

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

**RSA No.4725 of 2019 (O&M)
Date of Decision: 04.07.2022**

Satwant Kaur and others

.....Appellants.

Versus

Surinder Singh and others

.....Respondents.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashna Aggarwal, Advocate
for the appellants.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Ajaypal Singh Sandhu, Advocate and
Ms. Neha A. Mahajan, Advocate
for the respondents-caveators.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree passed by learned Additional Civil Judge (Senior Division), Karnal (for short, 'the trial Court') on 13.05.2015 whereby the civil suit filed by respondents No.1 & 2(caveators)-plaintiffs (here-in-after to be referred as 'the plaintiffs') against the defendant named Ravinder Pal Singh [since deceased and now, represented through his LRs-appellants No.1 to 3 and proforma respondent No.3 (since deceased and represented through her LRs)] (here-in-after to be referred as 'the LRs of the defendant') for seeking a decree for possession of the suit land by way of specific performance of the agreement dated 18.11.2008 or in the alternative, for recovery of Rs.80 lac, was decreed as

well as by the judgment and decree dated 16.03.2019 handed down by learned Additional District Judge, Karnal (for short, 'the lower appellate Court') dismissing the appeal preferred by them (the LR's of the defendant) to assail the above-said judgment and decree as passed by the trial Court, LR's No.(ii) to (iv) of the defendant in the said suit (arrayed as appellants No.1 to 3 in the first appeal) have filed the instant appeal.

2. The plaintiffs filed the afore-said civil suit while averring that on 12.09.2008, the defendant had entered into an agreement with them to sell the land measuring 08 Kanals in their favour and in pursuance thereof, he had received the entire sale consideration, amounting to Rs.20 lac, from them. Then, on 18.11.2008, he (defendant) executed another agreement to sell the land measuring 81 Kanals 03 Marlas (for short, 'the suit land'), being his $\frac{1}{3}^{\text{rd}}$ share in the total land measuring 243 Kanals 10 Marlas, to them @ Rs.15 lac per acre and received another amount of Rs.20 lac from them as earnest money. Initially, the date of execution and registration of the sale-deed had been stipulated as 20.04.2009 but at the instance of the defendant, the same was extended to 20.06.2009 and again, to 26.06.2009 and on the said date, they (plaintiffs) had gone to the office of the Sub-Registrar along-with the entire sale consideration, consisting of the Pay-Orders worth Rs.95 lac and the balance cash amount but however, the defendant did not turn up there to execute the sale-deed in their favour in accordance with the above-said subsequent agreement and then, they got their presence marked by submitting an affidavit to the afore-mentioned Authority, for this purpose. Despite their repeated requests as well as the

issuance of legal notice by them on 13.07.2009, the defendant failed to execute the sale deed in their favour whereas they had always been ready and willing to perform their part of the contract/said subsequent agreement.

3. The defendant filed his written statement, contesting the claim of the plaintiffs therein, *inter-alia*, on the grounds of maintainability, cause of action, *locus-standi*, concealment of material facts and jurisdiction etc. On merits, though he admitted the factum of his having executed the agreement to sell dated 12.09.2008 in favour of the plaintiffs as well as of the receipt of the sum of Rs.20 lac from them as the sale consideration but he denied the factum of the execution of the subsequent agreement dated 18.11.2008 by him and rather, asserted that the said agreement was forged and fabricated document and also simultaneously alleged that the plaintiffs might have procured his signatures on the same at the time of the execution of the earlier agreement dated 12.09.2008 by misrepresenting the facts to him. However, during the pendency of the suit, the defendant expired and his legal representatives were brought on the record. His mother, being one of his LRs, filed another written statement while taking an additional plea therein to the effect that the suit land was ancestral in the hands of her son (defendant) and there was no legal necessity to alienate the same and hence, he was not competent to execute any agreement to sell this land.

4. In their separate replications, the plaintiffs reiterated their earlier stand as taken in the plaint besides controverting the assertions as set-forth by the defendant and his said LR (mother) in their respective written statements.

5. The parties were put to the trial by framing the issues on 17.09.2014 and they led their evidence, oral as well as documentary, in support of their respective contentions. After appreciating their evidence and hearing their learned counsel, the trial Court decreed the suit by way of directing the LRs of the defendant to execute the sale-deed in favour of the plaintiffs, as per the terms and conditions of the said agreement to sell, within a period of three months, while further asking the plaintiffs to pay the balance sale consideration to them. The LRs of the defendant preferred the appeal to lay challenge to the above-said judgment and decree but the same has also ended in its dismissal vide the impugned judgment and decree dated 16.03.2019, as passed by the lower appellate Court.

6. I have heard learned Senior counsel for both the parties in the present appeal and have also perused the record thoroughly.

7. Learned Senior counsel for the LRs of the defendant has contended that the suit land was ancestral property in the hands of the defendant as the same had been allotted to his fore-fathers consequent upon their migration to India at the time of the partition of the country and the defendant had no legal necessity to alienate the same and was, therefore, not competent to execute the agreement to sell, Exhibit P-2. Secondly, he has contended that the said agreement is a forged and fabricated document and in case, it was found to be bearing the signatures of the defendant, then the same had been obtained by the plaintiffs by mis-representing the facts before him. Thirdly, he has contended that the earlier agreement to sell, Exhibit P-1, was executed by the defendant to sell 08 Kanals, i.e 01 acre

land, out of the suit land for a sum of Rs.20 lac but in the subsequent agreement Exhibit P-2, the rate of the sale consideration of the suit land has been reduced to Rs.15 lac per acre and it was highly improbable that any prudent person would subsequently agree to sell his land at a reduced price and moreover, at the relevant time, the price of the suit land was much higher than the afore-said price as mentioned in Exhibit P-2.

8. Fourthly, Learned Senior counsel for the LR's of the defendant has pointed out that it has specifically been recited in agreement Exhibit P-2 that there was an encumbrance on the suit land by way of the bank loan of Rs.50 lac and that the said loan amount, along-with the interest thereon, would be paid by the vendees, i.e the plaintiffs and the balance amount of sale consideration would be received by the defendant-vendor at the time of the registration of the sale-deed and he has contended that in view of these contents of the said agreement, it is explicit that the execution and registration of the sale-deed was contingent upon the repayment of the said bank loan by the plaintiffs but they did not repay the same which further goes to show that they themselves had never been ready and willing to perform their part of the said agreement and therefore, they could not seek the specific performance of this agreement by the defendant/his LR's. To buttress his contentions, he has placed reliance upon the observations as made in **Rajendra Kumar Jha Versus Manohar Lal Soni and Others 2018 AIR (Chhattisgarh) 144 (SB); Nandkishore Lalbhai Mehta Versus New Era Fabrics Pvt. Ltd. & Others 2016(1) RCR (Civil) 98 (SC); Rishi Aggarwal Versus M/s Vipul Infrastructure Developer Ltd and Others**

2016(10) AD (Delhi) 577 (DB); Sri Harish Versus Smt. Lakshamma and Others 2018(6) Karnataka Law Journal 706 (SB); Jogendra Singh Versus Smt. Mukul Joshi 2020 (AIR) (Uttaranchal) 200 (SB); Surinder Kaur (dead) through Legal Representative Jasinderjit Singh (dead) through Legal Representatives Versus Bahadur Singh (dead) through Legal Representatives (2019)8 Supreme Court Cases 575 and Shenbagam and Others Versus K.K Rathinavel (Civil Appeal No.150 of 2022) decided on 20.01.2022 (SC). Fifthly, he has further contended that the LR's of the defendant do not own any other agricultural land to earn their livelihood and moreover, the price of the suit land has, now, increased manifold and therefore, the sale of the suit land to the plaintiffs at the rate, as mentioned in the agreement Exhibit P-2, would cause great hardship to them. He has relied upon Nanjappan Versus Ramasamy and another 2015(1) PLJ 398 (SC); Pandian Chemicals Ltd, 17-A, Vallabhai Road, Madurai-2, Rep. By Company Secretary K Sathiavan Versus Punithavalli and another 2017 AIR (Madras) 198 (SB); Jayakantham and Others Versus Abaykumar 2017(2) RCR (Civil) 104 (SC); Vimalleshwar Nagappa Shet Versus Noor Ahmed Sherriff and Others 2011 AIR (SC) 2057; Sukhmander Singh and another Versus Mandeep Singh and others 2015(2) RCR (Civil) 781 (P&H) (SB) and Dulal Chand Nandi (deceased) through LR's Versus Kiran Bala Mehru and another 2018 SCC Online Del 10259 (Delhi) (SB) in support of his contentions. Lastly, he has contended that no substantial question of law has been framed in the present appeal and moreover, the trial Court as well as the lower appellate Court have not appreciated and

evaluated the evidence, as led on the record, in the right perspective and therefore, the impugned judgments and decrees are not legally sustainable and the same deserve to be set aside. To corroborate his contentions, he has placed reliance upon **Kirodi (since deceased) through his LR Versus Ram Parkash and Others, (Civil Appeal No.4988 of 2019 (@ Special Leave Petition(C) No.11527 of 2019) decided on 10.05.2019 (SC); Vinod Kumar Versus Gangadhar 2015(1) RCR (Civil) 598 (SC) and Laliteshwar Prasad Singh and Others Versus S.P. Srivastava (D) through LRs 2017(1) RCR (Civil) 460 (SC).**

9. Per contra, learned Senior counsel for the plaintiffs has argued that the LRs of the defendant have not led any evidence on the file to substantiate the factum of the suit land being ancestral in nature. He has also argued that the execution of agreement Exhibit P-2 stood duly proved in view of the testimonies of PW2 to PW4 and thus, the same is a genuine document and the plaintiffs had not misrepresented any facts before the defendant to procure his signatures on the same. He has further argued that the above-mentioned reduced rate of the sale consideration, in itself, could not be a valid ground to assail the validity and genuineness of the said agreement and moreover, it was the defendant himself who had been seeking extension of the date stipulated for the execution and registration of the sale-deed as he intended to get the said bank loan waived off and on the said agreed extended date, i.e 26.06.2009, the plaintiffs appeared before the concerned Sub-Registrar along-with the Pay Orders worth Rs.95 lac and the amount of the balance sale consideration in cash but the defendant

failed to turn up there and then, the plaintiffs submitted their affidavit Exhibit P-5 to the said Authority for marking their presence and therefore, it did not lie in the mouth of the LRs of the defendant to assert that the said agreement/contract was contingent and was no more legally enforceable on account of the non-repayment of the said bank loan by the plaintiffs or that they (plaintiffs) had not been ready and willing to perform their part and it being so, the impugned judgments and decrees are perfectly legal.

10. As regards the first contention as raised qua the suit land being ancestral in nature, the same is devoid of any merit because except the oral and self-serving depositions as made by DW1 Satwant Kaur in her affidavit Exhibit DW1/A to this effect, the LRs of the defendant have not adduced any other cogent evidence on the file to prove the afore-said plea. They could have produced the relevant revenue record/Excerpt in their evidence to establish this fact and the same could have been easily available to them but they have failed to do so, for the reasons best known to them. In these circumstances, an adverse inference has to be drawn against them to the effect that if so produced, the said record would not have supported their above-discussed version. Further, even if for the sake of arguments, it is presumed that the suit land was ancestral property in the hands of the defendant, even then the fact remains that in agreement Exhibit P-2, it has categorically been mentioned that a loan of Rs.50 lac had been raised against the said land and this fact, in itself, makes it crystal clear that the defendant must be in the need of funds for the repayment of the said loan.

11. So far as the second contention regarding agreement Exhibit

P-2 being a forged and fabricated document and qua the plaintiffs having obtained the signatures of the defendant thereon by misrepresenting the facts to him, is concerned, the same is also bereft of any force because a perusal of this agreement reveals that a note dated 17.04.2009, i.e Exhibit P-3, has been written overleaf Page No.2 thereof, regarding the date of the execution of the sale-deed having been mutually agreed between the parties to be extended to 20.06.2009 and then, another note dated 19.06.2009, i.e Exhibit P-4, has been scribed overleaf Page No.3 of this agreement wherein it has specifically been mentioned that the vendor, i.e the defendant, had to go to Chandigarh for seeking the waiver of the loan, as raised by him from the Co-operative Bank Limited, Karnal and therefore, the said date was being further extended to 26.06.2009. Both these notes and the agreement had been duly attested by the witnesses and one of such witnesses named Akashdeep appeared as PW2 and made depositions regarding the same. The Notary Public named Jai Parkash also stepped into the witness-box as PW3 and deposed regarding his having notarized agreement Exhibit P-2 and having made an entry qua the same in his register and PW4 Virender Kumar Bakshi also categorically stated that the stamp-papers, as used for scribing agreements Exhibits P-1 and P-2, had been sold by him to the defendant. The LRs of the defendant could have got the admitted signatures of the defendant compared with his (defendant's) signatures appearing on Exhibits P-2, P-3 & P-4, by the hand-writing expert whose report and testimony could have clinched the entire dispute between the parties over the said issue but however, they have failed to examine any such expert as

their witness for the said purpose.

12. Further, it is well settled that the plea/allegation regarding the misrepresentation of facts is required to be specifically pleaded and proved. However, except the bald depositions as made by the afore-named DW1 in her said affidavit in this regard, the LR's of the defendant have not produced any other convincing evidence on the file to substantiate their said plea/allegation and rather, in para No.3 of his written statement, the defendant had simply stated that the plaintiffs 'might have' procured his signature on the said agreement (Exhibit P-2) at the time of the execution of agreement to sell dated 12.09.2008, i.e Exhibit P-1 and thus, the above-mentioned plea/allegation is quite ambiguous and it being so, the depositions made by the said DW1 in respect thereof, do not inspire any confidence. Moreover, it is also necessary to point it out here that as discussed earlier, the signatures of the defendant also appeared on both the afore-said notes, i.e Exhibits P-3 and P-4, besides agreement Exhibit P-2.

13. Then, as regards the third contention qua the actual prevalent price of the suit land being many times higher than the one as quoted in agreement Exhibit P-2 and this agreement having been executed for the sale consideration at a rate lesser than the one as mentioned in agreement Exhibit P-1, the same is again devoid of any merit because besides the oral depositions as made by the above-named DW1 in her said affidavit to the effect that the price of the suit land was not less than Rs.50 lac per acre at the relevant time, the LR's of the defendant have not led any other cogent evidence on the record to establish the said fact. Rather, during her cross-

examination, this witness (DW1) has expressed her ignorance regarding the area of the total land being 243 Kanals 10 marlas and she has not even been able to tell as to how much area out of the total land, was located on the front side and also to disclose the price of the land so situated. Further, as discussed in the preceding paragraphs, the execution of agreement Exhibit P-2 by the defendant in favour of the plaintiffs stands duly proved on the record and moreover, the factum of the execution of earlier agreement Exhibit P-1 finds specific mention in the same and in these circumstances, the mere factum of the rate of the sale consideration in respect of the suit land, as agreed between the parties in the subsequent agreement, being lesser than the price of the portion of the said land, as mentioned in the earlier agreement, in itself, cannot be taken to be a justifiable and plausible ground to come to the conclusion that the subsequent agreement, Exhibit P-2, cannot be legally enforced.

14. So far as the fourth contention regarding agreement Exhibit P-2 being contingent upon the repayment of the bank loan by the plaintiffs and their having not done so and thereby, their being not ready and willing to perform their part of this agreement, is concerned, it is pertinent to point it out here that though it has been mentioned therein that the vendees, i.e the plaintiffs, would repay the loan amount of Rs.50 lac, along-with the interest accrued thereon, to the concerned bank and would pay the amount of the balance sale consideration to the defendant-vendor at the time of the execution and registration of the sale-deed but again, the fact remains that in Para No.2 of their plaint, the plaintiffs have categorically averred that

they had approached the defendant several times with the request to accompany them to clear the bank loan account and to accept the balance amount of sale consideration and to execute the sale-deed but the defendant had informed them that he had approached the concerned bank for One Time Settlement and for the waiver of the amount of interest and that as and when the settlement would be arrived at, he would inform them. While appearing as PW1, plaintiff No.1 Surinder Singh has made depositions to the same effect in Para No.4 of his affidavit Exhibit PW1/A. The afore-said plea also stands strengthened by Exhibit P-4, i.e the note dated 19.06.2009 as scribed overleaf Page No.3 of the agreement, Exhibit P-2, wherein it has specifically been mentioned that the vendor, i.e the defendant, had to go to Chandigarh for seeking the waiver of the said bank loan and therefore, the date stipulated for the execution of the sale deed was being extended from 20.06.2009 to 26.06.2009. The above-discussed averments, as put-forth by the plaintiffs in the plaint and the depositions as made by plaintiff No.1 as PW1 in his said affidavit, coupled with the contents of note Exhibit P-4, unequivocally speak volumes of the fact that it was the defendant who had been seeking time to approach the concerned bank for the said purpose. In these circumstances, the afore-discussed version of the plaintiffs is quite justified and logical also because after repaying the said loan amount, along-with the interest thereon, to the concerned bank, they were supposed to pay the amount of balance sale consideration to the defendant and it being so, it is quite natural that as a prudent person, the defendant must have been making all the possible endeavours to get the loan amount, as

required to be repaid to the bank, reduced so that he could get the maximum possible balance sale consideration from the plaintiffs at the time of execution and registration of the sale-deed.

16. Moreover, it has been held by Hon'ble Supreme Court in **M/s J.P Builders and anothers Versus A. Ramadas Rao and anothers 2011(1) RCR (Civil) 604** that *"where the vendors entered into agreement to sell the property against which the bank loan was raised by them and it was agreed to execute the sale-deed after the discharge of bank loans and release of original deeds to the vendors, it could not be construed as impossible event which would make the contract void and it could also not be termed as a contingent contract and would not come to an end and the plaintiff was entitled to the specific performance of the contract."* The present matter is squarely covered by the above-quoted observations and in view of the same, it becomes explicit that agreement Exhibit P-2 is not a contingent contract and hence, the same could be legally enforced.

17. Further, in their affidavit Exhibit P-5 as submitted by the plaintiffs to the concerned Sub-Registrar on 26.06.2009, i.e the agreed extended date for execution and registration of the sale deed, they have made depositions regarding the specific numbers of the Pay-Orders worth Rs.95 lac, as got issued by them and also qua the remaining cash amount for the payment of the sale consideration. Then, the details of the said Pay-Orders also find mention in Para No.5 of the plaint. Moreover, even during the pendency of the said civil suit, the plaintiffs moved an application before the trial Court on 14.09.2009 (annexed at Page No.177 in the trial

Court Record) with a prayer to call upon the defendant to accept the Pay-Orders towards the payment of the sale consideration but on 22.09.2009, learned counsel for the defendant made a categorical statement in the trial Court (annexed at Page No.367 in the trial Court Record) to the effect that he was not authorised to accept the same. The above-discussed facts and circumstances lead to the only irresistible conclusion that the plea qua the plaintiffs being not ready and willing to perform their part of agreement Exhibit P-2, would not be available to the LR's of the defendant so as to disentitle the plaintiffs from seeking the relief of the specific performance of the said agreement by them. To add to it, throughout in their respective written statements, the defendant and his mother have nowhere set-forth any plea to this effect.

18. The observations, as made in ***Rajendra Kumar Jha (supra)***, ***Nandkishore Lalbhai Mehta (supra)***, ***Rishi Aggarwal (supra)***, ***Sri Harish (supra)***, ***Jogendra Singh (supra)***, ***Surinder Kaur (dead) through Legal Representative Jasinderjit Singh (dead) through Legal Representatives (supra)*** and ***Shenbagam and Others (supra)***, are of no avail to the LR's of the defendant because the facts and circumstances of the case in hand are quite distinguishable from those of the cited above. In ***Rajendra Kumar Jha (supra)***, the agreement to sell the suit property was contingent upon the eviction of the tenant and there was nothing to show that the tenant had been so evicted at any point of time whereas in the present case, as discussed above, the plaintiffs had approached the defendant to accompany them for clearing the bank loan account. In ***Nandkishore Lalbhai Mehta***

(supra), the agreement to sell was subject to the consent of Mill Mazdoor Sabha and also to the permission of the competent authority for the change of user of the land from industrial/commercial to the residential one and the authority had refused to grant the necessary permission and Mill Mazdoor Sabha had also declined to give consent and therefore, it was held that the agreement had rightly been terminated by the respondent but in the instant case, the defendant himself had been seeking time to approach the bank for One Time Settlement and waiver of the amount of interest accrued on the said loan amount. In **Rishi Aggarwal (supra)** also, the performance of the agreement to sell was contingent upon the sanction of the building plan and the application had been moved by the defendant under Order 7 Rule 11 CPC on the grounds of the suit being barred by limitation and no cause of action having arisen in favour of the plaintiff to file the same whereas in this case, the facts are entirely different as discussed above. Then, in **Sri Harish (supra)**, the agreement to sell was held to be incomplete for its enforcement unless the necessary sanction was obtained by the competent persons from the Government whereas in the present case, the bank loan was required to be paid.

19. Further, in **Jogendra Singh (supra)**, the share of the joint property had been agreed to be sold but specific boundaries had been mentioned in the agreement as well as in the plaint without mentioning that the said property was ever partitioned amongst its owners but it is not so in the instant case. In **Surinder Kaur (dead) through Legal Representative Jasinderjit Singh (dead) through Legal Representatives (supra)** also, the

appellant-defendant had received less than 20% of the sale consideration but had handed over the possession of the suit property to the respondent-plaintiff while expecting that the earlier dispute pertaining to the said property would be decided at least within a year and there was a specific clause in the agreement itself that in case, the said litigation was not so adjudicated, the plaintiff would pay customary rent to her but the plaintiff failed to pay the same for 13 long years and therefore, it was held that the plaintiff had failed to perform his part of contract qua payment of the rent and it being so, the relief of specific performance of the contract was not permissible but in the present case, as discussed above, the plaintiffs have always been ready and willing to perform their part of the said agreement to sell. In **Shenbagam and Others (supra)**, the vendee had, initially, filed the suit for injunction and the vendors had sent notice to him to perform his part of the contract by paying the balance sale consideration and then, on the failure of the vendee to do so, they had rescinded the contract and after three years, the vendee had filed the suit for seeking specific performance of the agreement and there was nothing on the record to show that he had sufficient money to pay the sale consideration at the relevant time whereas in this case, the plaintiffs have filed the civil suit on 06.08.2009, i.e just about 1½ month after the agreed extended date, i.e 26.06.2009, for the execution and registration of the sale-deed.

20. As regards the fifth contention qua the suit land being the only source of livelihood for the LR's of the defendant and there being a steep rise in its price and hence, the sale of this land being a cause of hardship for

them, the same is, again, not tenable because throughout in their respective written statements, the defendant and his mother have not taken the plea regarding any such hardship and rather, they have denied the very factum of the execution of agreement to sell Exhibit P-2 and the defendant has also taken an inconsistent plea in his written statement, to the effect that his signatures might have been procured by the plaintiffs by misrepresenting the facts to him. Even otherwise, the said plea cannot be construed to be a purely legal one as it pertains to the factual aspects of the controversy between the parties and therefore, it would not be permissible to the LR's of the defendant to raise this plea at this stage. Moreover, the LR's of the defendant have also not led any trustworthy evidence on the file to show that except the suit land, they did not have any other source of income. Further, as discussed earlier, it was the defendant himself who had dilly-dallied the matter regarding the finalisation of his loan account whereas the plaintiffs had always been ready and willing to perform their part of the said agreement and in such circumstances, the LR's of the defendant cannot be allowed to derive the benefit out of the wrong of their predecessor-in-interest, the defendant, to avoid the specific performance of this agreement.

21. The observations, as made in **Nanjappan (supra)**, **Pandian Chemicals Ltd. (supra)**, **Jayakantham and others (supra)**, **Vimalleshwar Nagappa Shet (supra)**, **Sukhmander Singh and another (supra)** and **Dulal Chand Nandi (deceased) through LR's (supra)**, would also be of no help to the LR's of the defendant in this case as the facts and circumstances of the instant case are entirely different from those of the mentioned above.

In **Nanjappan (supra)**, the agreement had been executed 27 years ago but it is not so in the present case. In **Pandian Chemicals Ltd (supra)**, one of the vendors was a widow and her only property was the subject matter of the alleged agreement and the plaintiff Company had entered into the agreement without any valid resolution as was normally required to do so whereas in the instant case, the defendant was not required to fulfil any such formality before executing agreement Exhibit P-2. In **Jayakantham and others (supra)**, the agreement to sell was executed while mentioning the amount of the sale consideration as Rs.1.60 lac therein but it was proved on the record that the value of the property, as agreed to be sold, was about Rs.6.30 lac at that time but in this case, as discussed earlier, the LRs of the defendant have not been able to prove that the price of the suit land was higher than the one as mentioned in the above-said agreement. Further, in **Vimaleshwar Nagappa Shet (supra)**, the agreement to sell pertained to a joint family house situated in the urban area whereas in this case, the suit land is situated in a village named Mubarkabad. Again, in **Sukhmander Singh and another (supra)**, the plots had been purchased by about 175 persons who had also constructed their residential houses at the site and were not even impleaded as the party to the suit and the agreement to sell was, therefore, held to be completely incapable of being specifically performed but it is not so in the instant case. Then, in **Dulal Chand Nandi (deceased) through LRs (supra)**, the bank statements, filed by the vendees, pertained to a much later period and were not contemporaneous and hence, the readiness and willingness on behalf of the plaintiff had been suspected

whereas it is not so in the case in hand.

22. Rather, it has specifically been observed by the Apex Court in a recent judgment rendered in **Sughar Singh Versus Hari Singh (Dead) through LRs and Others 2021(4) RCR (Civil) 632** that “*not to grant the decree of specific performance despite the execution of the agreement to sell and part payment of sale consideration having been proved and the plaintiff having always been ready and willing to perform his part of the contract, would encourage dishonesty and the amendment to Specific Relief Act by which Section 10(a) was inserted, though may not be applicable retrospectively but could be a guide that specific performance is no longer a discretionary relief.*” These observations are fully applicable to the present case and in the light of the same, it becomes explicit that the plaintiffs are entitled to the relief of specific performance of the said agreement to sell, i.e Exhibit P-2, by the LRs of the defendant.

23. The last contention qua no substantial question of law having been framed and the Courts below having not discussed and appreciated the evidence in the right perspective in the impugned judgments, also does not hold any water because the framing of any substantial question of law is not required in view of Section 41 of the Punjab Courts Act, 1918. Even in **Kirodi (since deceased) through his LR (supra)**, the Apex Court has categorically observed that the effect of the judgment of the Constitution Bench in **Pankajakshi (Dead) through LRs and others Versus Chandrika and others (2016) 6 SCC 157** is that “*so far as the state of Punjab is concerned, the second appeal does not require formulation of a substantial*

question of law since the Punjab Act would be applicable for the State”.

Undisputedly, at the time of enactment of the above-said Statute, Haryana formed a part of the State of Punjab and learned Senior counsel for the LR's of the defendant has not been able to show that presently, the said Act is not applicable to the State of Haryana. Further, a perusal of the impugned judgments shows that the evidence, as adduced by both the parties on the file, has been elaborately as well as exhaustively discussed therein. In such circumstances, the observations made by Hon'ble Supreme Court in **Vinod Kumar (supra)** and **Laliteshwar Prasad Singh and others (supra)**, would not come to the aid of the LR's of the defendant to challenge the legality of the impugned judgments and decrees.

24. As a sequel to the fore-going discussion, it follows that the impugned judgments and decrees, as passed by both the Courts below, do not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the appeal in hand, being *sans* any merit, stands dismissed.

July 04, 2022
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

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