

2026:PHHC:092512



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

RSA-2866-1995

Date of Decision: 08.07.2026

MALKIAT SINGH (SINCE DECEASED) THROUGH LRS

...Appellant

Versus

JASBIR SINGH AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Amit Dhawan, Advocate
for the appellant.

Mr. P.S. Chahal, Advocate for
Mr. G.S. Nagra, Advocate
for respondent No.1.

Mr. Mayur Kanwar, Advocate
for respondents No.7(iv).

PARMOD GOYAL, J. (ORAL)

Present appeal has been preferred by unsuccessful appellant/defendant No.1(a) against impugned judgment and decree dated 16.11.1992, passed by learned Additional Senior Sub Judge, Phagwara vide which suit for possession by way of specific performance preferred by respondent No.1/plaintiff was decreed and against judgment and decree dated 16.11.1995 passed by learned Additional District Judge, Kapurthala vide which first appeal preferred by defendants was dismissed.

2. Respondent No.1/plaintiff had preferred a suit for specific performance wherein it was pleaded that defendant No.1-Shangara Singh was owner of suit property measuring 5 kanals 6 marlas situated at Phagwara Sherki, Tehsil Phagwara and he had agreed to sell the same vide agreement dated 10.02.1989. As per agreement, total consideration was

fixed at Rs.22,000/- out of which Rs.5,000/- was paid as earnest money. Furthermore, it was pleaded that respondent No.1/plaintiff was always ready and willing to perform his part of contract and was ready to pay the remaining consideration of Rs.17,000/-. Defendant No.1-Shangara Singh had also agreed to execute the sale deed on or before 15.05.1990 on receipt of remaining consideration amount. It was agreed that in case respondent No.1/plaintiff failed to pay balance consideration amount, his earnest money would be forfeited and in case of non-performance of agreement by defendant No.1-Shangara Singh, he agreed to pay Rs.10,000/- i.e. double the total earnest money or respondent No.1/plaintiff shall be entitled to get the sale deed executed through civil court. It was asserted that after getting into the agreement as well as after receipt of earnest money, defendant No.1 with dishonest intention had sold suit property on 10.03.1989 prior to the date fixed for execution of sale deed in favour of his wife i.e. respondent/defendant No.2. It was asserted that sale deed executed by defendant No.1 in favour of respondent/defendant No.2 is illegal, void and ineffective and injunction against respondent/defendant No.2 from getting mutation in her favour was also sought.

3. The suit was contested by defendants by filing separate written statements and number of preliminary objections regarding maintainability etc. were taken. On merits, it was asserted that defendant No.1 was addicted to narcotic drugs and this fact was very well known to father of respondent No.1/plaintiff who was cultivating his land on *batai*. The proceed of crops were to be shared between respondent No.1/plaintiff's father and defendants. The respondent No.1/plaintiff's father had not paid the proceeds and was putting the matter on one pretext or other to clear the account. On

10.02.1989, defendant No.1 was feeling uneasy, respondent No.1/plaintiff's father took defendant No.1 to Tehsil for getting the accounts settled where he was administered some intoxicating drugs and his thumb impression on some blank papers were taken. It was asserted that defendants had come to know about the alleged agreement only on filing of suit. It was asserted that agreement was result of misrepresentation and fraud, therefore, was liable to be set aside. Dismissal of suit was accordingly prayed for.

4. Respondent/defendant No.2 vide her separate written statement also took number of preliminary objections regarding maintainability etc. She claimed that sale deed was executed by defendant No.1 in a *bona fide* manner for consideration. Allegation that sale deed was a sham transaction was denied. She claimed that she is owner of suit property and was entitled to get the mutation sanctioned in her favour and accordingly sought dismissal of suit against her.

5. Following issues were framed from the pleadings of parties :-

1. Whether defendant No.1 entered into an agreement to sell dated 10.02.1989 and received Rs.5,000/- as part payment for the sale consideration? OPP
2. Whether plaintiff has always been ready and willing to perform his part of contract? OPP
3. Whether plaintiff is entitled to specific performance of an agreement in dispute? OPP
4. Whether plaintiff is entitled to permanent injunction as prayed for? OPP
5. Whether in the alternative, the plaintiff is entitled to recover Rs.10,000/- as prayed for? OPP

6. Whether the suit property is ancestral property of defendant No.1? If so, its effect? OPD
7. Whether suit is bad for non-joinder of necessary parties? OPD
8. Whether suit is not maintainable? OPD
9. Relief.

6. Learned Court of first instance after considering respective contentions of parties had decided issues No.1 to 3 and 5 in favour of respondent No.1/plaintiff, issues No.6, 7 and 8 against the defendants whereas issue No.4 was decided against respondent No.1/plaintiff and in favour of defendants. Accordingly, suit for specific performance was decreed. Defendants were directed to execute sale deed in favour of respondent No.1/plaintiff within a period of two months on receipt of remaining amount. The finding of learned Court of first instance were upheld by first Appellate Court in appeal preferred by LRs of defendant No.1. First appeal was dismissed.

7. Perusal of evidence on record goes to show that in order to prove agreement to sell (Ex.P1), respondent No.1/plaintiff had examined Agya Ram, Nambardar, who was an attesting witness to the agreement as PW1, deed writer of agreement as PW2 and respondent No.1/plaintiff appeared through his natural guardian Manjeet Singh as PW3.

8. In the present case, thumb impression of defendant No.1 on the agreement to sell (Ex.P1) is not denied rather defendants' case was that thumb impression was taken under the influence of intoxication and by misrepresentation in the garb of settling the accounts which were payable by father of respondent No.1/plaintiff. To discharge primary onus on plaintiff to

prove agreement, plaintiff/respondent had examined attesting witness as well as deed writer, who had clearly stated that agreement was typed on the instructions of parties by Ashok Kumar, Deed Writer (PW2) and, thereafter, it was read over to defendant No.1, who after understanding the same as correct had put his thumb impressions and thereafter, attesting witnesses Agya Ram (PW1) and Jit Singh had attested the same. On behalf of respondent No.1/plaintiff, his father, Manjeet Singh had put his thumb impression. It was agreed that possession of land will be handed over at the time of execution of sale deed. Deed writer (PW2) had duly entered the factum of agreement in his register at serial No.238. Evidence of PW1 and PW2 as regards to execution of agreement to sell has mainly gone unrebutted and unchallenged. Therefore, the initial onus to prove due execution of agreement cast upon respondent No.1/plaintiff was duly discharged by examination of attesting witness, deed writer as well as guardian of respondent No.1/plaintiff, who had entered into the agreement on behalf of respondent No.1/plaintiff. Furthermore, since thumb impression on agreement is not being denied by defendants, therefore, burden to rebut due execution of agreement had shifted to defendants and it was for defendants to prove that at the time of execution of agreement to sell defendant No.1 was under influence of intoxication administered by respondent No.1/plaintiff's father as alleged by defendants No.1 and 2 or that agreement was got thumb marked by misrepresentation.

9. In the present case, agreement was executed in Tehsil. A strange plea has been taken by defendants that defendant No.1 was taken by father of plaintiff to Tehsil to settle the accounts of *batai* which he was bound to pay to defendant No.1, however, Tehsil is not a place to settle the

accounts. If there was any dispute regarding settlement of accounts over *batai* rent the same could have been decided in the village before Panchayat or with the help of friends and family, but there was no reason to visit Tehsil to settle the accounts. The allegation that defendant No.1 was taken to Tehsil to settle the accounts, in fact indirectly proves that defendant No.1 had visited Tehsil on 10.02.1989. No material except for oral assertions by defendants that suit land was under cultivation of father of plaintiff was placed on revenue record. No record to show father of plaintiff to be tenant was produced. In fact, recital in agreement shows that possession of land was to be given to plaintiff at the time of execution. There is no reference regarding the fact that suit land was given on *batai*, PW3 had specifically denied the suggestion that he had taken land on *batai* or there was any dispute regarding accounts. Therefore, pretext of accounting dispute is also not proved by defendants.

10. PW1 had specifically denied that at the time of execution of agreement, Shingara Singh was administered intoxicant or was under the influence of drugs. No suggestion has been given by either PW1 or PW2 that at the time of execution of agreement, defendant No.1 was under the influence of intoxication and was not in a sound mind. Mere assertion that defendant No.1 was habitual of taking intoxicant by itself is not sufficient to conclude that at the time of execution of agreement dated 10.02.1989 he was under the influence of intoxication and was not in a position to understand the nature of document executed by him. Contradictory stands were taken in written statement and suggestions made to witnesses. In written statement it was pleaded that father of plaintiff had given some intoxication, whereas PW1 was suggested that he administered drugs on the day of execution of

agreement.

11. In fact, there is no evidence to show that on the day when the agreement was executed, defendant No.1 was administered intoxication or was under the influence of intoxication being unfit to thumb mark the agreement.

12. The conduct of defendants No.1 and 2 also goes to disprove their case as it is worth noticing that in the present case, last date for execution of sale deed was fixed as 15.05.1990, whereas without waiting for last date, defendant No.1 had made a friendly transfer in favour of his own wife i.e. defendant No.2 on 10.03.1989 to avoid agreement one month after execution of agreement to sell. In fact, this goes to show that after agreement was entered by defendant No.1, he wanted to resile from the same and, therefore, had executed a sham sale deed in favour of his wife which defendants have failed to prove to be *bona fide* or for consideration.

13. None of the witnesses to the sale deed has been examined by defendants. There is no evidence on record except for self-serving oral assertions by Surinder Kaur DW1 that amount so mentioned in the sale deed executed on 10.03.1989 was passed as consideration. The actual passing of consideration is not proved. This fact clearly shows that there was a clear attempt to wriggle out of contractual obligation by executing a sham sale deed by defendant No.1 in favour of defendant No.2 without there being any consideration and only to avoid agreement to sell dated 10.02.1989. This deliberate act to wriggle out from the agreement in fact further goes to show that agreement was not on account of any misrepresentation or under influence of intoxication but a conscious act. Furthermore, no police complaint or suit seeking quashing of agreement was ever filed by either

defendant No.1 or defendant No.2. All the above facts if taken cumulatively goes to prove due execution of agreement dated 10.02.1989 by defendant No.1 as a voluntary act for consideration. Payment of earnest money has been duly stated by all the plaintiff's witnesses i.e. PW1 to PW3 and nothing could be shown from their cross-examination as to conclude that no consideration was passed as was argued by learned counsel for appellant.

14. The argument raised on behalf of learned counsel for appellant/defendant No.1(a) that suit land was valued @Rs.4,000-5,000/- per marla, are mere oral assertions without there being any evidence in this regard. It is worth noticing that neither Tehsildar nor Patwari or any other revenue officer showing prevalent market rate in the area was examined. No corresponding sale deeds of area were adduced by defendants to show value of land. Therefore, merely on the oral assertions that too made by defendants, it cannot be concluded that agreement to sell was not for proper valuation of land and the argument raised in this regard by learned counsel for appellant/defendant No.1(a) is liable to be rejected. Therefore, no exception to the finding of learned Courts below that plaintiffs have succeeded in proving due execution of agreement to sell dated 10.02.1989 by defendant No.1 can be made out. The finding of learned Courts below on these issues is therefore, upheld.

15. Faced with above noted findings, learned counsel for appellant/defendant No.1(a) has placed reliance upon judgment of Hon'ble Supreme Court titled as **K. Narendra Vs. Riviera Apartments (P) Ltd.**, 1999 (3) RCR (Civil) 292 and prayed that in view of the fact that agreement pertains to 1989 and more than 36 years have passed since then, therefore, in the present case, the appropriate relief to settle equity between the parties

would be to grant alternative relief of recovery of earnest money along with penalty. No doubt, in an appropriate case, alternative relief of recovery of earnest money along with penalty can be granted instead of relief for specific performance. However, this discretion vested in the Court cannot be exercised in an arbitrary manner. It is dependent upon the facts and circumstances of each case.

16. In the present case, fault lies on the part of defendants and for the fault of appellants/defendants, plaintiff cannot be made to suffer. Equity in the present case is against appellant. It is defendants who had tried to wriggle out of the contractual obligation after entering into the same on 10.02.1989 by executing a sham sale deed which was without consideration in favour of defendant No.2 (wife of defendant No.1). The act and conduct of defendants disentitles them from any alternative relief and 36 years have passed not because of any fault on the part of plaintiff but due to act and conduct of defendants.

17. It is worth noticing that immediately after coming to know about sham sale deed by defendant No.1 in favour of defendant No.2, respondent No.1/plaintiff had filed the present suit in 1989 itself. The suit was decreed within three years in 1992 and thereafter, appeal was dismissed in 1995 which is being decided after 31 years. In the entire chain of circumstances plaintiff has no role to delay and wriggle out of contract. It was on account of conduct and fault of defendants that the execution of sale deed and payment of remaining amount was delayed and they cannot be put to premium. Therefore, the plea of alternative relief in the facts and circumstances of the present case, cannot be accepted as injustice cannot be done to the plaintiffs who have been fighting to get the sale deed registered

in their favour since 1989.

18. Appeal is therefore, without any merit, hence is dismissed.
19. Pending application(s), if any, is/are disposed of accordingly.

08.07.2026
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned :

Whether Reportable :

Yes/No

Yes/No