defendant Nos.2 & 3 were not bona fide purchasers and had failed to prove that they had raised reasonable queries about the agreement to sell.

8. On consideration, I find that both the Courts below have erred in accepting simple oral statement of PW-4-respondent-plaintiff that appellants-defendant Nos.2 & 3 always knew about the existence of agreement to sell between respondents-plaintiffs and respondent-defendant No.1. The Courts below have wrongly drawn this assumption from the fact that all the parties are resident of same village and therefore, the appellants-defendant Nos.2 & 3 ought to have known about the agreement to sell.

9. Admittedly, in the present case, last date of execution of agreement was 5.12.1995. The sale deed was executed in favour of appellants-defendant Nos.2 and 3 on 22.03.1996. No notice regarding non-



performance of agreement to sell dated 05.12.1995 was ever given by respondents-plaintiffs to respondent-defendant No.1 as same was neither pleaded nor proved on record. The agreement to sell was not even part of revenue record and in fact was between respondents-plaintiffs and respondent-defendant No.1 alone. There is no evidence to disregard evidence of DW-2 that despite inquiries, nothing against purchase of land came to their notice. In fact, failure by respondent-defendant No.1 to contest present suit for specific performance goes to show that he had in fact colluded with respondents-plaintiffs as his non-appearance and failure to contest suit only benefits respondents-plaintiffs and not the appellants-defendant Nos.2 and 3.

10. There is no material on record except for oral assertions by PW-4-Palwinder Kaur/respondent-plaintiff that agreement to sell dated 07.06.1995 was in public domain, and with reasonable inquiry appellants-defendant Nos.2 and 3 could have known about its existence. Respondent-defendant No.1 had also not denied receipt of consideration while executing sale deed dated 22.03.1996. In fact appellants-defendant Nos.2 and 3 have duly examined attesting witness of sale deed as DW-1 and have proved due execution of sale deed for consideration. Failure on the part of respondent-defendant No.1 to deny receipt of consideration, in fact, goes against case of respondents-plaintiffs. Once, sale deed is proved by the attesting witnesses, its contents have to be accepted by the Court.

11. The second objection taken by learned counsel for respondents-plaintiffs was that all the attesting witnesses of the sale deed were close relatives of appellants-defendant Nos.2 & 3, therefore, the execution of sale deed is doubtful. However, I do not find any merit in the contention raised



by learned counsel for respondents-plaintiffs. Witnesses to sale deed or agreement to sell are generally known to the parties, and it is common and acceptable practice that out of two witnesses, one witness belongs to vendor's side and another witness belongs to vendee's side. It is only in exceptional cases that independent witnesses not known to the parties are made witnesses and such act raises doubt over the execution of said documents. Therefore, in the present case, merely because attesting witnesses were related to appellants-defendant Nos.2 and 3, the execution of registered sale deed cannot be doubted.

12. In the present case, both the Courts have concluded that appellants-defendant Nos.2 & 3 are not bona fide purchasers for consideration without their being any just and proper evidence in this regard. Rather evidence of parties goes to show otherwise, and shows that sale deed was executed for consideration, without there being any knowledge on the part of appellants-defendant Nos.2 and 3 regarding the execution of agreement to sell dated 07.06.1995.

13. The finding of learned Courts below is therefore, not only erroneous but perverse, not being based upon evidence of the parties. Accordingly, same are set aside, judgment and decree dated 22.12.2001 passed by learned Civil Judge (Junior Division), Batala and judgment and decree dated 07.05.2008 passed by learned Additional District Judge, Gurdaspur are accordingly set aside.

14. However, in view of the fact that respondent-defendant No.1 had executed the agreement to sell and had received Rs.16,000/- from the respondents-plaintiffs, the respondents-plaintiffs shall be entitled to recover amount of Rs.16,000/- along with interest of 9% from date of filing of suit



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till date of realization. Appellants-defendant Nos.2 & 3 are held bona fide purchasers for consideration and sale deed dated 22.03.1996 is upheld.

Appeal is allowed in above terms.

15. Pending application(s), if any, is/are disposed of accordingly.

12.05.2026

Ravinder

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No