

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

**RSA No.5624 of 2015 (O&M)**

**Date of decision : 01.02.2016**

**Ranjit Singh and another**

.....Appellants

*Versus*

**Harbans Singh**

...Respondent

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

1. Whether Reporters of the local papers 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

Present: Mr. Vipin Mahajan, Advocate for appellants.

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**DARSHAN SINGH, J.**

**CM-13655-C-2015**

This is an application filed by the applicant-appellant for condonation of delay of 17 days in re-filing the present appeal.

Heard on the application.

In view of the reasons mentioned in the application, the application for condonation of delay is hereby allowed.

RSA No.5624 of 2015

This regular second appeal has been preferred against the judgment and decree dated 18.04.2015 passed by learned Additional District Judge, Gurdaspur vide which the appeal filed by the appellant-defendants against the judgment and decree dated 12.04.2013 passed by learned Civil Judge (Junior Division), Batala has been dismissed.

2. Plaintiff-respondent Harbans Singh filed the suit for specific performance directing the defendants to specifically perform the contract effected by an oral agreement dated 30.03.2007 entered into by them for transferring by way of sale of the land measuring 02 Kanals 14 Marlas detailed and described in the head-note of the plaint situated at village Nikko Sarai, Tehsil Dera Baba Nanak, Distt. Gurdaspur by getting the sale deed dated 30.03.2007 registered. In alternative the recovery of Rs.1,60,000/- by way of refund of the amount paid, has been prayed for.

3. As per the averments in the plaint the defendants agreed and contracted with the plaintiff to sell the land in dispute for a sum of Rs.1,60,000/- after obtaining the entire sale consideration of Rs.1,60,000/-. The stamp papers were purchased and the sale deed in favour of the plaintiff was executed on 30.03.2007. Plaintiff was also delivered the actual physical possession of the suit land. However, at the time of presentation of the aforesaid sale deed executed by the defendants they slipped away from the Tehsil compound Dera Baba Nanak and did not appear before the Sub Registrar for its registration. Hence this suit.

4. Appellants-defendants contested the suit on the grounds *inter alia* that they never agreed to execute the sale deed in favour of the

plaintiff. The sale deed relied upon by him is false, forged and fabricated document. They never received even a single penny from the plaintiff. With these pleas, they pleaded for dismissal of the suit.

5. From the pleadings of the parties, following issues were framed by the learned trial court :-

1. Whether the defendants executed agreement dated 30.3.2007 in favour of the plaintiff? OPP
2. Whether plaintiff is ready and willing to perform the contract? OPP
3. Whether plaintiff is entitled to relief of specific performance as prayed for? OPP
4. Whether in alternate plaintiff is entitled to relief of recovery of Rs.1,60,000/-? OPP
5. Whether agreement relied upon by the plaintiff is forged and fabricated document? OPD
6. Relief.

6. On appreciating the evidence and material on record, the learned trial court decreed the suit of the plaintiff with costs directing the defendants to execute the sale deed of the property in dispute in favour of the plaintiff within two months from the date of decree.

7. Aggrieved with the aforesaid judgment and decree dated 12.04.2013, the appellants defendants preferred the appeal. The same was dismissed by the learned Additional District Judge, Gurdaspur. Hence, this regular second appeal.

8. I have heard Mr. Vipin Mahajan, Advocate, learned counsel for the appellants-defendants and carefully gone through the paper-book.

9. Learned counsel for the appellants contended that learned courts below have not properly appreciated the evidence. PW2 Santokh Singh the marginal witness of the sale deed dated 30.03.2007 has deposed in the cross-examination that no money was paid to the appellants-defendants in his presence. Similarly, PW4 Nirmal Kumar the scribe of the sale deed has also stated that no money was given or taken in his presence. Thus, he contended that there is no evidence to show that the sale consideration was ever paid by the plaintiff to the defendants.

10. He further contended that the appellants have categorically denied the execution of the sale deed. The plaintiff has not led any evidence to show that the sale deed dated 30.03.2007 was executed by the defendants. The learned courts below have wrongly based their judgments on the basis of some suggestions put by learned counsel for the appellants in the cross examination of the witnesses of the plaintiff. Thus, he pleaded that the suit has been wrongly decreed by the learned courts below.

11. I have duly considered the aforesaid contentions.

12. This regular second appeal has been preferred against the concurrent findings of fact by both the learned courts below. It is settled principle of law that scope for interference with concurrent findings of fact while exercising the jurisdiction under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') is very limited. Such interference is only warranted where the trial court and/or the first appellate court has misdirected itself in appreciating the question of law.

There is no scope of interference in the second appeal where there is no perversity in the approach of the courts below. The High Court while exercising the powers under Section 100 CPC cannot undertake the task of re-appreciating of evidence and record the findings different than those recorded by the courts below merely because another view is possible view. Keeping in view the aforesaid principle of law, we have to examine the case in hand.

13. The perusal of the impugned judgment and decrees shows that the plaintiff has examined both the marginal witnesses of the sale deed i.e. Harjinder Singh as PW1 and Santokh Singh as PW2. He also examined Nirmal Kumar Deed Writer, the scribe of the sale deed as PW4. All these witnesses have categorically deposed about the execution of the sale deed dated 30.03.2007 by the defendants in favour of the plaintiff for the sale of the land in dispute. In rebuttal to their statements, there is the solitary statement of appellant-defendant Ranjit Singh. When he stepped into witness box as DW1, the appellant-defendant has simply denied the execution of the sale deed but this denial of the execution of the sale deed by the appellant-defendant is of no consequences as a specific suggestion was put by learned counsel for the appellants to the respondent-plaintiff in his cross-examination that in fact the Sub Registrar was not present and working on the day of execution of the sale deed and that is why the sale deed could not be presented before him for registration. Meaning thereby, the execution of the sale deed by the appellants has been impliedly admitted. The appellant-defendant Ranjit Singh has also

admitted in the cross-examination that the marginal witnesses were known to him. They belong to his village and had no enmity with him. So, there was no reason with them to falsely depose about the execution of the sale deed. Thus, from the aforesaid evidence adduced by the plaintiff-respondent, the execution of the sale deed dated 30.03.2007 by the appellants-defendants in favour of the plaintiff for the sale of the suit land is established.

14. Learned counsel for the appellants has vehemently contended that the passing over of the sale consideration is not proved. He has drawn my attention to the cross-examination of PW7 Santokh, the attesting witness of the sale deed and PW4 Nirmal Kumar but PW1 Harjinder Singh, another marginal witness has categorically stated about the passing over of the consideration by the plaintiff to appellants-defendants in his presence at the time of execution of the sale deed. The statement of PW1 Harjinder Singh has fully corroborated the case of the plaintiff. Moreover, it is not believable that the defendants would have executed the sale deed without receiving the sale consideration. Thus, the passing over of the sale consideration is also established.

15. Consequently, I do not find that the learned courts below have misdirected or misinterpreted the evidence brought on record or that the concurrent findings arrived at by the learned courts below suffers from any perversity. Therefore, I have no reason to differ with the findings arrived at by the learned courts below.

16. Thus, no question of law, much less the substantial

question of law, arises in the present appeal and the same is hereby dismissed in *limine*.

17.                      However, no order as to costs.

**01.02.2016**  
*sunil yadav*

**( DARSHAN SINGH )**  
**JUDGE**