



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

R.S.A. No.1243 of 2026 (O&M)

Reserved on : 09.04.2026

Pronounced on : 17.04.2026

Uploaded on : 17.04.2026

Deepak Bhardwaj (since deceased)
through his legal representative-Hitesh Bhardwaj

... Appellant

Versus

M/s J.V.Builders Private Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Argued by:- Mr. Rakesh Nehra, Senior Advocate assisted by
Mr. Sahil Nehra & Mr. Vivek Dahiya, Advocates
for the appellant.

Mr. Akshay Kumar Jindal, Senior Advocate assisted by
Mr. Yashvardhan Goyal & Mr. Bhavya Vats, Advocates
for respondent No.1 & respondent No.2/caveator.

MAHABIR SINGH SINDHU, J.

Present Regular Second Appeal (R.S.A.) has been preferred by
defendant No.1 against impugned judgment & decree dated 22.12.2025, passed
by learned Additional District Judge, Jhajjar (*hereinafter referred as 'First*



Appellate Court'), vide which judgment & decree dated 28.02.2023 of learned Civil Judge (Junior Division), Bahadurgarh (*hereinafter referred as 'trial Court'*), granting money decree of ₹ 15 Lakh along with interest @ 6% per annum from the date of institution of suit till its realization to plaintiff No.2/respondent No.2-Jagbir Singh were modified to the extent that defendant Nos.1 (b) & (c) (LRs of defendant No.1), namely, Hitesh Bhardwaj & Nitesh Bhardwaj, were directed to execute the Sale Deed of land, comprised in Khewat No.314, Khatoni No.337, Rect. & Killa Nos.31/19/1 (2-16) and 22/2 (0-16), total measuring 3 Kanals 12 Marlas vide *Jamabandi* for the year 2000-2001, situated within revenue estate of Village Sakhol, Tehsil Bahadurgarh, District Jhajjar (*hereinafter referred as 'suit property'*) in favour of plaintiff No.2 on payment of balance sale consideration i.e. ₹ 15 Lakh along with compensation to the tune of ₹ 50 Lakh. Further defendant Nos.1 (b) & (c) were also directed to hand over the vacant possession of suit property to plaintiff No.2.

(2) BRIEF FACTS

(2.1) Case set up by respondent Nos.1 & 2, namely, M/s J.V.Builders Private Ltd. through its Managing Director (*MD*)-Jagbir Singh & Jagbir Singh, respectively, (*hereinafter referred as 'plaintiff Nos.1 & 2'*) is that plaintiff No.1 is a Private Limited Company. Plaintiff No.2 and respondent No.3-Vinay Chhabra (*hereinafter referred as 'defendant No.2'*) were MDs of plaintiff No.1. Appellant-Deepak Bhardwaj (since deceased & now represented through his legal representative-Hitesh Bhardwaj) [*hereinafter referred as 'defendant No.1'*] was absolute owner and in possession of suit property.



(2.2) Defendant No.1 entered into an 'Oral Agreement to Sell' of suit property with plaintiff No.2 & defendant No.2 in equal shares on 11.03.2007 for a total sale consideration of ₹ 30 Lakh. It was agreed between them to get Sale Deed executed and registered on or before 31.12.2008.

(2.3) On the same day i.e. 11.03.2007, an amount of ₹ 10 Lakh was paid to defendant No.1 by plaintiff No.2 vide Cheque bearing No.128033 as earnest money in the presence of witnesses, namely, Pavitar Ruhil (PW-4), Azad Singh (PW-5) & Sukhbir Singh.

(2.4) On asking of defendant No.1, defendant No.2 paid an amount of ₹ 10 Lakh and ₹ 5 Lakh vide two different Cheques bearing Nos.353946 & 272226 dated 03.07.2007 & 15.04.2008, respectively. Similarly, another Cheque for an amount of ₹ 5 Lakh was also paid to defendant No.1 vide cheque bearing No.453452 dated 17.04.2008, issued by plaintiff No.2. In this way, entire sale consideration of ₹ 30 Lakh was already paid to defendant No.1 regarding suit property.

(2.5) Further plaintiff No.2 is owner and in possession of a plot, measuring 1008 Sq. Yds. out of land comprised in Khewat No.330/314 Min Khatoni No.358 & Rect. & Killa No.31//18/1/2 (2-4) and 18/2/1 (1-16), situated within the revenue estate of Village Sakhol. After annexing said plot, shown by letters 'BEFG' with the suit property, he raised boundary walls with iron rod fencing, erected two iron gates and also planted a number of trees after investing an amount of ₹ 15 Lakh over the suit property with the verbal consent of defendant No.1.



(2.6) On 23.04.2008, plaintiff No.2 went to the Office of Sub Registrar, Bahadurgarh along with necessary amount of stamp papers of ₹ 2.4 Lakh as well as registration charges and remained present there; but defendant No.1 did not turn up in spite of assurance given by him. Hence, plaintiff(s) were constrained to file Suit for Possession by way of Specific Performance on the basis of ‘Oral Agreement to Sell dated 11.03.2007’ seeking directions to defendant No.1 to get the Sale Deed executed & registered in respect of suit property along with all the rights appurtenant thereto and to hand over the vacant possession of suit property to plaintiff No.2.

(2.7) It is apposite to mention here that defendant No.2 was originally plaintiff No.3 in Suit and an application under Order 23 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (*for short ‘the Code’*) was moved by him on 17.12.2014, seeking withdrawal of Suit *qua* him. On 03.05.2017, none appeared on his behalf and Suit *qua* him was dismissed in default and the case proceeded only on behalf of plaintiff Nos.1 & 2.

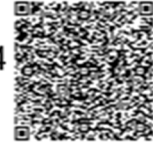
(2.8) Also worthwhile to mention here that aforesaid plaintiff No.3 i.e. Vinay Chhabra was transposed as defendant No.2 (*hereinafter referred as ‘defendant No.2’*) by learned trial Court vide order dated 19.08.2019 on an application under Order 6 Rule 17 read with Section 151 of the Code, moved by plaintiff Nos.1 & 2.

(2.9) Upon notice, defendants appeared and filed separate written statements. Defendant No.1 raised preliminary objections *qua* maintainability, *locus standi*, cause of action etc.



(2.10) On merits, it was submitted that defendant No.1 had purchased the suit property from plaintiff No.2 vide Sale Deed dated 25.07.2005 (Ex.D-1) for his *bona fide* needs and answering defendant had no reason to sell the same to plaintiff(s). Further submitted that oral understanding for sale of suit property was with defendant No.2 for a sum of ₹ 1,60,00,000/- (Rupees One Crore Sixty Lakh only), which was to be paid on or before expiry of three months and plaintiff No.2 had only paid a sum of ₹ 10 Lakh as advance money on 11.03.2007 & ₹ 5 Lakh on 17.04.2008 (total ₹ 15 Lakh) and had to make a balance payment of ₹ 1,45,00,000/- which he never tendered within the stipulated period; hence, the Agreement stood breached; thus, the time fixed for performance had expired on 10.06.2007 and earnest money stood forfeited. Again submitted that plaintiff No.2 was neither ready; nor willing to perform his part of the contract; therefore, suit filed by plaintiff(s) was liable to be dismissed.

(2.11) Defendant No.2 filed separate written statement and submitted that he was always ready & willing to perform his part of Agreement dated 11.03.2007 and to get Sale Deed executed & registered in favour of plaintiff No.2 after making balance sale consideration to defendant No.1. It was admitted that plaintiff No.2 and answering defendant after annexing plot of plaintiff No.2 shown by letters 'BEFG' with the suit property have invested ₹ 15 Lakh by raising boundary walls with iron rod fencing, did earth filling, erected iron gates and have planted a number of trees with the consent of defendant No.1. Further submitted that on 23.04.2008, plaintiff No.2 and



answering defendant reached the Office of Sub Registrar, Bahadurgarh along with the requisite Stamps & registration charges etc.; but defendant No.1 did not turn up.

(2.12) Further submitted that answering defendant never authorized Mr. Sunil Balyan, Advocate, Bahadurgarh to withdraw the suit on his behalf when he was plaintiff No.3. Answering defendant was/is ready to purchase whole of the suit property which is subject matter of Agreement to Sell dated 11.03.2007. Prayer has been made for passing a decree for possession by way of specific performance of contract.

(2.13) Replication was filed and from pleadings of the parties, following issues were framed on 18.07.2012:-

1. *Whether the defendants entered into an oral agreement to sell the suit land to the plaintiffs, on 11.03.2007 and received Rs.10 Lacs as earnest money? OPP*
2. *Whether the plaintiffs have been ready and willing to perform their part of the contract? OPP*
3. *Whether the suit of the plaintiffs is not maintainable in the present form, as per the provisions of law? OPD*
4. *Whether the plaintiffs have concealed material facts from this Court and the suit deserves to be dismissed on this ground alone? OPD*
5. *Relief.*

(2.14) Thereafter, none appeared on behalf of defendant No.2 and he was proceeded *ex parte* vide order dated 14.10.2022.

(2.15) In support of their case, plaintiff(s) examined as many as six witnesses, which are as follows:-



PW-1	<i>Anand Kumar, Tax Assistant, Income Tax Department, New Delhi;</i>
PW-2	<i>Vivek Kumar, Senior Executive Officer, HDFC Bank Bahadurgarh;</i>
PW-3	<i>Jagbir Singh;</i>
PW-4	<i>Pavitar Ruhil;</i>
PW-5	<i>Azad Singh;</i>
PW-6	<i>Shree Bhagwan, Draftsman.</i>

(2.16) Plaintiff(s) also relied upon following documents:-

<i>Ex.P-1</i>	<i>Communication from Income Tax Department to learned trial Court regarding authorization of Sh. Anand Kumar, Tax Assistant;</i>
<i>Ex.P-2</i>	<i>Income Tax Return of Deepak Bhardwaj for Assessment Year 2007-2008;</i>
<i>Ex.P-3</i>	<i>Income Tax Return Verification Form of Hitesh Bhardwaj for the Assessment Year 2008-2009;</i>
<i>Ex.P-4 to Ex.P-7</i>	<i>Statements of account(s):- (a) Jagbir Singh (b) Vinay Chhabra (c) M/s Surya Properties (Jagbir Singh) (d) Jagbir Singh</i>
<i>Ex.P-8</i>	<i>Memorandum & Articles of Association of J.V.Builders Private Ltd.;</i>
<i>Ex. P-9</i>	<i>Extract from Minutes of Meeting of Board of M/s J.V. Builders Pvt. Ltd. held and constituted on 07.11.2011;</i>
<i>Ex.P-10</i>	<i>Site Plan;</i>
<i>Ex.P-11 & Ex.P-11/1</i>	<i>Copy of Draft Sale Deed dated 23.04.2008;</i>
<i>Ex.P-12</i>	<i>Letter dated 22.01.2020 of C.A. of Jagbir Singh;</i>



<i>Ex.P-13</i>	<i>Income Tax Return acknowledgement of Jagbir for the Assessment Year 2019-2020;</i>
<i>Mark PX</i>	<i>Statement of Account of Jagbir;</i>
<i>Mark PY</i>	<i>Details of Loans & Advances received as on 31.03.2008 of Deepak Bhardwaj</i>

(2.17) No evidence in rebuttal was led by the plaintiff(s) and vide order dated 27.01.2020, plaintiff No.2 closed evidence.

(2.18) *Per contra*, defendant No.1 examined the following witnesses:-

<i>DW-1</i>	<i>Hitesh Bhardwaj;</i>
<i>DW-2</i>	<i>Shree Bhagwan, Draftsman;</i>
<i>DW-3</i>	<i>Naresh, Clerk of D.C., Office, Jhajjar;</i>
<i>DW-4</i>	<i>Sandeep Sharma;</i>
<i>DW-5</i>	<i>Ajay Kumar;</i>
<i>DW-6</i>	<i>Anoop Kumar.</i>

(2.19) Defendant No.1 also tendered in evidence the following documents:-

<i>Ex.D-1</i>	<i>Sale Deed No.2862 dated 25.07.2005;</i>
<i>Ex.D-2</i>	<i>---</i>
<i>Ex.D-3 to Ex.D-138</i>	<i>Statements of Account(s);</i>
<i>Ex.D-139</i>	<i>Copy of Aadhar Card of Anoop Kumar Dubey;</i>
<i>Ex.D-140</i>	<i>Copy of Summons;</i>
<i>Ex.D-141</i>	<i>Letter dated 14.01.2023;</i>
<i>Mark DA to Mark DZ</i>	<i>Securities Receipts and Attendance Register.</i>

(2.20) Thereafter, evidence of defendant No.1 was closed by Court vide order dated 20.01.2023.



(2.21) In rebuttal, no oral as well as documentary evidence was led by plaintiff(s) and same was closed vide separate statement.

(2.22) After examining the evidence of both sides, learned trial Court declined relief of specific performance; but partly decreed Suit for alternate relief for refund of ₹ 15 Lakh to plaintiff No.2 along with interest @ 6% per annum from date of institution of Suit till its realization vide judgment & decree dated 28.02.2023 in the following manner:-

“30. In view of the aforesaid discussions, this Court is of the view that the plaintiff is successful in proving his case partly and as such, the suit of the plaintiff is hereby partly decreed to the effect that defendant no.1 (Lrs) are directed to pay Rs.15 Lacs to plaintiff no.2 along with interest of 6% per annum from the date of institution of the suit till realization thereof. Decree sheet be drawn accordingly. File be consigned to the record room after due compliance.”

(2.23) Feeling aggrieved, plaintiff No.2 filed the First Appeal. Learned First Appellate Court, after evaluating the matter and upon hearing parties, modified the decree of learned trial Court & allowed Suit for Specific Performance vide judgment & decree dated 22.12.2025 in the following terms:-

“23. In the light of the discussion and reasoning mentioned here in above, this Court is of considered view that appeal of the appellant-plaintiff no.2 is hereby allowed and the findings of impugned judgment and decree dated 28.02.2023 are modified and the suit of the plaintiff is decreed with costs and the defendant no.1 (b) and defendant no.1 (c) are directed to execute the sale-deed of the Land mentioned in para no.3 of the plaint in favour of appellant-plaintiff no.2 on the payment of balance sale consideration i.e. Rs.15,00,000/-(Rupees Fifteen Lakh only) and

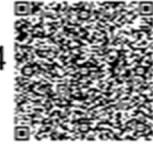


the defendants are also directed to hand over the vacant possession of the suit land to the appellant-plaintiff no.2. It is relevant to mention that the agreement to sell was of dated 11.03.2007 and now the year 2025 is going to be elapsed. In the meantime, due to the efflux of time and escalation of the price of the property, the legal heirs of the defendant-Deepak Bhardwaj cannot be made to suffer on the account of long delay in the litigation regarding the suit land. Hence, in view of the judgment laid by Hon'ble Supreme Court of India in case tiled as Satya Jain vs. Anis Ahmed Rushdie, (2013) 8 SCC 131, this Court deem it fit to grant a compensation of Rs.50,00,000/- (Rupees Fifty Lakh only) to be paid by the appellant-plaintiff no.2 to legal heirs of Deepak Bhardwaj i.e. defendant no.1 (b) and defendant no.1 (c) in equal shares. Decree-sheet be prepared accordingly. Trial Court record with copy of this judgment be sent back. File be consigned to the record room, after due compliance.”

(2.24) Aggrieved against the above impugned judgment and decree of learned First Appellate Court, Hitesh Bhardwaj (one of the legal representatives of defendant No.1), has filed the instant R.S.A.

(3) CONTENTIONS ON BEHALF OF DEFENDANT NO.1

(3.1) Learned Senior Counsel contends that plaintiff(s) entered into an ‘Oral Agreement to Sell’ with defendant No.1 on 11.03.2007 and last date of bargain was 16.05.2008. They remained silent for more than three years and instituted Suit on 14.11.2011, coupled with the fact that there is no explanation, reflecting their act & conduct for non-readiness and non-willingness.



(3.2) Further contends that there are no definite terms & conditions of the Agreement and no positive evidence has been adduced by the plaintiff(s) since it was oral assertion by both sides.

(3.3) Also contends that an application was moved by plaintiff No.3- Vinay Chhabra (later transposed as defendant No.2) for withdrawal of Suit *qua* him by submitting that he along with plaintiff No.2 failed to make the payment of balance sale consideration as agreed on 11.03.2007 and advance paid by them was forfeited by defendant No.1. Further contends that defendant No.1 even after revocation at the request of plaintiff Nos.2 & 3 gave grace period to make payment of balance sale consideration till 16.05.2008; however, they again failed to do the needful, which supports the case of defendant No.1.

(3.4) Again contends that aforesaid admission of defendant No.2-Vinay Chhabra by moving an application that he along with plaintiff No.2 was not having sufficient amount to pay the balance sale consideration of ₹ 1,45,00,000/- is in sheer contradiction to the stand taken by him in his written statement.

(3.5) Further contends that no reliance can be placed on shifting stands of defendant No.2 as it is his positive case in his written statement that he never authorized Mr. Sunil Balyan, Advocate, Bahadurgarh to withdraw the Suit on his behalf when he was plaintiff No.3. On the other hand, defendant No.2 pleaded that he was/is ready to purchase whole of the suit property, which is subject matter of Agreement to Sell dated 11.03.2007.



(3.6) Disputing the target date to be 31.12.2008 as projected by respondent Nos.1 & 2/plaintiffs, learned Senior Counsel vehemently contends that present suit is hopelessly time barred as initial target date was fixed as 10.06.2007, which was later extended to 23.04.2008 and thereafter, to 16.05.2008; suit having been filed on 14.11.2011.

(3.7) Again contends that even if the target date is taken to be 31.12.2008, there is no reason why plaintiff(s) still waited for a period of 2 years and 11 months to institute the Suit.

(3.8) Yet again contends that no Legal Notice was ever issued by plaintiff(s), which shows that they have concocted the story of readiness & willingness; whereas the fact of matter is that they were neither ready; nor willing to perform their part of contract.

(3.9) Further contends that PW-4 Pavitra Ruhil & PW-5 Azad Singh are Property Dealer(s)/Politician(s); their examination-in-chief are verbatim and the same is nothing; but only an afterthought story just to support the claim of plaintiff(s). Also contends that PW-4 feigned ignorance about the meaning of words “*Mutnaza (disputed), Freekain (parties), Vaadigan (plaintiffs) & Prativaadigan (defendants)*”, which shows that his affidavit tendered in examination-in-chief was merely signed by him without having knowledge of its contents. In these circumstances, no reliance can be placed on his testimony.

(3.10) Lastly contended that although earnest money of ₹ 15 Lakh was forfeited and plaintiff(s) have no case at all; but in the fitness of things and interest of justice, learned trial Court has correctly decreed their suit for



alternate relief for a sum of ₹ 15 Lakh along with interest to be paid to plaintiff No.2 by defendant No.1. Further remaining amount of ₹ 15 Lakh, paid by defendant No.2 (erstwhile plaintiff No.3) to defendant No.1 was adjusted towards the rent of premises i.e. Property No.1/16, East Patel Nagar, Delhi. To strengthen his contention(s), learned Senior Counsel has placed reliance on the application dated 17.12.2014, filed by defendant No.2 for withdrawal of suit *qua* him, which was ultimately dismissed in default vide order dated 03.05.2017, wherein these facts find mentioned.

(3.11) In support of above contentions, learned Senior Counsel has relied upon the following judicial precedents:-

- (i) **K.S.Vidyanadam *Versus* Vairavan, 1997 (3) SCC 1;**
- (ii) **M/s. J.P. Builders and anothers *Versus* A. Ramadas Rao and anothers, 2011 (1) SCC 429;**
- (iii) **Saradamani *Kandappan Versus* Rajalakshmi and others, 2011 (12) SCC 18;**
- (iv) **U.N. Krishnamurthy (since deceased) through LRs *Versus* A.M. Krishnamurthy, 2023 (11) SCC 775;**
- (v) **Rajesh Kumar *Versus* Anand Kumar and others, 2024 (13) SCC 80;**
- (vi) **Pydi Ramana @ Ramulu *Versus* Davarasety Manmadha Rao, 2024 (7) SCC 515;**
- (vii) **R. Kandasamy (Since Dead) & Ors. *Versus* T.R.K. Sarawathy & Anr., 2025 (3) SCC 513.**

(4) **SUBMISSIONS ON BEHALF OF PLAINTIFF NOS.1 & 2:-**

(4.1) Submits that plaintiff No.1 is a Private Limited Company; plaintiff No.2 & defendant No.2 were MDs of said Company. On 11.03.2007, defendant

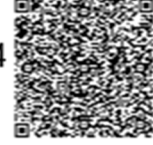


No.1 entered into an 'Oral Agreement to Sell' *qua* suit property with plaintiff No.2 & defendant No.2 in equal shares for total sale consideration of ₹ 30 Lakh.

(4.2) Further submits that at the time of aforesaid Agreement, plaintiff No.2 paid a sum of ₹10 Lakh to defendant No.1 vide cheque bearing No. 128033 and target date for execution of Sale Deed was fixed for 31.12.2008.

(4.3) Also submits that defendant No.2 paid an amount of ₹ 10 Lakh and ₹ 5 Lakh vide two different Cheques bearing Nos.353946 & 272226 dated 03.07.2007 & 15.04.2008, respectively, to defendant No.1. Further plaintiff No.2 issued Cheque No.453452 dated 17.04.2008, amounting to ₹ 5 Lakh to defendant No.1; hence, entire sale consideration of ₹ 30 Lakh was paid to him in respect of suit property.

(4.4) Again submits that plaintiff No.2 & defendant No.2 remained present before Sub Registrar, Bahadurgarh on 23.04.2008 along with stamp papers of ₹ 2.4 Lakh as well as registration charges; but defendant No.1 did not turn up. Learned Senior Counsel has specifically refuted the argument raised on behalf of defendant No.1 that plaintiff(s) were not ready and willing to perform their part of contract; rather, entire sale consideration of ₹ 30 Lakh had already been paid and their presence in the Office of Sub Registrar, Bahadurgarh was duly recorded on 23.04.2008. As such, plaintiff(s) have performed their part of contract and learned First Appellate Court has rightly decreed the suit for specific performance. Further, learned First Appellate Court has also taken care of the escalating prices and inflation rates while granting an additional



compensation of ₹ 50 Lakh to defendant Nos.1(b) & (c), which plaintiff No.2 is ready to pay.

(4.5) Yet again submits that plaintiff(s) have led sufficient evidence in the form of testimony of PW-4 & PW-5, namely, Pavitra Ruhil & Azad Singh, respectively, in whose presence, the terms and conditions of Oral Agreement were settled/agreed upon.

(4.6) Still further submits that no evidence was led by defendant No.1 that the said Agreement was for ₹ 1.6 Crore; whereas fact of the matter is that entire sale consideration of ₹ 30 Lakh was duly paid to defendant No.1.

(4.7) Elaborating his arguments, learned Senior Counsel for plaintiff(s) submits that defendant No.1 himself admitted the fact in his written statement that he had purchased suit property for ₹ 20 lakh in the year 2005. Further submits that 'Oral Agreement to Sell' was entered into between parties in the year 2007 for purchase of same property by plaintiff No.2 from defendant No.1. Again submits that stand of defendant No.1 with regard to sale consideration to be ₹ 1.6 crore is hard to believe that prices will escalate eight times in just two years, which further strengthens the plea of plaintiff(s) that sale consideration was in fact ₹ 30 Lakh.

(4.8) Also submits that in the present case, time was not the essence of contract owing to conduct of defendant No.1, who initially admitted that period for execution of Sale Deed was extended from time to time. It is the case of plaintiff(s) that defendant No.1 finally refused to execute Sale Deed on



31.12.2008 and suit was instituted within the period of limitation i.e. on 14.11.2011.

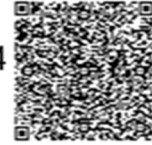
(4.9) Vehemently submits that defendant No.1 has taken contradictory stand in his written statement as on one hand, he admitted having entered into an understanding with plaintiff No.2 for a sale consideration of suit property for ₹ 1.6 Crore; whereas on the other hand, he denies sale of suit property altogether. No proof was brought on record by defendant No.1 with regard to his stand that defendant No.2 got adjusted ₹ 15 Lakh for payment of tenancy; hence, conduct of defendant No.2 is irrelevant in any manner.

(4.10) Lastly submitted that Second Appeal can be entertained by this Court even without framing substantial questions of law, as stipulated under Section 100 of the Code of Civil Procedure, 1908 (*for short 'the Code'*) since Section 41 of the Punjab Courts Act, 1918 (*for short 'the Act'*) still holds the field. To buttress his argument, learned Senior Counsel has placed reliance upon '**Lehna Singh (D) by LRs Versus Gurnam Singh (D) by LRs and others**', 2024 SCC Online SC 969.

(4.11) In support of above submissions, learned Senior Counsel has also relied upon the following judicial precedents:-

- (i) Alka Bose Versus Parmatma Devi & Ors., 2009 (2) SCC 582;**
- (ii) Gurmail Singh and another Versus Suman Sharma and others, 2014 SCC Online P&H 15600;**
- (iii) Piru Versus Fakir Chand, 2006 (4) RCR (Civil) 207.**

(5) No other argument was raised by either sides.



(6) I have heard learned Senior Counsel for parties; perused the paper-book as well as records of learned trial Court and First Appellate Court.

(7) Before proceeding further, it is worthwhile to mention here that Second Appeal within the jurisdiction of this High Court lies under Section 41 of the Act and as such, there is no pre-condition to frame substantial questions of law *stricto sensu* in terms of Section 100 of the Code.

(8) In support of the above observation, reliance can be made to the Constitution Bench of Hon'ble the Supreme Court in **“Pankajakshi (Dead) through legal representatives and others Versus Chandrika and others”**, (2016) 6 SCC 157, wherein scope of Section 100 of the Code vis-à-vis Section 41 of the Act was examined a decade back and relevant para Nos.24 & 27 of the same are extracted as under:-

“24. The judgment in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] raised a question which arose on an application of Section 41 of the Punjab Courts Act, 1918. This section was couched in language similar to Section 100 of the Code of Civil Procedure as it existed before the Code of Civil Procedure (Amendment) Act, 1976, which amended Section 100 to make it more restrictive so that a second appeal could only be filed if there was a substantial question of law involved in the matter. The question this Court posed before itself was whether Section 41 stood repealed by virtue of Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, which reads as under : (SCC p. 270, para 10)

“97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or

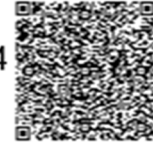


provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

This Court concluded that Section 41 of the Punjab Courts Act was repealed because it would amount to an amendment made or provision inserted in the principal Act by a State Legislature. This Court further held that, in any event, Section 41 of the Punjab Courts Act being a law made by the Legislature of a State is repugnant to a later law made by Parliament, namely, Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, and that therefore, by virtue of the operation of Article 254 of the Constitution of India, the said provision is in any case overridden. In arriving at the aforesaid two conclusions, this Court held [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] : (SCC p. 276, paras 27-29)

“27. Now we proceed to examine Section 97(1) of the Amendment Act and the amendment of Section 100 CPC by the said 1976 Act. Through this amendment, right to second appeal stands further restricted only to lie where, ‘the case involves a substantial question of law’. This introduction definitely is in conflict with Section 41 of the Punjab Act which was in pari materia with unamended Section 100 CPC. Thus, so long there was no specific provision to the contrary in this Code, Section 4 CPC saved special or local law. But after it comes in conflict, Section 4 CPC would not save, on the contrary its language implied would make such special or local law inapplicable. We may examine now the submission for the respondent based on the language of Section 100(1) CPC even after the said amendment. The reliance is on the following words:

‘100. Second appeal.—(1) Save as otherwise expressly provided ... by any other law for the time being in force....’



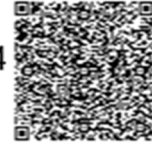
These words existed even prior to the amendment and are unaffected by the amendment. Thus, so far it could legitimately be submitted that, reading this part of the section in isolation it saves the local law. But this has to be read with Section 97(1) of the Amendment Act, which reads:

***‘97. Repeal and savings.—(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.’** (Noticed again for convenience.)*

28. Thus, language of Section 97(1) of the Amendment Act clearly spells out that any local law which can be termed to be inconsistent perishes, but if it is not so, the local law would continue to occupy its field.

29. Since Section 41 of the Punjab Act is expressly in conflict with the amending law viz. Section 100 as amended, it would be deemed to have been repealed. Thus, we have no hesitation to hold that the law declared by the Full Bench of the High Court in Ganpat [Ganpat v. Ram Devi, 1977 SCC OnLine P&H 188 : AIR 1978 P&H 137 : (1978) 80 PLR 1] cannot be sustained and is thus overruled.”

27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision in Kulwant Kaur case [Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262] . Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80-A of the Government of India Act, 1915, which law was



continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Shri Viswanathan's reliance upon this authority, therefore, does not lead his argument any further.”

(9) Again, a Division Bench of Hon’ble the Supreme Court in **Lehna’s case (supra)**, while relying upon **Pankajakshi’s case (ibid)**, considered the scope of Section 100 of the Code as well as Section 41 of the Act and in Para Nos.9 to 12, held as under:-

“9. The second appeal in Punjab and Haryana High Court is heard under Section 41 of the Punjab Act, which is reproduced hereunder for ready reference:—

“41. Second Appeals - (1) An appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court on any of the following grounds, namely:



(a) the decision being contrary to law or to some custom or usage having the force of law:

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law:

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure 1908 (V of 1908), or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;

[Explanation - A question relating to the existence or validity of a custom or usage shall be deemed to be a question of law within the meaning of this section :]

(2) An appeal may lie under this section from an appellate decree passed ex parte.”

10. The provision contained in Section 41 of the Punjab Act, as reproduced above, does not mandate framing of a substantial question of law for entertaining the second appeal. Therefore, a second appeal under Section 41 of Punjab Act can be entertained by the Punjab and Haryana High Court even without framing a substantial question of law.

11. It would be appropriate to refer to the provision contained in Section 41 of the Punjab Act in juxtaposition to Section 100 CPC, before its amendment in 1976, to appreciate and understand the jurisdiction of Punjab and Haryana High Court in second appeal. The provisions are reproduced hereunder for ready reference:—

<i>“Section 41 of the Punjab Act</i>	<i>Section 100 CPC</i>
<i>41. Second appeals.—(1) An appeal shall lie to the High Court from every decree passed in appeal by any court subordinate to the High Court on any of</i>	<i>100. Second appeal.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree</i>



<p><i>the following grounds, namely:</i></p>	<p><i>passed in appeal by any court subordinate to a High Court, on any of the following grounds, namely:</i></p>
<p><i>(a) the decision being contrary to law or to some custom or usage having the force of law;</i></p> <p><i>(b) the decision having failed to determine some material issue of law or custom or usage having the force of law;</i></p> <p><i>(c) a substantial error or defect in the procedure provided by the Civil Procedure Code, 1908 (V of 1908), or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits;</i></p> <p><i>* * *</i></p>	<p><i>(a) the decision being contrary to law or to some usage having the force of law;</i></p> <p><i>(b) the decision having failed to determine some material issue of law or usage having the force of law;</i></p> <p><i>(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.</i></p>
<p><i>(2) An appeal may lie under this section from an appellate decree passed ex parte.</i></p>	<p><i>(2) An appeal may lie under this section from an appellate decree passed ex parte.”</i></p>

12. In Pankajakshi (supra), the Constitution Bench of this Court has held that substantial question of law may not be required to be framed in a second appeal before Punjab and Haryana High Court.



However, the finding of fact recorded, cannot be interfered with even in terms of Section 41 of Punjab Act.....”

(10) Thus, keeping in view the settled law laid down by Hon’ble the Supreme Court in **Pankajakshi’s case (supra)**, followed by Division Bench judgment in **Lehna’s case (ibid)**, and after taking into account the provisions of Section 41 of the Act, the points for consideration in the present appeal would be as under:-

1. Whether the Oral Agreement to Sell dated 11.03.2007 regarding land in question was for ₹ 30,00,000/- (Rupees Thirty Lakh) or ₹ 1,60,00,000/- (Rupees One Crore Sixty Lakh)?;
2. Whether act and conduct of plaintiff(s)/respondent(s) in filing the Civil Suit on 14.11.2011 is fatal to seek decree for specific performance on the basis of alleged Oral Agreement to Sell being barred by limitation in view of Article 54 of the Limitation Act, 1963 as well as the law laid down by Hon’ble the Supreme Court in the judgments cited by learned Senior Counsel for appellant?;
3. Whether impugned decree of learned First Appellate Court for specific performance on the basis of alleged Oral Agreement on payment of ₹ 15 Lakh as balance sale consideration as well as ₹ 50 Lakh as compensation to be paid by plaintiff(s) to defendant Nos.1 (b) & (c) in equal shares, would be just, fair, equitable and sufficient?

(11) Concededly, execution of ‘Oral Agreement to Sell’ between parties is not in dispute and even there is sufficient material on record to prove the same.



(12) The bone of contention raised on behalf of defendant No.1 is as under:-

- (i) amount of 'total sale consideration';
- (ii) 'target date', coupled with the readiness and willingness of plaintiff(s);
- (iii) delay in filing the Suit for Specific Performance.

(13) As per the case of plaintiff(s), sale consideration was ₹ 30 Lakh and target date was 31.12.2008 while defendant No.1 has alleged sale consideration to be ₹ 1.6 crore and initial target date was 10.06.2007, which was extended twice i.e. up to 23.04.2008 & thereafter to 16.05.2008.

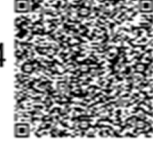
(14) From the evidence adduced by both sides, it is discernible that there was a concluded 'Oral Agreement to Sell' between plaintiff No.2 and defendant No.2 on one hand and defendant No.1 (since deceased and now represented through his LRs) on the other hand. Defendant No.1 has examined as many as six witnesses. There is no evidence on record to prove that sale consideration was ₹ 1.6 crore except the self-serving statement of DW-1 Hitesh Bhardwaj, one of the LRs of defendant No.1-Deepak Bhardwaj. DW-2 Shree Bhagwan, Draftsman and DW-3 Naresh, Clerk of D.C. Office, Jhajjar are formal witnesses, who have proved Sale Deed (Ex.D-1), whereby defendant No.1 had purchased the suit property from plaintiff No.2 for sale consideration of ₹ 20 Lakh in the year 2005. Defendant No.1 has also examined DW-4 Sandeep Sharma (Proprietor of S.N. Security Services); DW-5 Ajay Kumar Gupta (Manager, ICICI Bank, Branch at New Delhi) and DW-6 Anup Kumar



Dubey (Proprietor of Baaz Security Services, New Delhi). These witnesses have only tried to prove that deceased Deepak Bhardwaj had multiple properties and he had taken security services from two Security Agencies, namely, S.N. Security Services & Baaz Security Services. This in no way strengthens the case of defendant No.1 that the sale consideration of suit property was ₹ 1.6 crore; rather there is overwhelming evidence on record produced by plaintiff(s) to show that sale consideration was in fact ₹ 30 Lakh and a sum of ₹ 15 Lakh (50% of the total sale consideration) was paid to defendant No.1 by plaintiff No.2 vide Cheque Nos.128033 & 453452 dated 11.03.2007 & 17.04.2008, respectively. Likewise, another sum of ₹ 15 Lakh was paid by defendant No.2 to defendant No.1 vide Cheque Nos.353946 and 272226 dated 03.07.2007 & 15.04.2008, respectively. Receipt of all these aforesaid cheques has also been admitted by defendant No.1, who is now trying to wriggle out by claiming that the sale consideration was actually ₹ 1.6 Crore.

(15) Although, learned Senior Counsel for defendant No.1 tried to impeach the credibility of PW-4 & PW-5 on account of their professional background as property dealer(s)/politician(s); but this Court finds no substance in this regard as during their cross-examination, they remained consistent & unshaken. Both of them deposed in unison and supported the case of plaintiff(s) to full extent.

(16) Apart that, merely because witnesses are politician(s)/property dealer(s) would not *ipso facto* render their testimonies untrustworthy. As evidence of PW-4 & PW-5 inspires the full confidence of this Court and given



that no material contradictions were elicited to discredit them; thus, their testimonies are held to be reliable and it cannot be said that PW-4 had merely signed the affidavit tendered in examination-in-chief without knowing its contents.

(17) It is worthwhile to mention here that defendant No.1 had admittedly purchased the suit property for sale consideration of ₹ 20 Lakh vide Sale Deed dated 25.07.2005 (Ex.D-1), duly proved by defendant No.1 himself by examining DW-2 Shree Bhagwan, Draftsman and DW-3 Naresh, Clerk, D.C. Office, Jhajjar. It is unbelievable that the price of suit property will escalate to ₹ 1.6 Crore in just two years, which shows that defendant No.1 became greedy & taking advantage of 'Agreement to Sell' to be oral is trying to arm twist plaintiff(s) and extract more money.

(18) Learned Senior Counsel for defendant No.1 has laid much emphasis upon factum of filing of Suit after a lapse of 3 years from the last date of bargain i.e. 16.05.2008 and same is time barred. PW-4 & PW-5 have minced no words to prove that target date was 31.12.2008 and the plea raised by defendant No.1 that in fact the initial target date was 10.06.2007, which was later extended to 23.04.2008 and thereafter, to 16.05.2008, has no legs to stand. It stands duly proved on record that there was mutual understanding & trust between the parties and as such, 'Oral Agreement to Sell' was entered. It seems that defendant No.1 out of greed kept on delaying the execution of Sale Deed on one pretext or the other and that led to present litigation.



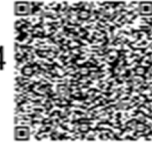
(19) Hon'ble the Supreme Court in **Alka Bose's case** (*supra*) held that it is not necessary that every Agreement of Sale must be in writing and there is no embargo if Agreement is 'Oral' as in the present case. Para Nos.15 to 18 thereof, being relevant, read as under:-

15. We find that neither of the two decisions have addressed the real issue and cannot be said to be laying down the correct law. The observation in Mohd. Mohar Ali [AIR 1998 Gau 92] stating that an agreement of sale is an unilateral contract is not correct. An unilateral contract refers to a gratuitous promise where only one party makes a promise without a return promise. Unilateral contract is explained thus by John D. Calamari and Joseph M. Perillo in The Law of Contracts [4th Edn., Para 2-10(a) at pp. 64-65]:

“If A says to B, ‘If you walk across the Brooklyn Bridge I will pay you \$100,’ A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation.”

All agreements of sale are bilateral contracts as promises are made by both — the vendor agreeing to sell and the purchaser agreeing to purchase.

16. On the other hand, the observation in S.M. Gopal Chetty [AIR 1998 Mad 169] that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to



sell and the purchaser agrees to purchase, for an agreed consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it.

17. Section 10 of the Act provides that all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to Section 10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid.

18. In any agreement of sale, the terms are always negotiated and thereafter reduced in the form of an agreement of sale and signed by both parties or the vendor alone (unless it is by a series of offers and counter-offers by letters or other modes of recognised communication). In India, an agreement of sale signed by the vendor alone and delivered to the purchaser, and accepted by the purchaser, has always been considered to be a valid contract. In the event of breach by the vendor, it can be specifically enforced by the purchaser. There is, however, no practice of purchaser alone signing an agreement of sale.”



(20) Further, where there is ‘Oral Agreement’, ocular evidence assumes significance. There is preponderance of evidence in favour of plaintiff(s) that the Agreement to Sell dated 11.03.2007 was for ₹ 30 Lakh and not ₹ 1.6 Crore, as projected by defendant No.1.

(21) Now coming to the point of limitation, raised by learned Senior Counsel for defendant No.1. Article 54 of the Limitation Act, 1963 reads as under:-

54	For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
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(22) The Co-ordinate Bench of this Court in **Piru’s case** (*supra*), in para 7, observed as under:-

“7. This submission has been considered. It has no merits at all. It was not disputed by the learned counsel for the appellant that the appeal could be filed within a period of three years and admittedly, the appeal has been filed within a period of three years. The mere plea that it was filed on the last day, does not defeat the right of the respondent to seek specific performance. It was held by the Hon’ble Division Bench of the Rajasthan High Court in the judgment reported as *Surendra Singh v. L.Rs of Bhanwar Lal and others, 2006(2) Indian Civil Cases 606* that merely filing of the suit on the last day of limitation when seen in isolation does not defeat the suit.”



Perusal of above extract clearly reveals that mere filing of Suit on the last date of limitation would not non-suit the plaintiff(s), especially when both parties were known to each other. In the present case, even defendant No.1 acknowledged that ₹ 15 Lakh has been received by him from plaintiff No.2 towards sale consideration; but he is only disputing the remaining ₹ 15 Lakh, which was paid by defendant No.2 on the premise that the same was adjusted as rental money of some other property.

(23) For the sake of argument, by taking the worst proposition that ₹ 15 Lakh, paid by defendant No.2, was not towards sale consideration, as pleaded by defendant No.1 and was adjusted towards rent of another premises; even then, ₹ 15 Lakh paid by plaintiff No.2 is not in dispute. As discussed above, it is duly established on record that 50% of the total sale consideration of ₹ 30 Lakh i.e. amount of ₹ 15 Lakh was received by defendant No.1. Thus, it seems that LRs of defendant No.1 want to take the benefit of Oral Agreement and unnecessarily resort to coercive tactics to extract more money for unjustly enriching themselves, which cannot be permitted.

(24) In these circumstances, it is duly proved that target date was 31.12.2008 and act & conduct of plaintiff(s) in filing the Suit on 14.11.2011 within the prescribed period of limitation of three years cannot be fatal to seek the decree for specific performance.

(25) The contention raised on behalf of defendant No.1 that defendant No.2 never authorized Mr. Sunil Balyan, Advocate, Bahadurgarh to withdraw the Suit on his behalf when he was plaintiff No.3 is of no help to defendant

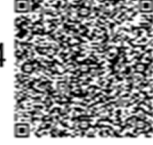


No.1 inasmuch as defendant No.2 did not appear after moving application under Order 23 Rule 1 of the Code and later on, another application was moved by plaintiff Nos.1 & 2 to transpose him as defendant. After becoming defendant No.2, he filed separate written statement and supported the case of plaintiff(s).

(26) The argument raised by learned Senior Counsel for defendant No.1 that no Legal Notice was ever served by plaintiff(s) is also not helpful for the reason that parties were known to each other and Legal Notice is not a pre-condition for seeking relief of specific performance on the basis of an ‘Oral Agreement’.

(27) In the present case, it cannot be said that time was the essence of contract as portrayed by learned Senior Counsel for defendant No.1. Since stand of defendant No.1 is that time was extended from 10.06.2007, which was later extended to 23.04.2008 and thereafter, to 16.05.2008; hence, it can be safely concluded that time was never the essence of contract.

(28) Insofar as the issue of readiness and willingness is concerned, the plaintiff(s)/respondent(s) have led ample evidence to establish that they remained ready and willing to perform their part of contract. In support of their case, plaintiff(s) made payment of ₹ 10 Lakh to defendant No.1; they got examined Anand Kumar, Income Tax Assistant as PW-1, who brought on record PAN Card Number of defendant No.1 and Income Tax Statements>Returns (Ex.P-2 & Ex.P-3, respectively). Apart that, plaintiff(s) also examined PW-2 Vivek Kumar, Senior Executive from HDFC Bank, who proved on record the Bank Statement(s) of plaintiff No.2 to show that ₹ 5 Lakh



was paid to defendant No.1 as per statement of Account (Ex.P-7). In this way, payment of ₹ 15 Lakh to defendant No.1 stands duly proved on record.

(29) Evidence on record collectively demonstrates that plaintiff No.2 remained present in the Office of Sub Registrar, Bahadurgarh on 23.04.2008, along with 'Draft Sale Deed' (Ex.P-11/1) and necessary amount of stamp-papers of ₹ 2.4 Lakh as well as registration charges; however, defendant No.1 failed to appear. PW-6 Shree Bhagwan, Draftsman proved copy of aforesaid Draft Sale Deed to show that same was actually prepared by affixing necessary stamp duty purchased on 23.04.2008. Hence, it can be safely inferred that there is sufficient evidence that plaintiff(s) were/are ready & willing to perform their part of contract for specific performance of Oral Agreement in which, target date was 31.12.2008 and it is the defendant No.1, who did not come forward.

(30) Oral execution of Agreement to Sell has been duly proved, as also the readiness and willingness of plaintiff(s) to perform their part of contract. In these circumstances, equity demands that 'Oral Agreement to Sell' should be enforced; rather to grant alternate relief of mere damages to plaintiff(s).

(31) Findings of learned First Appellate Court, while granting decree for specific performance on the basis of alleged 'Oral Agreement to Sell' dated 11.03.2007 on payment of balance sale consideration of ₹ 15 Lakh as well as compensation of ₹ 50 Lakh, to be paid by plaintiff(s) to defendant Nos.1 (b) & (c) in equal shares, are based on proper appreciation of evidence available on record and are absolutely just, fair, equitable & sufficient; thus, no interference is warranted by this Court.



(32) After thoroughly examining the matter, irresistible conclusion would be as under:-

- (i) The sale consideration regarding suit property was for ₹ 30 Lakh and not ₹ 1.6 Crore; out of which, ₹ 15 Lakh has already been admittedly paid by plaintiff No.2 to defendant No.1;
- (ii) The target date was 31.12.2008 and the Suit filed by plaintiff(s) for Specific Performance on 14.11.2011 was well within time;
- (iii) Amount of ₹ 15 Lakh on account of balance sale consideration and ₹ 50 Lakh as compensation, granted by learned First Appellate Court, to be paid by plaintiff(s) to defendant Nos.1 (b) & (c) in equal shares, is absolutely fair, just and equitable to grant decree for specific performance on the basis of alleged Oral Agreement;
- (iv) Learned First Appellate Court, while exercising jurisdiction under Section 96 of the Code, evaluated the matter threadbare and rightly decreed Suit for Specific Performance; hence, this Court fully concurs with the same.

(33) The judicial precedents, cited by learned Senior Counsel for defendant No.1, are also not helpful for the following reasons:-

- (i) There is no dispute about the proposition of law, laid down by Hon'ble the Supreme Court in



K.S.Vidyanadam's case (*supra*), that suit for specific performance should be filed within reasonable time having regard to terms of contract and that specific performance should not be granted where there has been inaction on the part of plaintiff for two-and-a-half-year after initial payment of a small amount as earnest money. In that case, out of total sale consideration of ₹ 60,000/-, earnest money of ₹ 5000/- only was paid. However, in the present case, initially, entire sale consideration of ₹ 30 Lakh was paid to defendant No.1; however, later on, the amount paid by defendant No.2 was adjusted towards rent. In this way, a substantial amount of ₹ 15 Lakh had already been paid to defendant No.1 out of total sale consideration of ₹ 30 Lakh and plaintiff(s) had approached learned trial Court within the prescribed period of limitation, particularly when they were having cordial relations which led to entering into 'Oral Agreement to Sell'; hence the facts of present case are distinguishable;

- (ii) In **M/s. J.P. Builders' case (*supra*)**, Hon'ble the Supreme Court held that continuous readiness & willingness on the part of plaintiff is a condition precedent for obtaining relief and in case of non-compliance therewith, suit has to be dismissed; but in the present case, readiness & willingness of plaintiff(s) in continuity have been duly established and as such, no benefit can be derived by defendant No.1 from the ratio of aforesaid judgment;
- (iii) Hon'ble the Supreme Court in **Saradamani Kandappan's case (*supra*)** observed that delay in rising



prices justify refusal; but in present case, defendant No.1 has been duly compensated for delay to the tune of ₹ 50 Lakh; particularly when it is admitted and proved on record that defendant No.1 had purchased suit property in the year 2005 for sale consideration of ₹ 20 lakh two years prior to entering into 'Oral Agreement to Sell' in the year 2007; thus, this judicial precedent is also of no help to defendant No.1;

(iv to vi) In **U.N. Krishnamurthy, Rajesh Kumar and Pydi Ramana @ Ramulu cases' (supra)**, it was held that continuous readiness & willingness is required and delay even within limitation can disentitle relief. However, in present case, as discussed above, plaintiff(s) were/are continuously ready & willing to perform their part of contract and cannot be non-suited on the ground of delay in peculiar facts and circumstances of present case;

(vii) To the same effect is the ratio of law laid in **R. Kandasamy's case (supra)**, wherein it was held that specific performance is discretionary relief and continuous readiness is required to be proved. At the cost of repetition, it is reiterated that plaintiff(s) were/are ready and willing to perform their part of contract while defendant No.1 has tried to back out of his contractual liability for obvious reasons. No doubt, decree of specific performance is discretionary; but the discretion has to be exercised judiciously and not capriciously. Defendant No.1 cannot be allowed to take benefit of his own wrong; thus, the facts of present case are clearly distinguishable.



(34) Moreover, pleas raised on behalf of appellant/defendant No.1 are primarily dealing with the factual aspect of case; but there is no iota of proof to indicate that any substantive document and/or evidence has been ignored or material, which is extraneous to records, has been taken into consideration while passing the impugned judgment & decree by learned First Appellate Court.

(35) Hence, learned Senior Counsel for defendant No.1 has failed to convince the Court to interfere with the well-reasoned judgment & decree, passed by learned First Appellate Court.

(36) Thus, in the opinion of this Court, impugned judgment & decree dated 22.12.2025, passed by learned First Appellate Court, while decreeing the Suit for Specific Performance on the basis of Oral Agreement to Sell dated 11.03.2007 on payment of balance sale consideration of ₹ 15 Lakh along with compensation amount of ₹ 50 Lakh, is most appropriate and equitable and findings to this effect are perfectly valid & legally sustainable.

(37) In view of above, there is no option except to dismiss the appeal.

(38) Consequently, appeal is dismissed being devoid of any merits. As a result thereof, impugned judgment & decree dated 22.12.2025, passed by learned First Appellate Court, are upheld.

(39) Needless to say that plaintiff(s) are directed to deposit balance sale consideration of ₹ 15 Lakh and compensation amount of ₹ 50 Lakh to defendant Nos.1(b) & (c) in equal shares within a period of two weeks from the date of passing of this judgment. In case plaintiff(s) fail to do so within



aforesaid period, the Suit for Specific Performance shall be deemed to be dismissed and partial decree for alternate relief for refund of earnest money of ₹ 15 Lakh along with interest @ 6% per annum by aforesaid defendant(s) to plaintiff(s), as ordered by learned trial Court, vide judgment & decree dated 14.11.2011, shall enure.

(40) Defendant Nos.1(b) & (c) shall execute the Sale Deed of suit property in favour of plaintiff(s) within two weeks thereafter. In the event of failure, plaintiff(s) shall be at liberty to get the Sale Deed executed through the process of Court.

(41) No order as to costs.

Misc. application(s), if any, pending shall also stand disposed off.

17th April, 2026

Gagan

(MAHABIR SINGH SINDHU)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>