

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

**RSA-1300-2015 (O&M)  
Date of Decision-16.10.2015**

**MUKHTIAR SINGH DECEASED TH LEGAL HEIR KULWANT  
KAUR**

Appellant

Versus

**GULZAR SINGH AND ORS**

Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Anil Chawla, Advocate  
for the appellant.

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**RAJ MOHAN SINGH, J. (ORAL)**

[1]. Plaintiff is in second appeal in a suit for specific performance and joint possession on the basis of agreement to sell dated 25.05.2005 in respect of land measuring 21 kanals 8 marlas for total sale consideration of Rs.3.34,375/- at the rate of Rs.1,25,000/- per acre. Out of sale consideration an amount of Rs.50,000/- was paid towards earnest amount. Target date was fixed for 02.5.2009 for execution of the sale deed.

[2]. The suit has been contested by the defendants by taking plea of denial as well as the agreement to sell being false and fabricated.

[3]. On the basis of pleadings trial Court framed the following issues:-

*“1. Whether the defendant entered into an agreement to sell dated 25.05.2005 with the plaintiff? OPP*

*2. Whether the plaintiff is entitled to the relief of joint possession by way of specific*

*performance of agreement to sell dated 25.5.2005?OPP*

*3. Whether the plaintiff is entitled to the alternative relief of recovery of Rs.1 lac as earnest money and damages? OPP*

*4. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*

*5. Whether the plaintiff has got no locus-standi and cause of action to file the present suit? OPD*

*6. Whether the suit of the plaintiff is not maintainable? OPD*

*7. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*

*8. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD*

*9. Whether the plaintiff has not come to the court with clean hands and has suppressed the material facts from this court? OPD*

*10. Relief.”*

[4]. After necessary pleadings, both the parties led their evidence.

[5] Plaintiff got examined himself as PW1, Dilbag Singh as PW2 who is son of attesting witness deceased Gulzar Singh Lambardar, PW 3 as Kuldeep Rai, stamp vendor. On the other hand, defendants have also examined Harjinder Singh as DW 1, Gulzar Singh as DW 2 and Vikram Raj Singh Chauhan Handwriting and Finger Print Expert as DW 3. Harjinder Singh

acted as attorney of defendants.

[6]. After having considered the evidence on record, both the Courts have dismissed the suit.

[7]. I have heard arguments of learned counsel for the appellant.

[8]. So far as execution of agreement to sell is concerned, out of two attesting witnesses son of Gulzar Singh deceased Lambardar namely Dilbag Singh has been examined as PW2. The Statement of PW2 Dilbag Singh did not disclose about the attestation of agreement to sell by his father nor he identified the signature of his deceased father Gulzar Singh on agreement to sell. His testimony remained confined only to the effect that his father died without advancing any necessary particulars in the context of attestation of agreement to sell by the attesting witness. The second attesting witness has not been examined by the plaintiff on the ground that he is not mentally fit. Scribe has not been examined. In this way execution of agreement to sell remained unproved. Learned counsel for the appellant relied upon the statement of PW 3 Kuldeep Rai Stamp Vendor who has stated that he got the signature of Gulzar Singh in his register (Stamp Vendor Register). The witness while appearing in cross examination has admitted that Ex.P3 did not bear any stamp/ seal of himself, rather it did not bear his full signatures. Word *Ikrarnama* has wide connotation and cannot be applied in general parlance. In the absence of examination of scribe, second attesting witness and statement of Dilbag

Singh to be lacking on material particulars, it cannot be observed that the agreement to sell is proved on record.

[9]. The payment of earnest amount on the spot has not been proved by any witness nor any receipt has been produced in the present case. The source of money has not been proved by way of any evidence. In the context of readiness and willingness of the plaintiff, no witness has come forward to prove that the plaintiff attended the office of Sub Registrar on the target date. In this way the affidavit Ex.P2 also lacks in the context of readiness and willingness of the plaintiff to fulfill his part of obligation for want of necessary evidence from the office of Sub Registrar. After fixing the target date for execution of sale deed and in the event of no application on the part of the defendants, no notice is proved to have been issued by the plaintiff calling upon the defendants to execute the sale deed and perform their part of obligation. The expert evidence in the form of report of Vikram Raj Singh Chauhan DW3 proved the thumb impressions of Mukhtiar Singh, Gulzar Singh and Karaz Singh which already existed on the blank paper and thereafter writing has been done. On this particular feature of this case, there is no rebuttal by the plaintiff.

[10]. Both the Courts below have concurrently observed that the agreement to sell has not been proved on record nor any cogent evidence has been led by the plaintiff to show his readiness and willingness.

[11]. In considered opinion of this Court, no law point worth consideration is involved. The question No.1 does not arise inasmuch as that the plaintiff himself has failed to prove execution of agreement to sell. The findings recorded by the Courts below are not the result of any perversity. Question No.2 is also to the same effect that since there is no material produced on record by the plaintiff himself, therefore, the findings cannot be treated to be the result of misreading of evidence. Question No.3 does not arise, as this question is totally dependent upon the evidence of the plaintiff himself. Initially onus to prove agreement to sell was on the plaintiff himself. Since the initial onus has not been discharged by him, therefore, subsequent onus to disprove the agreement to sell on the defendants does not arise.

[12]. Question No.4 has to be answered in the context of findings recorded by the Courts below to the effect that PW2 Dilbag Singh son of Gulzar Singh was the only witness of agreement to sell examined in the context of agreement to sell. This witness has not stated anything on broader aspect of the case particularly the attestation of agreement to sell by his father and identification of signature of his deceased father on agreement to sell. On both counts statement of this witness is lacking. The second attesting witness has not been examined by the plaintiff himself on the ground that he was not mentally fit. In

the absence of statement of the scribe the agreement to sell remained totally unproved. Therefore, question No.4 also does not arise.

[13]. In view of findings recorded by the Courts below, this Court feels that this appeal has no worth consideration and the same is accordingly dismissed.

**October 16, 2015**  
prince

**(RAJ MOHAN SINGH)**  
**JUDGE**