

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

RSA No.4409 of 2010 (O&M)

Date of decision: 09.09.2015

Gurmeet Singh and others

..... Appellants

versus

Dalbara Singh

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.A.K.Chopra, Senior Advocate with
Mr.Harinder Singh, Advocate for the appellants
Mr.Mohan Jain, Senior Advocate with
Mr.Fateh Saini, Advocate for the respondent

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ? Yes*
2. *To be referred to the Reporters or not ? Yes*
3. *Whether the judgment should be reported in the Digest? Yes*

Kuldip Singh, J.

Challenged in the present regular second appeal is the judgment and decree dated 1.4.2010, passed by the learned Additional District Judge, SAS Nagar, Mohali, affirming that of learned Civil Judge, Junior Division, SAS Nagar, Mohali dated 6.6.2007, vide which, the suit of the plaintiffs was decreed for possession by way of specific performance of an agreement dated 27.1.1989, executed by defendant Nos.1 to 4, vide which, they agreed to sell the land to the extent of their 1/4th share, which comes to 142 bighas 07 biswas, out of the land described in the head note of the plaint. Defendant Nos.1 to 4 were directed to get the sale deed executed in favour of the plaintiff after receiving/ depositing the

balance sale consideration regarding the suit property as per terms of the agreement to sell dated 27.1.1989 within a period of three months from the date of passing of the decree otherwise the plaintiff shall be at liberty to get the sale deed executed as per law. Declaration was also granted to the effect that the sale deed Nos.817 dated 6.5.1993, 1528 dated 3.6.1993, 1846 dated 14.6.1993 and 1425 dated 1.6.1993 are illegal, null and void and are set aside. Permanent injunction was also granted restraining the defendants from alienating the suit land in any manner and further from cutting, removing and selling the trees standing over the suit land along with the tubewell and *kotha* to anybody except the plaintiff.

Facts of the case are that defendant Nos.1 to 4 entered into an agreement to sell dated 27.1.1989 with the plaintiff to sell their 1/4th share in the suit land equal to 142 bighas 07 biswas out of the suit land. Defendant Nos.1 to 4 have respectively 5346, 3564, 1782 share out of 4267 shares. Rs.69,000/- were paid by the plaintiff at the time of execution of the agreement as earnest money and balance was to be paid at the time of sale. Sale deed was agreed to be executed on or before 5.1.1991. The price of the land was settled at Rs.34,500/- per 5 bighas i.e. one acre. The land was agreed to be sold with share in the shamlat trees, tubewells, *kothas* etc. existing in the suit land. Sale deed was agreed to be executed in favour of plaintiff or anybody else of his choice or nominee. 5.1.1991 was holiday, therefore, plaintiff requested the defendants to come present on 4.1.1991 in the office of the Sub-Registrar, Kharar to get the sale deed executed. On 4.1.1991, plaintiff remained present in the office

of Sub-Registrar, Kharar from 9.00 AM to 5.00 PM with requisite money to execute the sale deed but vendors / defendants did not turn up. In the evening defendants showed regret and promised to do the needful, but in vain. Plaintiff is always ready and willing to perform his part of the contract. Plaintiff had earlier filed a suit for permanent injunction against the defendants and others in the Court of Additional Senior Sub Judge, Kharar bearing No.82 of 9.2.1991, decided on 1.12.1993 titled as *Dalbara Singh v. Chinto etc.*, which was dismissed as withdrawn on 1.12.1993 with permission to file fresh one on the same cause of action. Thus, the present suit was filed and costs of Rs.100/- has been deposited in the Court. It is further alleged that during the pendency of the said suit No.82 dated 9.2.1991 decided on 1.12.1993, defendant Nos.1 to 4 executed certain sale deeds. Plaintiffs seek declaration that said sale deeds should be set aside. Details of sale deeds is as under:-

- 1. Defendant No.1 Chinto executed registered sale deed Vasika No.817 dated 6.6.1983 of land measuring 23 bighas 14 biswas for Rs.1,98,000/- in favour of defendant No.7 Gurmit Singh and defendant No.8 Harpal Singh.*
- 2. Defendant No.2 Charno executed registered sale deed Vasika No.1528 dated 3.6.1993 for land measuring 11 bighas 19 biswas for Rs.99,583/- in favour of defendant No.7 Gurmit Singh and defendant No.8 Harpal Singh, defendant No.5 Amrik Singh and defendant No.6 Gurmit Singh now dead and sued through his LRs.*

3. Defendant No.2 Charno executed registered sale deed vasika No.1846 dated 14.6.1993 of land measuring 23 bighas 16 biswas for Rs.1,98,334/- in favour of defendant No.9 Jagjit Singh, defendant No.10 Malkit Singh, defendant No.11 Bahadur Singh, defendant No.12 Nirmal Singh and defendant No.13 Inderjit Kaur.

4. Defendant Baljit Singh executed registered sale deed vasika No.1425 dated 1.6.1993 for land measuring 14 bighas 17 biswas for Rs.99,000/- in favour of defendant No.5 Amrik Singh, defendant No.6 Gurmit Singh now deceased through his LRs.

It is stated that the said sale deeds are false, fictitious, fabricated and hit by principles of lis pendens and not binding on the rights of the plaintiff and are liable to be set aside. In the alternative, plaintiff claimed Rs.10 lacs as damages with interest @ 12% per annum from the date of agreement till realization. The permanent injunction was also sought.

In the written statement filed jointly by defendant Nos.1 to 6 and 8, it was denied that defendant Nos.1 to 4 ever entered into agreement dated 27.1.1989 in favour of the plaintiffs to sell their land. It is stated that said agreement is forged and fictitious document, prepared in connivance with the scribe and the witnesses. It was further stated that in October 1990, defendant Nos.5 to 13 filed a suit for declaration titled as Mohan Singh and others v. Chinto and others against the other defendants in which the present plaintiff moved an application for impleading him as defendant on the basis of alleged

agreement. Plaintiff also filed a suit for permanent injunction restraining the defendant Nos.1 to 4 from alienating the suit land to defendants including defendant Nos.5 to 8 on the basis of same agreement. In the application filed in the said suit on 9.12.1990, no date of execution of agreement was given. It was merely mentioned as January 1989. Rate of the land was also mentioned as Rs.35,000/- per killa, whereas in the injunction suit, he had mentioned the rate of the land as Rs.34,500/- per killa. In the application moved in the previous suit, it was mentioned that Rs.70,000/- were received as earnest money but in the suit for permanent injunction, it was mentioned that Rs.69,000/- were paid as earnest money. In the application, last date of execution was mentioned as 31.1.1991 but in the suit for permanent injunction, it was mentioned as 5.1.1991, which shows that the agreement was forged and fabricated. The remaining averments were denied. It was stated that the sale deeds executed in favour of other defendants are legal.

In the replication, the plaintiff reiterated that he had come to Kharar. When he came to know about the suit having been filed, in a confusion and haste, he could not disclose all the facts to his counsel orally as at that time, agreement was not with him in Court and was lying in the house. Plaintiff reiterated other facts mentioned in the plaint.

It comes out that on the basis of the un-amended pleadings, following issues were framed on 5.10.1994:-

1. Whether the defendants No.1 to 4 entered into an

agreement dated 27.1.1989 to sell the suit land to the plaintiff and received a sum of Rs.69,000/- as alleged?

OPP

2. If issue No.1 is proved whether plaintiff was and is still ready and willing to perform his part of the contract?

OPP

3. Whether plaintiff in the alternative entitled to recover a sum of Rs.3 lacs by way of damages? OPP

4. Whether plaintiff is entitled to the injunction prayed for?

OPP

5. Whether agreement dated 27.1.1989 is forged and fictitious document and if so its effect? OPD

6. Whether suit for specific performance latches if so its effect? OPD

7. Whether suit has not been properly valued for the purpose of Court fee and jurisdiction? OPD

8. Whether defendants No.1 to 8 are bonafide transferee for valuable consideration without notice of the rights of the plaintiff? If so its effect? OPD

9. Relief.

It comes out that later on the plaint was amended and defendant Nos.9 to 13 were added as party. On their appearance, fresh amended written statement was filed and on 1.6.1998, following issues were framed:-

1. Whether the plaintiff is entitled for possession by specific performance of an agreement to sell dated

27.1.1989 to the extent of 1/4th share as prayed for?

OPP

2. Whether the plaintiff is ready and willing and still ready and willing to perform his part of the contract? OPP

3. Whether the suit of the plaintiff is not properly valued for the purposes of court fee and jurisdiction? OPD

4. Whether the plaintiff has not come to the Court with clean hands? OPD

5. Whether the suit of the plaintiff is liable to be dismissed with costs? OPD

6. Relief.

The lower Court recorded the findings on the six issues, framed after the amendment of the plaint and accordingly decreed the suit as stated above. The appeal filed by the defendants was dismissed by the the learned Additional District Judge.

I have heard learned counsel for the parties at length and have minutely examined lower Court record.

Learned counsel for the appellants at the very outset has argued that in this case earlier nine issues were framed but after the amendment, six issues were framed. The lower Court recorded the findings on the six issues framed subsequently. It was not specifically stated in the order that fresh issues have been framed. It has been further argued that some of the material issues were left out and the case deserves to be remanded. It is pointed out that no specific issue was framed whether defendant Nos.5 to 13 are bonafide purchasers for valuable consideration. Similarly, in the later

issues framed on 1.6.1998, no specific issue was framed whether plaintiff is entitled to alternative relief. Further no issue was framed whether the plaintiff is entitled to injunction and the declaration prayed for and as to whether the agreement dated 27.1.1989 is forged and fictitious.

After going through the issues framed on 5.10.1994 and 1.6.1998, I am of the view that whether the plaintiff is entitled to declaration, injunction or alternative relief are to be decided while granting the relief. Therefore, even if the specific issues are not framed in this regard, the matter could still be decided. Similarly, plea of forgery of agreement by the defendants is in reply to the agreement put forth by the plaintiff. Therefore, the issue regarding the forgery is covered in issue No.1. However, I find that no specific issue was framed on 1.6.1998 as to whether the defendant Nos.5 to 13 are bonafide purchasers for valuable consideration. Now the further question would arise as to whether in the regular second appeal, the matter can be remanded on the said basis? I am of the view that the perusal of the evidence shows that both the parties were alive to such controversy. They have led evidence on the same. The matter has been considered and decided by the lower Court as well as by the appellate Court holding that the said defendants are not bonafide purchasers. Therefore, once the parties were alive to the controversy and they have led evidence on the same and then matter has been considered and decided by the lower Court, therefore, even if no specific issues were framed, in the regular second appeal, the case cannot be remanded only on the

said ground. In this regard, I am supported by the authorities in Swaraj Engines Limited v. Punjab State Industrial Development Corporation 2007(4) RCR (Civil) 574 and in Jagiri Ram v. Ralia and others, 2009(3) PLR 451. Further the subsequent issues were framed after the appearance of defendant Nos.9 to 13 and therefore, the subsequently framed issues were correctly decided. By implication, the issues framed later substitute the issues framed earlier. It has not occasioned the failure of justice. Therefore, on this ground, the case cannot be remanded back.

Learned counsel for the appellants has further argued that the suit is barred under Order II Rule 2 CPC. It has been pointed out that the suit for permanent injunction was filed by the plaintiff on 9.2.1991 against all the defendants on the basis of the same agreement. It was stated that the vendors want to sell the land to defendant Nos.5 to 13. The said suit was dismissed as withdrawn on 1.12.1993 with permission to file a fresh one on the same cause of action. The present suit for specific performance was filed on 4.1.1994 and the cost of Rs.100/- was deposited on 7.1.1994. The limitation for filing the suit was expiring on 4.1.1994. Therefore, the suit at the first instance is time barred and is deemed to have been instituted on 7.1.1994. I am of the view that the present suit is not barred under Order II Rule 2 CPC. The previous suit for permanent injunction was based on the apprehension of the plaintiff that defendant Nos.1 to 4 are going to alienate the suit land to the other defendants. At that time, no sale deed was executed. The limitation of three years for filing the suit for specific performance was still

there. Therefore, in place of rushing to file the suit for specific performance, plaintiff instituted the suit for permanent injunction, which though based on the same agreement, but was based on a different ground. Therefore, even if the said suit had been withdrawn without any permission, the subsequent suit is not barred.

The matter was considered by the Hon'ble Supreme Court in Inbasegaran and another v. S. Natarajan (dead) through LRs, 2014(4) RCR (Civil) 872, wherein the plaintiff had filed a suit for permanent injunction, restraining the defendant from taking forcible possession. However, during pendency of the suit, defendants exhibited his intention of not performing his part of sale agreement. Therefore, suit for specific performance was filed. It was held by the Apex Court that second suit is not barred under Order II Rule 2 CPC. In the present case also, during pendency of the suit for permanent injunction, four sale deeds were executed by defendants Charno, Chinto and Baljit Singh within a span of one and a half months in the month of May and June 1993. Therefore, the plaintiff was justified in withdrawing the said suit and subsequently, filing the suit for specific performance and also challenging the sale deeds executed during pendency of the previous suit. Therefore, I am of the view that even if there would have been no permission to file the suit, the second suit is maintainable. Secondly, the mere fact that the costs were actually deposited in the Treasury three days later is no ground to hold that the suit is time barred. In this regard, I am supported by the authority in Konkan Trading Company v. Suresh Govind Kamat Tarkar and others, (1986)2 SCC 424, in which, the Hon'ble Apex

Court has observed as under:-

In the instant case, however, a reading of the order passed on September 4, 1984 does not even suggest that the costs of Rs. 100 had to be deposited as a condition precedent before the institution of the next suit. It only means that the application for withdrawal of the suit had been granted and the plaintiff was liable to pay a sum of Rs. 100 by way of costs. The word 'but' in the clause 'this application is granted but on payment of costs of Rs. 100.....' in the order permitting the withdrawal of the suit cannot in the circumstances be construed as imposing a condition precedent for the filing of the fresh suit. There is no warrant for taking a hypertechnical rigid view which results in denying to a person access to justice and deprives him of his legal rights more so when it is possible to take a liberal view which promotes the ends of justice. The trial court in obeisance to this principle repelled the unjust plea urged by the defendant. But alas, the High Court, in exercise of revisional jurisdiction tripped into reversing the justice oriented conclusion reached by the trial court.

It being so, the present suit is not barred either by limitation or under Order II Rule 2 CPC.

Learned counsel for the appellants has further argued that the agreement in question is not proved and is forged and fabricated and the findings recorded by the two Courts below are

perverse and liable to be intervened in the regular second appeal.

The perusal of the agreement shows that it is written on the plain paper. Thumb impression of Chinto and Charno and signatures of Kamaljit Singh and Baljit Singh vendors appear across the revenue stamps. For each signatures/ thumb impression, two revenue stamps of 20 paisa each have been used. It is scribed by Labh Singh and attested by Karam Singh, resident of village Patto Tehsil Kharar, District Ropar and Dara Singh son of Khem Singh, resident of village Shekh Nawaja.

Learned counsel for the appellants has also pointed out that Devender Parshad, expert produced by the plaintiff as well as Jassy Anand, document expert produced by the defendant has opined that the thumb impression of Chinto and Charno are not fit for comparison. However, the expert of the plaintiff has opined that the disputed signatures of Kamaljit Singh and Baljit Singh defendants tallied with the standard signatures, whereas Jassy Anand, expert produced by the defendant has opined otherwise. Both the Courts below have relied upon the expert opinion given by Devender Parshad.

I am of the view that the science of handwriting is not exact science. Therefore, the fact as to whether the Kamaljit Singh and Baljit Singh had signed the agreement and also the fact whether the Charno and Chinto had thumb marked the same, in face of the fact that their thumb impressions are not comparable, is to be gathered from attending circumstances. It comes out that Chinto and Charno are mother and daughter. Kamaljit Singh defendant happens

to be a doctor by profession and Baljit Singh defendant happens to be an Advocate by profession. It has also come in evidence that at that time Baljit Singh was practicing as an Advocate. According to Baljit Singh, Chinto is his grandmother and Charno is his mother. In this way, all the four vendors are closely related to each other. It is not convincing that if the agreement of such a huge land is forged, an Advocate and Doctor will not rush to the police to lodge a complaint of forgery. Then there are further circumstances to show that the defendants have been making attempts to avoid the agreement which also strengthen the existence and genuineness of the agreement. Amrik Singh, Gurmit Singh, Harpal Singh, Jagjit Singh, Malkit Singh, Bahadur Singh, Inderjit Kaur, with some others had filed a suit for declaration against defendants Nos.1 to 4 vendors on 3.10.1990 for seeking declaration that they have become owners of the share of the vendees. In the said case, written statement was filed and it is contended that defendants/ vendors had admitted the claim of the said plaintiffs. The said suit was withdrawn on 11.6.1991 when Dalbara Singh, the present plaintiff filed an application to become the party. Further, the present plaintiff himself filed a suit for permanent injunction on 9.2.1991 against the vendors and other proposed vendees for restraining the vendors from alienating the suit land to them. However, it comes out that during pendency of the suit, within a span of one and half months, four sale deeds were executed between 6.5.1993 and 14.6.1993 by Chinto, Charno and Baljit Singh, Advocate. It has come in their evidence that sale deeds were executed after the stay in favour of the plaintiff was vacated. When

the sale deeds were executed and the suit for injunction was apparently frustrated, the plaintiff withdrew the suit on 1.12.1993 and thereafter, filed the present suit which is within the limitation of three years. The fact that vendors have been trying to alienate the property firstly through an apparent collusive suit and then they actually did it through the sale deeds executed during the pendency of the suit filed by plaintiff/ vendee goes to show that they were desperate to avoid the agreement in favour of plaintiff. It further lends strength to the fact that the agreement was executed by them. It is further noted that the vendees are none else than the close relatives of defendant Nos.1 to 4. This fact is not denied by them in cross examination. Kamaljit Singh Pannu, defendant (DW7) has admitted that defendant Nos.5 to 13 are related to his mother from her parent side and they are her collaterals. Ujagar Singh and Chaja Singh are also related to them. Baljit Singh (DW5) also made similar statement. Ujagar Singh defendant has admitted that Chinto is his Chachi (aunt) and Charno is his cousin. Amrik Singh, Gurmit Singh Harpal Singh are real nephews. Malkit Singh, Jagjit Singh and Bahadur Singh are sons of Magh Singh and are also his newphews. Nirmal Singh son of Rala Singh is his brother. Inderjit Kaur defendant No.13 is his sister-in-law. Ujagar Singh himself is a sarwara lambardar. Similarly, Pritam Singh (DW1) also admitted that Amar Singh and Labh Singh are real brothers. Charno is sister of Labh Singh i.e. daughter of uncle of Labh Singh and Amar Singh. Chinto is aunt of Amar Singh and Labh Singh.

It comes out that Amar Singh, Labh Singh and Maghar

Singh are brothers and defendant Nos.5 to 11 are their children. In this way, the fact remains that defendant Nos.1 to 4 alienated the major portion of the property in favour of their close relations. The rate of land mentioned in the sale deed is about Rs.40,000/- per acre in May/ June 1993, which is little more than Rs.34,500/- per acre at which it was proposed to be sold to the plaintiff in January 1991. This would show that the said vendees are not bonafide purchasers and that the sale was in fact a sham transaction to avoid the agreement in question.

Admittedly, the agreement in question is on plain paper but the attending circumstances goes to show that it is genuine agreement. Both the attesting witnesses have appeared to prove the execution of the agreement. They have explained as to how they were present. The scribe and the witnesses have also stated that the agreement was dictated by Baljit Singh, who happens to be an Advocate by profession. Therefore, the agreement was duly proved and cannot be called forged and fabricated. The findings of facts recorded by both the Courts below are not perverse and are not to be interfered into the regular second appeal.

Learned counsel for the appellants has further argued that plaintiff was not ready and willing to perform his part of the agreement. I am of the view that the fact that the plaintiff had appeared before the Sub Registrar on 4.1.1991 and got his presence marked vide affidavit Ex.P1 and also got marked his presence on 7.1.1991 through another affidavit Ex.P2 goes to show that he was ready and willing to perform his part of the contract. Secondly, when

some of the defendants filed a suit for declaration against the vendors, he immediately filed an application to become party. Thereafter, he filed a suit for permanent injunction and kept contesting it until the vendors were successful in alienating the major portion of the suit land in favour of their close relations during the pendency of the suit. Thereafter, the present suit was filed. All these facts go to show that the plaintiff was ready and willing from the beginning till the end to perform his part of the contract. So far as the availability of money/ sale consideration is concerned, plaintiff was cross-examined in detail about the source of money and he has explained as to how much money was borrowed by him and how much money was available with him. Therefore, ready and willingness of the plaintiff was rightly held by both the Courts below.

Learned counsel for the appellants has laid much emphasis on some error in the date of performance of agreement, sale consideration and the balance sale consideration as mentioned in the application by the plaintiff to become intervener in the earlier suit filed by Mohan Singh etc. on 3.10.1990. I am of the view that if in place of Rs.34,500/-, Rs.35,000/- is mentioned as the rate of the land and in place of Rs.69,000/-, Rs.70,000/- is mentioned as earnest money and in place of exact date, month of agreement is mentioned and there is some error in date fixed for the performance of the agreement, it does not affect the merits of the case. Since the plaintiff had claimed that he hurriedly filed the application, it appears that plaintiff is speaking the truth as in the said case, the defendants had admitted the claim and had plaintiff not intervened, the suit might

have been decreed on the basis of consent of the defendants/vendors of the present agreement. Therefore, the said fact cannot be stretched to hold that the agreement is forged and fabricated.

Learned counsel for the appellants has further argued that the agreement is dated 27.1.1989. The last date of execution of sale deed was 5.1.1991. The present suit was filed on 4.1.1994 i.e. on the last day of limitation. Therefore, the specific performance of the agreement cannot be decreed, rather the alternative relief should have been granted even if the agreement is held to be valid.

The findings recorded above clearly show that it is not that the plaintiff was sleeping over the matter. After sale deed was not executed on the date fixed, he had been contesting the attempts of the vendors to transfer the suit land either through civil decree or through sale deed. He kept contesting the matter before one or the other Court. It was only that when the sale deeds were executed between May and June 1993 in favour of close relations that he withdrew the suit for permanent injunction and then filed a comprehensive suit for specific performance though on the last date of limitation. Therefore, authority of the Hon'ble Apex Court in Nanjappan v. Ramasamy and another, (Civil Appeal No.2373 of 2015), decided on 24.2.2015 is not attracted in the present case and the alternative relief cannot be granted. Moreover, in the present case, during pendency of the suit for permanent injunction, defendants Chinto, Charno and Baljit Singh alienated major portion of the suit land. Therefore, it is not a case of undue hardship. Rather the defendants wanted to transfer the land. Moreover, the

defendants vendors had not pleaded any undue hardship before both the Courts below. Moreover, keeping in view the fact that major portion of the suit land was alienated during pendency of the litigation and the said sale deeds have also been challenged, no alternative relief can be allowed as prayed for by learned counsel for the appellants.

The following other authorities have been referred by learned counsel for the appellants:-

	Title	Citation
1.	<i>T.G. Ashok Kumar v. Govindammal and another</i>	2012(3) RCR(Civil) SC 282
2.	<i>A.Nawab John & others v. V.N.Subramaniyam</i>	2012(3) RCR (Civil) SC 749
3.	<i>Mittar Singh and another v. Bhajan Singh and others</i>	2012(3) RCR (Civil) SC 630
4.	<i>Vijay Kumar Aggarwal @ Gupta v. Km.Anupama</i>	2013(5) RCR (Civil) 255
5.	<i>G.Jayashree & others v. Bhagwamdas S. Patel & others</i>	2009(3) SCC 141
6.	<i>Saradammi Kandappan v. S.Rajalakshmi and others</i>	2011(4) RCR (Civil) 130
7.	<i>K.S.Vidyanandam V. Vairavan</i>	1997(2) RCR (Civil) 312
8.	<i>Ashok Aggarwal v. Bhagwan Das Arora</i>	2002(1) RCR (Civil) 29
9.	<i>Baldev Singh v. Sudam Singh and others</i>	RSA No.280 of 2013 date of decision 7.1.2015
10.	<i>Malkhan Singh v. Deep Chand</i>	2005(2) RCR (Civil) 394
11.	<i>M/s Virgo Indust. V. M/s Venturetech</i>	2013(1) SCC 625
12.	<i>Darshan Singh Sahota v. State of Punjab</i>	2002(2) SCT 540

I am of the view that these authorities are of no help to the appellants in the facts of the present case.

Learned counsel for the respondents has referred to the law laid down by the Hon'ble Apex Court in Jogendra Ram v. Phullan Mian (dead) by Lrs and others, (2011) 15 SCC 247 and Harjeet

Singh and another v. Amrik Singh and another, (2005) 12 SCC 270,

wherein it was held that where from the facts, it is proved that the plaintiff was ready and willing to perform his part of the contract and finding of facts have been recorded, no substantial question of law arises and that in the regular second appeal, the High Court cannot interfere in the findings of facts recorded by the lower Court. I am in full agreement with the said authorities. In the present case, it comes out that concurrent findings of facts have been recorded by the two Courts below. Otherwise also, this Court has examined the evidence and findings recorded thereon and has come to the conclusion that these are the findings of facts and are not perverse. No substantial question of law arises in the present case. Therefore, such findings which are otherwise found to be not perverse, cannot be interfered in the regular second appeal.

Consequently, the present appeal fails and is dismissed with costs.

09.09.2015
gk

(Kuldip Singh)
Judge