

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-344-2002 (O&M)****Harbhajan Singh and Others****. . . . Appellants****Vs.****Beant Singh and Others****. . . . Respondents****Reserved on: 28.11.2025****Pronounced on: 03.12.2025****Pronounced fully/operative part: Fully****CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA**

Argued by:- Mr. Amit Jain, Senior Advocate with
Ms. Aeshna Jain, Advocate for
the appellants.

Mr. Ashok Kumar Verma, Advocate
for respondent No.1.

***********DEEPAK GUPTA, J.**

This Regular Second Appeal is directed against the judgment and decree dated 20.09.2000 passed by the learned trial Court, whereby the suit filed by the plaintiffs for possession by way of specific performance of an agreement to sell dated 22.04.1987 was decreed; and the judgment and decree dated 22.10.2001, whereby learned first Appellate Court, affirmed the findings, thus dismissing the appeals of the defendants.

2. The Legal representatives of Hazara Singh - subsequent purchaser (defendants No. 2 to 10), have approached this Court in present second appeal.

3. For convenience, parties herein are referred to by their status before the trial Court. Trial Court Record (available on DMS) has been perused.

4.1 ***Factual Background*** : The subject matter of dispute is land measuring 14 kanal 14 marla situated in village Khanna Majra, District Ambala, detailed



in head-note of the plaint. Defendant No.1 Devinder Singh (*respondent N: 3 herein*) being owner of the said land, executed an agreement to sell dated 22.04.1987 (Ex.P2) in favour of the plaintiffs (*respondent N: 1 & 2 herein*) for ₹31,500/- per acre, and received ₹10,000/- as earnest money. The sale deed was to be executed on or before 30.11.1987.

4.2 Apprehending that defendant No.1 intended to alienate the land elsewhere, plaintiff No.2 filed a suit for permanent injunction and secured an interim restraint order on 28.04.1987. On the assurance of defendant No.1 that the sale deed would be executed in their favour, the said suit was got dismissed in default on 07.09.1987.

4.3 The plaintiffs asserted that on the stipulated date of 30.11.1987, they appeared before the Sub-Registrar with the balance sale consideration and requisite expenses and marked their presence vide application Ex.P1. However, defendant N: 1 did not turn up. Subsequently, they discovered that defendant No.1 had sold the suit land in favour of Defendant N: 2 Hazara Singh [*Later on his death, replaced his legal representatives as defendants N: 2 to 10 – appellants herein*] for consideration of ₹49,000/-. Alleging the sale to be collusive & sham transaction and seeking specific performance of the prior agreement, the present suit was filed on 03.02.1988.

5. Defendant No.1 did not file any written statement.

6. Defendants No.2 to 10 (*LRs of Hazara Singh – appellants*) contested the suit asserting themselves to be bona fide purchasers for valuable consideration without notice of any prior agreement, by virtue of sale deed dated 05.01.1988 (Ex.D-1). They also raised the plea of estoppel and contended that the plaintiffs were aware of the sale and prayed for dismissal of the suit.

7. Necessary issues were framed. Evidence led by the parties was taken on record. Trial court decreed the suit on 20.09.2000 and the first Appellate Court, in the separate appeals filed by defendant No.1 - owner as well as by



defendants No.2 to 10 i.e. the LR's of the subsequent purchaser, affirmed the findings by dismissing both the appeals.

8.1 ***Appellants' Contentions*** : Assailing the concurrent findings of the Courts below, Learned senior counsel for the appellants contends that the original agreement to sell was not produced and only a photocopy was relied upon. It is urged that non-production of the original agreement to sell raises a presumption of cancellation.

8.2 It is next argued that the plaintiffs were neither ready nor willing to perform their part of contract and had no financial capacity. Reliance is placed on ***Ram Awadh (Dead) by LR's v. Achhaibar Dubey, (2000) 2 SCC 428***, to submit that readiness and willingness can be examined even from the standpoint of subsequent purchasers.

8.3 Learned senior counsel supports the above submission by contending that the sale deed dated 05.01.1988 executed in favour of Hazara Singh, the predecessor of the appellants, was effected with the plaintiffs' full knowledge and consent. It is argued that the plaintiffs themselves delivered possession of the suit land to Hazara Singh immediately after the execution of the said sale deed, a fact admitted by PW-1 during cross-examination. Ld. Counsel submits that if a prior agreement to sell in favour of the plaintiffs had genuinely subsisted, and particularly when the plaintiffs were in possession as tenants on the suit land before the alleged agreement, they would not have voluntarily parted with possession nor remained silent; instead, they would have protested or taken legal recourse. Significantly, the plaint contains no averment that possession was taken from them forcibly by Hazara Singh. According to learned counsel, these circumstances clearly demonstrate that the sale in favour of Hazara Singh was with the plaintiffs' acquiescence, thereby estopping them from seeking enforcement of the agreement to sell dated 22.04.1987. It is submitted that the plaintiffs voluntarily handed over possession to Hazara Singh upon execution of sale deed Ex.D1, thereby demonstrating acquiescence. The plea that posses-



sion was forcibly taken is an afterthought unsupported by pleadings or complaint.

8.4 With these submissions, learned counsel has prayed for setting aside the judgments and decrees passed by the Courts below and to dismiss their suit by accepting this appeal.

9.1 **Respondents' Contentions : Per Contra,** Learned counsel for the respondents supports the concurrent findings and submits that both courts have categorically held that the agreement to sell dated 22.04.1987 (Ex.P2) stands duly proved. It is explained that the original agreement was lost in the floods of 1988, which had also damaged the plaintiffs' house. However, a photocopy earlier supplied to their counsel was produced in secondary evidence. Permission to lead such evidence was granted on 05.10.1999, and that order was never challenged. Further, the deed writer and an attesting witness have proved the execution of the agreement, while defendant No.1 Devinder Singh neither filed a written statement nor entered the witness box to deny it.

9.2 It is next contended that the plaintiffs' readiness and willingness have been rightly affirmed by the courts below. When defendant No.1 attempted to sell the land elsewhere, the plaintiffs promptly sought and obtained an injunction. On the defendant's assurance, the suit was got dismissed in default. On the stipulated date of performance, both plaintiffs appeared before the Sub-Registrar with the balance consideration and necessary expenses, and recorded their presence (Ex.P1). Immediately after learning of the sale deed dated 05.01.1988 in favour of Hazara Singh, they filed the present suit on 03.02.1988, and upon decree of the suit, they promptly deposited the balance sale consideration on 11.12.2000.

9.3 It is further argued that the sale deed dated 05.01.1988 is a sham, as it reflects a consideration of only ₹49,000/–, which is significantly lower than the price agreed between the plaintiffs and defendant No.1.



9.4 The allegation that the plaintiffs voluntarily handed over possession to Hazara Singh is specifically denied, by contending that this plea is being raised for the first time. Ld. counsel submits that plaintiffs were in cultivating possession of suit land on *batai*, and possession was taken from the plaintiffs about ten days after execution of Ex.D1, when defendant No.1 and the subsequent purchasers asked them to vacate. As the plaintiffs had no stay order and wished to avoid confrontation, they vacated the land but immediately instituted the present suit.

9.5 On these grounds, learned counsel seeks dismissal of the appeal.

10. This Court has considered submissions of both the sides and has appraised the record carefully.

11. **Points for Determination** : The following question arises for adjudication:

- Whether, despite proof of the agreement to sell, and readiness & willingness of the plaintiffs, the relief of specific performance is barred on account of the plaintiffs' conduct giving rise to equitable estoppel in favour of the subsequent purchasers?

12.1 **Analysis and Findings : Execution of Agreement to sell & Secondary Evidence** : The execution of the agreement to sell dated 22.04.1987 stands proved through PW-1 Beant Singh, attesting witness PW-2 Gurdev Singh, and deed-writer PW-3 Dharampal. Defendant No.1 did not deny execution either through pleadings or by entering the witness box. Adverse inference under Section 114 (g) of the Evidence Act must therefore operate.

12.2 The order permitting secondary evidence dated 05.10.1999 was never challenged. Once a photocopy was admitted in evidence and execution of agreement is duly proved, the argument of cancellation, or suppression has no force. So, the concurrent findings on execution of agreement call for no interference.



13. **Readiness and Willingness** : The plaintiffs' conduct in obtaining injunction; getting the earlier suit dismissed in default on assurance; appearing before the Sub-Registrar on target date of 30.11.1987 with funds, evidenced by Ex.P1; and promptly filing the present suit, establishes their initial readiness and willingness, as required under Section 16(c) of the Specific Relief Act, 1963. The explanation regarding arrangement of funds, as testified by PW1 appears credible and remains unshaken. The conclusion of the courts below on this aspect is, therefore, affirmed.

14. **Estoppel and Conduct of Plaintiffs vis-à-vis Subsequent Purchasers**: The critical question pertains to the plaintiffs' conduct after the execution of sale deed dated 05.01.1988 in favour of Hazara Singh.

15. This Court finds that the courts below failed to adequately consider the plea of estoppel raised by defendants No.2 to 10, the successors of Hazara Singh—the subsequent purchaser. Their specific case is that they had no knowledge of any prior agreement with the plaintiffs, whereas the plaintiffs were fully aware of the sale deed dated 05.01.1988 in favour of Hazara Singh for ₹49,000. This stand is supported by the evidence on record.

16. Though the plaintiffs did not plead that they were earlier tenants on the land, but PW-1 Beant Singh (one of the plaintiffs) admitted this fact during his testimony. Crucially, he further acknowledged that he handed over possession to Hazara Singh on the execution of the sale deed. DW-1 Swarn Singh, son of Hazara Singh, corroborated this by testifying that possession was voluntarily delivered by the plaintiffs, and also stated that the bargain between Devinder (the owner) and Hazara was negotiated with the involvement of plaintiff Beant Singh. This portion of DW-1's testimony went unchallenged, thereby reinforcing that the plaintiffs were aware of and consented to the sale dated 05.01.1988 (Ex.D1).



17. The plaintiffs' later claim that possession was forcibly taken is unsupported by pleadings or evidence. Even as per their own version (*synopsis filed before this court*), possession was allegedly taken around 15 days after the sale deed i.e., about 20.01.1988. However, no pleadings to that effect were made, nor was any complaint lodged with the police or other authority. The absence of such foundational assertions further undermines the plea of forcible dispossession.

18. Taken together, the admission of PW-1, the uncontroverted testimony of DW-1, the plaintiffs' failure to plead or complain about forcible dispossession, and their conduct in handing over possession clearly show that the sale in favour of Hazara Singh occurred with their knowledge and acquiescence. These circumstances create an equitable estoppel, thereby barring the plaintiffs from seeking specific performance of the agreement to sell dated 22.04.1987.

19. Hon'ble Supreme Court in **Ram Awadh's case (supra)** recognised that readiness and willingness may also be tested from the perspective of subsequent purchasers. Where the conduct of the promisee creates an impression inconsistent with a subsisting contract, the relief of specific performance may justifiably be refused.

20. In the present case, the plaintiffs' conduct amounts to acquiescence and generates an equitable estoppel. They cannot now assert a right contrary to their own acts, particularly to the detriment of purchasers, who acted on apparent authority and possession.

21. **Validity of Sale Deed dated 05.01.1988 Ex.D1** : The plea that sale deed Ex.D1 is a sham transaction is unsubstantial. The sale deed records payment of ₹49,000/- before the Sub-Registrar. DW-2, an attesting witness, corroborates this fact. A lower price is not indicative of fraud, particularly in the absence of any reliable evidence. Thus, Ex.D1 is held to be a genuine transaction.



22. **Conclusion** : Although the agreement dated 22.04.1987 and initial readiness and willingness of plaintiffs are duly proved, but the plaintiffs' own conduct dis-entitles them to the equitable relief of specific performance. Their active participation in the subsequent transaction, delivery of possession, and absence of protest estop them from enforcing the prior agreement.

23. Consequently, the concurrent judgments and decrees of the courts below cannot be sustained. The suit for specific performance deserves to be dismissed. However, since the plaintiffs paid earnest money of ₹10,000/- on 22.04.1987, and in view of the long passage of approximately 38 years, refund with appropriate compensation is warranted in exercise of the Court's equitable jurisdiction.

24. **Result & Directions** : The judgments and decrees dated 20.09.2000 and 22.10.2001 passed by the courts below are hereby set aside. The suit for specific performance filed by the plaintiffs is dismissed. However, since the contract is not being enforced on equitable considerations and not on account of any fault attributable to the plaintiffs in proving the agreement, the plaintiffs are entitled to refund of the earnest money of ₹10,000/- paid on 22.04.1987 from defendant N: 1 Devinder Singh.

25. The plaintiffs shall accordingly be entitled to:

- Refund of earnest money ₹10,000/-, and
- Interest @ 7.5 % per annum on this amount of ₹ 10,000/- from the date of filing of the suit (03.02.1988) until the date of actual payment.
- Compensation of ₹ 2,00,000/-.

26. The aforesaid amounts shall be deposited by defendant No.1 Devinder Singh before the trial Court within three months from today. In default, the amount of ₹ 10,000/- shall thereafter carry enhanced interest @ 9%



per annum until realisation, though for compensation amount of ₹ 2,00,000/-,
interest will be 7.5 % per annum on expiry of 3 months till payment.

27. In the circumstances of the case, the parties are left to bear their
own costs. Decree-sheet be prepared accordingly.

(DEEPAK GUPTA)
JUDGE

03.12.2025
Neetika Tuteja

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No

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