



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA-894-1995 (O&M) and
XOBJ-13-C-1996**

Gurlal Singh

. . . . Appellant

Vs.

Munshi Singh through his LRs

. . . . Respondent

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Gurlal Singh

. . . . Appellant

Vs.

Surjit Singh through his LRs and Others

. . . . Respondents

**Reserved on: 25.02.2026
Pronounced on: 06.03.2026
Pronounced fully/operative part: Fully**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. K.S. Dadwal, Senior Advocate
for the appellant.

Mr. Mandeep K. Sajjan, Advocate and
Mr. Vikram K. Bishnoi, Advocate for
the respondent.

DEEPAK GUPTA, J.

This order shall dispose of RSA 894-1995 & connected cross-objections, filed by the respondent, besides RSA 3456-1997, pertaining to the same subject matter.

2. The present Regular Second Appeal [RSA 894-1995] has been preferred by the plaintiff Gurlal Singh, assailing the concurrent findings recorded by both the Courts below [*Trial court : dated 12.01.1993; and appellate court : 09.02.1995*], whereby his suit for specific performance of agreement to sell



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dated 12.09.1989 was declined, though a decree for refund of the earnest money along with interest was granted in his favour.

3. For the sake of clarity and convenience, the parties shall be referred to as per their status before the learned trial Court. The trial Court record, as available on DMS, has been duly perused.

4.1 ***Plaintiff's Case*** : As per pleaded case of the plaintiff, the defendant Munshi Singh [*Respondent through his LRs herein*], agreed to sell suit land measuring 10 Kanal 12 Marla, situated in the revenue estate of village Dharamkot, Tehsil Zira, District Ferozepur for a total sale consideration of ₹45,000/-. The agreement to sell was executed on 12.09.1989 (Ex.P1). At the time of execution of the agreement, an amount of ₹7,000/- was paid as earnest money. It was further agreed that ₹15,000/- would be paid on 20th Maghar, 2046 Bikrami; and the remaining sale consideration would be paid at the time of execution and registration of the sale deed, for which 20.06.1990 was fixed as the target date. The plaintiff pleaded that the amount of ₹15,000/- was paid on 05.12.1989 against a separate receipt.

4.2 According to him, he remained ready and willing to perform his part of the contract. On 20.06.1990, the plaintiff appeared before the Joint Sub-Registrar, Dharamkot, along with the balance sale consideration and waited for the defendant, who failed to appear. The plaintiff marked his presence. He again appeared on 21.06.1990 before the Sub-Registrar and waited, but the defendant did not turn up. Subsequently, on 25.06.1990, the plaintiff issued a legal notice calling upon the defendant to execute the sale deed. In response, the defendant admitted execution of the agreement but pleaded inability to appear on the stipulated date due to illness. The defendant expressed readiness and willingness to execute the sale deed on or before 12.07.1990. It is further pleaded that, in terms of the mutual understanding, both parties visited the office of the Sub-Registrar on 09.07.1990. They went to Moga and purchased stamp papers at the rate fixed by the Government. Thereafter, they returned to Dharamkot for



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execution of the sale deed. However, according to the plaintiff, the defendant absconded from the office of the Sub-Registrar without executing the sale deed.

4.3 On these averments, asserting continuous readiness and willingness on his part and alleging breach by the defendant, the plaintiff instituted the suit seeking a decree for specific performance of the agreement.

5.1 **Defendant's Stand** : The defendant Munshi Singh (*now represented through his legal representatives*), contested the suit by raising serious allegations regarding the very execution and validity of the agreement. It was pleaded that the defendant was addicted to opium and liquor and had been borrowing small amounts from Bahadur Singh, father of the plaintiff, who is a money lender, from time to time. In that regard, he referred to Pronote dated 05.12.1988 for ₹3,000/-; Pronote dated 04.03.1989 for ₹3,000/-; and Pronote dated 05.06.1989 for ₹5,000/-. The defendant alleged that on 02.08.1989, Bahadur Singh sought renewal of the loan claiming that the outstanding amount had swelled to ₹7,000/-.

5.2 It was further alleged that Bahadur Singh attempted to procure a gift deed in favour of his son (the plaintiff) concerning the suit land in lieu of the loan amount. According to the defendant, when the said attempt failed, Bahadur Singh, on the pretext of renewal of the loan, obtained the defendant's signatures on blank or incomplete papers and later fabricated the alleged agreement to sell in favour of the plaintiff. The defendant further alleged coercion and criminal intimidation. He pleaded that he had been kidnapped by the plaintiff and others, taken to the Mand area, mercilessly beaten, confined, and threatened with death, and under such duress compelled to execute a document for ₹15,000/- purportedly as renewal of the loan. Similarly, it was alleged that on 09.07.1990 he was again forcibly taken to Moga, kept in fields under threat, and later brought near the office of the Sub-Registrar. He claimed that he managed to escape from the spot fearing further coercion and threats not to contest the anticipated litigation.



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5.3 It was also pleaded by defendant that suit land is ancestral/co-parcenary property and that he alone did not have the right to alienate the same in absence of any legal necessity.

5.4 With this stand and denying the genuineness and voluntariness of the agreement to sell, and alleging fabrication, coercion, and fraud, the defendant prayed for dismissal of the suit.

6.1 **Findings of the Courts Below** : Upon framing of the necessary issues and appreciation of the evidence led by the parties on record, the trial Court returned a categorical finding that the defendant had, in fact, executed an agreement to sell dated 12.09.1989 in favour of the plaintiff in respect of the suit land for a total sale consideration of ₹45,000/-. It was further held that out of the agreed consideration, the defendant had received a sum of ₹22,000/- from the plaintiff. The trial Court also recorded a clear finding that the plaintiff had successfully proved his continuous readiness and willingness to perform his part of the contract and that he remained ready and willing even at the time of adjudication.

6.2 However, despite recording findings in favour of the plaintiff regarding execution of the agreement and readiness and willingness, the trial Court declined the discretionary relief of specific performance upon the finding that the suit property was ancestral in nature and that the defendant held the same as a coparcener to the extent of his share. It was further held that by virtue of a prior family settlement (Ex.D6), the defendant had already transferred his interest in the suit property in favour of his sons, and mutation pursuant thereto had also been sanctioned. In view of the said family arrangement, the trial Court concluded that the defendant had ceased to be owner of the suit property and, therefore, was not competent to enter into an agreement to sell in respect thereof.



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6.3 On the basis of this finding of want of title and competency, the trial Court held that specific performance could not be granted, notwithstanding proof of execution of the agreement and readiness & willingness on the part of the plaintiff. Consequently, the suit was decreed on 12.01.1993 only to the limited extent of alternative relief, granting recovery of ₹22,000/- along with proportionate costs and future interest @ 6% per annum from the date of institution of the suit till realization.

7.1 Aggrieved by the judgment and decree dated 12.01.1993, both parties preferred separate appeals.

7.2 The defendant challenged the finding of the trial Court, whereby execution of the agreement to sell dated 12.09.1989 had been held proved against him. The plaintiff, on the other hand, assailed the denial of specific performance, contending that once execution of the agreement and his continuous readiness and willingness had been established, there was no legal justification to decline the principal relief.

8.1 The learned First Appellate Court, upon re-appreciation of the evidence, affirmed the finding of the trial Court that the defendant had indeed executed the agreement to sell dated 12.09.1989 in favour of the plaintiff. The finding that the suit property was ancestral in character was also upheld. The Appellate Court further concurred with the trial Court in holding that, in view of the prior family settlement and mutation sanctioned thereunder, the defendant lacked competency to convey title in the suit property, and therefore, the plaintiff was not entitled to a decree for specific performance.

8.2 However, the First Appellate Court modified the decree to the extent of interest. It held that the plaintiff would be entitled to recovery of ₹22,000/- along with proportionate costs and interest calculated as follows:

- Interest @ 12% per annum on ₹7,000/- from 12.09.1989 to 04.12.1989;
and



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- Interest @ 12% per annum on ₹22,000/- from 05.12.1989 till realization.

8.3 Accordingly, the appeal preferred by the defendant was dismissed, while the appeal filed by the plaintiff was partly allowed only to the limited extent of modification in the rate and manner of calculation of interest, vide common judgment and decree dated 09.02.1995.

9. Against the concurrent findings recorded by the Courts below, the plaintiff has approached this Court in the present Regular Second Appeal. Defendant on the other hand filed cross-objections.

10. **Undisputed Findings :** At the very outset, it deserves to be noticed that certain findings have attained finality. The concurrent finding of both the Courts below that the agreement to sell dated 12.09.1989 was duly executed by defendant Munshi Singh in favour of the plaintiff is not under challenge before this Court. Likewise, the finding that the plaintiff had proved his continuous readiness and willingness to perform his part of the contract has also not been disputed. Although cross-objections were filed questioning the ancestral nature of the suit property, the said contention has not been pressed during the course of arguments. Thus, the finding that the suit property was ancestral/coparcenary in nature stands concluded.

11. **Submissions of Appellant :** The only submission advanced by learned counsel for the appellant-plaintiff is that once execution of the agreement and readiness & willingness stood proved, the Courts below were not justified in declining the relief of specific performance. It is argued that even if the defendant was found to be owner of a lesser share, a decree for specific performance to the extent of his share ought to have been granted. Reliance has been placed upon the Full Bench judgment of this Court in **Rakesh Kumar vs. Satpal 1986 PLJ 515**; and upon **Hukum Chand vs. Hari Singh (dead) thr LRs, 2007(5) RCR (Civil) 403** to contend that partial enforcement is permissible and that mere possibility of third-party rights is no ground to deny specific performance.



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12. **Response of Respondent : Per Contra**, learned counsel for the respondent-defendant submits that prior to execution of the agreement to sell, Munshi Singh had already divested himself of ownership by virtue of a family settlement dated 20.03.1989 (Ex.D6), whereunder the suit property had fallen to the share of his sons and they had been put in possession. It is contended that once the defendant had no subsisting right, title or interest in the property on the date of agreement, no decree for specific performance could legally be granted. It is further pointed out that the decretal amount as awarded by the First Appellate Court has already been deposited and received by the plaintiff.

12. Having considered the rival submissions and carefully examined the record, this Court finds no merit in the appeal.

13. **Consideration by this Court** : It is an admitted position that the sons of Munshi Singh had instituted an independent civil suit [CS No. 313-1 of 1990-1995] seeking declaration that the suit property was ancestral coparcenary property and that a family settlement dated 20.03.1989 had taken place, whereby the property had fallen to their share and they had become owners in possession. In that suit, the present appellant Gurlal was impleaded as a defendant and contested the proceedings. After framing issues and recording evidence, the trial Court held that the property was ancestral in nature, that the family settlement dated 20.03.1989 stood duly proved, and that Munshi Singh, having divested himself of ownership prior to 12.09.1989, had no authority to execute the agreement to sell in favour of Gurlal. A decree of declaration dated 22.09.1995 was accordingly passed holding the agreement to sell to be null and void. The appeal [CA No.33 of 1995-1997] filed by Gurlal was dismissed and the findings attained finality. The connected second appeal [RSA No. 3456-1997] arising therefrom is also being disposed of herein.

14. The principal contention raised before this Court is that the *Yadasht* dated 20.03.1989 required compulsory registration and therefore, could not confer title upon the sons of Munshi Singh.



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15. This argument is wholly untenable. The law relating to family arrangements is well settled by the Hon'ble Supreme Court in ***Kale and others vs. Deputy Director of Consolidation and others, AIR 1976 SC 807***, wherein it has been authoritatively held that a family arrangement may be oral and that registration is required only if the document itself creates or extinguishes rights in immovable property. Where a document merely records a prior oral settlement or serves as a memorandum of an already concluded arrangement acknowledging pre-existing rights, it does not require registration.

16. In the present case, both the Courts below, on appreciation of the testimony of the scribe and marginal witnesses and upon examination of the contents of the *Yadasht*, have concurrently held that the document was only a memorandum recording an already concluded family settlement. The sons, being coparceners in ancestral property, had antecedent rights therein. The settlement merely defined and acknowledged those pre-existing rights. Such a finding is essentially one of fact and no perversity has been shown so as to warrant interference in second appeal.

17. Once it is held that by virtue of the family settlement dated 20.03.1989 the sons of Munshi Singh had become owners in possession of the suit property, it necessarily follows that on the date of execution of the agreement to sell dated 12.09.1989, Munshi Singh had no subsisting right, title or interest in the property. The relief of specific performance is discretionary and equitable in nature. A Court cannot compel transfer of property by a person, who had no transferable interest at the time of the contract. The principle permitting specific performance to the extent of a vendor's share would apply, where the vendor had an existing share capable of conveyance. It has no application, where the vendor had already divested himself of all rights prior to the agreement. In such circumstances, there was nothing which could be specifically enforced.



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18. The argument that the plaintiff is entitled to challenge the family settlement is equally devoid of merit. The settlement was entered into between coparceners having pre-existing rights and had taken place prior in time to the agreement to sell. The plaintiff Gurlal, being a stranger to the coparcenary, cannot impeach a bona fide family arrangement, which has already been upheld in declaratory proceedings to which he was a party.

19. The findings regarding ancestral nature of the property, validity of the family settlement, and absence of title in Munshi Singh on the date of agreement are concurrent findings of fact recorded by both the Courts below and affirmed in independent proceedings. No substantial question of law arises for consideration under Section 100 CPC. What is sought is essentially re-appreciation of evidence, which is impermissible in second appeal.

20. In view of the foregoing discussion, this Court finds no infirmity in the judgments & decrees passed by the Courts below declining the relief of specific performance and granting refund of the amount received under the agreement along with interest.

21. Consequently, RSA No.894 of 1995, RSA No.3456 of 1997 and the connected cross-objections are dismissed. A photocopy of this judgment be placed on the file of the connected case.

**(DEEPAK GUPTA)
JUDGE**

06.03.2026

Neetika Tuteja

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No

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