

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

**RSA-5110-2019 (O&M)**

**Reserved on: 21.10.2022**

**Date of pronouncement: November 2, 2022**

Rajpal Singh and another ..... Appellants  
*Versus*  
Charan Singh and others ..... Respondents

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present:- Mr.Vikas Kumar, Advocate for the appellants.

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**HARKESH MANUJA, J.**

**CM-14481-CII-2019**

Application for impleading the legal representatives of  
appellant No.3- Smt.Bhagwati.

**CM-14482-CII-2019**

Application for impleading the legal representatives of  
respondents No.3 & 4 i.e. Smt.Santosh and Smt.Rathi @ Ram Rati.

For the reasons mentioned in both applications which are  
supported by an affidavit, the same are allowed. As a result thereof,  
names mentioned in para 1 of CM-14481-CII-2019 as well as paras 1  
& 2 of CM-14482-CII-2019 are ordered to be impleaded as LR's of  
appellant No.3- Smt.Bhagwati and respondents No.3 & 4 i.e.  
Smt.Santosh and Smt.Rathi @ Ram Rati, respectively to pursue the  
present appeal, subject to all just exceptions.

Amended memo of parties is taken on record.

Registry to tag the same at appropriate place.

**MAIN CASE:**

Present appeal has been filed against the judgments and decrees dated 15.10.2016 and 06.07.2019 passed by the Court of Civil Judge (Senior Division), Faridabad; and Additional District Judge, Faridabad; whereby a decree for recovery of Rs.18 lacs along with interest @ 6% per annum w.e.f. 06.10.2005 has been passed in favour of respondent No.1-plaintiff and against appellants besides respondents No.2 to 8, herein.

Facts leading to the present appeal are that based on an agreement to sell dated 06.10.2005 entered into between respondent No.1 and one Nathi (predecessor-in-interest of appellants as well as respondents No.2 to 8, herein) as regards the suit property, a suit for specific performance along with permanent injunction was filed at the instance of respondent No.1. As per the averments made in the plaint, the total sale consideration was Rs.21 lacs with 06.06.2007 being the target date and a sum of Rs.15 lacs was paid as earnest money to the vendor. It was further pleaded that another sum of Rs.3 lacs was paid to the vendor on 06.04.2006 against a receipt besides some more payment of Rs.2 lacs made through cheque No.556801 dated 05.04.2006. Further it was also stated that Nathi-vendor died on 29.12.2007 and a legal notice dated 13.03.2008 was served upon his legal representatives requesting them to get the sale deed executed on or before 28.03.2008. In pursuance of the said legal notice, respondent No.1 even marked himself present in the office of Sub Registrar on 28.03.2008, however, none turned up on behalf of

vendor compelling him to file a suit for specific performance on 20.09.2009.

In response, a written statement came to be filed on behalf of appellants, besides their mother Bhagwati, disputing the factum of execution of agreement besides the payment of sale consideration as well. In the written statement, it was stated that the suit land in the hands of Nathi was ancestral in nature as such, he had no right to enter into any such agreement. Besides this, it was also pleaded that the agreement in question was the result of fraud and misrepresentation. Appellants also stated that the suit land already stood sold/ transferred in favour of one Tek Chand Verma i.e. the predecessor-in-interest of respondent No.9 herein, on the basis of sale deed dated 28.05.2010 executed in his favour in pursuance to a decree for specific performance passed by learned Trial Court on 21.08.2006, upheld in appeal on 22.08.2007 and re-affirmed by this Court vide judgment dated 23.11.2009 in a suit for specific performance filed at the instance of Tek Chand Verma, based on an agreement to sell dated 12.07.1996. To the same effect, written statement was also filed by Tek Chand Verma i.e. the predecessor-in-interest of respondent No.9 herein. Remaining respondents were proceeded against ex-parte.

It may be pointed out here that in view of the sale deed dated 28.05.2010 executed in favour of Tek Chand Verma, the prayer for relief of specific performance was relinquished by respondent No.1 restricting himself only for grant of refund of his earnest money.

Learned trial Court vide its judgment and decree dated 15.10.2016 partly decreed the suit in favour of respondent No.1 to the extent of refund of Rs.18 lacs along with interest @ 6% per annum w.e.f. 06.10.2005 by recording a positive finding to the effect that execution of the agreement in question was duly proved on record including the amount of payment of earnest money to the tune of Rs.18 lacs, however, learned trial Court held that the payment made by respondent No.1 through cheque No.556801 dated 05.04.2006 could not be proved on record.

Aggrieved against the judgment and decree dated 15.10.2016 passed by learned trial Court, the appellants besides their mother Bhagwanti filed first Appeal which came to be dismissed vide judgment and decree dated 06.07.2019 passed by the Court of learned Additional District Judge, Faridabad.

Challenging the judgments and decrees dated 15.10.2016 and 06.07.2019 passed by the Courts below, learned counsel for the appellants contends that in the present case, the execution of agreement in question dated 06.10.2005 was not proved on record as the scribe was never examined to prove the same. He further submits that even the payment of earnest money as mentioned in the agreement Ex.P1 or even in the receipts Exs. P-2 & P-3 had not been established on record and as such a decree for refund of payment of earnest money along with interest could not have been passed in favour of respondent No.1. In support, learned counsel for the appellants relied upon judgments passed by this

Court in **Harvel Singh Vs. Ranjit Singh and another**, 2012 (4) CCC 393 (P&H), **Balwinder Kaur Vs. Bawa Singh and others**, (2002-3) PLR 117 and **Richhpal Singh Vs. Sandhura Singh**, 2013 (3) CCC 242 (P&H).

No other point was argued.

I have heard learned counsel for the appellants and gone through the paper-book as well as records which has been provided to me at the time of hearing by learned counsel for the appellants. Considering the aforesaid, I do not find much scope to interfere with the concurrent finding of facts recorded by both the Courts below on the point of execution of agreement to sell dated 06.10.2005 as well as payment of earnest money, as a consequent thereof. A perusal of record shows that the agreement in question dated 06.10.2005 has been duly proved on record by respondent No.1/ plaintiff himself while appearing as PW1, besides having examined PW2 Vikram Singh i.e. one of the marginal witness to the agreement in question.

Respondent No.1-plaintiff while appearing as PW1 in his cross-examination has specifically deposed that the amount paid to Nathi as earnest money was obtained by him from brothers, besides a loan of Rs.3 lacs from one of his friends, namely, Jai Kumar Jain. No specific suggestion during his cross-examination was ever put to respondent No.1/ plaintiff to the effect that the afore-stated portion of his statement was incorrect. In the absence of any such specific suggestion having been put to respondent No.1, there does not

appear to be any reason to disbelieve the said part of the statement made by him.

From a conjoin reading of statements of PW1 and PW2 besides a bare perusal of agreement dated 06.10.2005 (Ex.P1) and the payment of receipts dated 06.10.2005 (Ex.P2) as well as dated 06.40.2006 (Ex.P3), one can see through that the agreement in question and the receipts Ex.P2 & P3 were duly executed between respondent No.1 and Nathi. PW2 who happens to be one of the marginal witness to the agreement in question belongs to the same locality and has even been known to deceased Nathi being a neighbourer. In addition, the agreement in question as well as receipt dated 06.10.2005 Ex.P2, also bears the photograph of Nathi-vendor, to which no explanation at all has been rendered by the appellants.

One of the important aspect in the present case has been that a legal notice dated 13.03.2008, was issued at the instance of respondent No.1/ plaintiff and its receipt has been admitted by appellant No.1 herein, while appearing as DW1 before the learned trial Court. Nothing has been proved on record so as to establish that any reply to the notice dated 13.03.2008, controverting its contents, was ever filed and a copy thereof was sent to respondent No.1. Thus, in the facts and circumstances of the present case, when the defendants did not raise any rebuttal to the contents of the notice dated 13.03.2008 which clearly specified regarding the agreement dated 06.10.2005 as well as payment of earnest money, this also has to be taken against the appellants. Though a plea of fraud has been

raised in the written statement, however, no evidence at all has been produced on record by the defendants to show as to whether any complaint was ever made to the police against respondent No.1 having allegedly defrauded them.

In the present case, a specific stand was taken by the appellants in their written statement alleging fraud and misrepresentation having been played upon deceased Nathi. Neither complete particulars of fraud as enjoined under Order 6 Rule 4 CPC were ever pleaded in the written statement; nor any evidence to this effect was ever adduced by them. No doubt, it is the plaintiff who has to stand on his own legs and has to prove his case in order to succeed, however, the conduct of the parties including the defendants has to be taken into consideration while adjudicating upon a *lis*.

I have gone through the judgments referred to by learned counsel for the appellants. **Harvel Singh's** (supra) was a case wherein the vendee/ plaintiff failed to examine any marginal witness to the agreement; whereas in the present case, one of the marginal witness, namely, Vikram Singh has appeared as PW2 and supported the case of the plaintiff.

In the case of **Balwinder Kaur's** supra, execution of the agreement to sell was disbelieved, based upon suspicious circumstances as such the same does not apply to the facts of the present case.

In another case i.e. **Richhpal Singh’s** case (supra), the agreement was executed on plain paper which was also one of the considerations while recording a finding; whereas the same is missing in the present case.

Thus, in view of the discussion made hereinabove, I do not find any justification to interfere with the findings recorded by both the Courts below which are purely factual in nature and based on evidence available on record as such, no question of law much less substantial question of law is involved in the present appeal.

There is no illegality or irregularity warranting interference by this Court in exercise of power under Section 100 of CPC. Thus, the present appeal is dismissed.

Pending application(s), if any, shall also stand disposed of.

**November 2, 2022**  
sanjay

**( HARKESH MANUJA )**  
**JUDGE**

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether Reportable</i>        | <i>Yes/No</i> |