

RSA-1493-2001(O&M) &  
RSA-4898-2001(O&M)

-1-

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

(1) **RSA-1493-2001(O&M)**

Harnam Singh (since deceased) through his LRs

...Appellants

Versus

Jagdish Rani

...Respondent

(2) **RSA-4898-2001(O&M)**

Jagdish Rani

...Appellant

Versus

Harnam Singh (since deceased) through his LRs

...Respondents

Reserved on:-5.5.2023

Date of Decision:-15.5.2023

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.V.K. Jindal, Advocate  
for the appellants in **RSA-1493-2001** and  
for the respondents in **RSA-4898-2001**.

Mr.K.R. Dhawan, Advocate  
for the appellant in **RSA-4898-2001** and  
for the respondent in **RSA-1493-2001**.

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**H.S. MADAAN, J.**

1. By this order, I shall dispose of two regular second appeals  
i.e. **RSA-1493-2001** filed on behalf of appellant Harnam Singh (since  
deceased) through his LRs and **RSA-4898-2001** filed on behalf of  
appellant Jagdish Rani, since both the appeals have arisen out of same

judgments and decrees.

2. Briefly stated, facts of the case are that plaintiff Harnam Singh had brought a suit against defendant Jagdish Rani, seeking possession by way of specific performance of the agreement to sell dated 4.9.1989 regarding land measuring 1 kanal out of total land measuring 19 kanals 6 marlas bearing khasra no.2372//17-14, 2373/2/1-12 within revenue estate of Kapurthala; in the alternative seeking a decree for recovery of Rs.20,000/- i.e. refund of earnest money of Rs.10,000/- and damages to the tune of same amount along with interest and further seeking a decree for permanent injunction restraining the defendant from alienating the suit property to third persons except the plaintiff.

3. As per the case of the plaintiff, the defendant being owner of the suit land had agreed to sell the same to the plaintiff vide written agreement dated 4.9.1989 @ Rs.7,000/- per marla, receiving Rs.10,000/- as earnest money; the date for execution of sale deed was fixed as on or before 30.12.1989.

According to the plaintiff, he has been ready and is willing and still ready and willing to perform his part of contract but the defendant refused to come forward to execute the sale deed in terms of agreement to sell, giving rise to a cause of action to the plaintiff to bring the suit in question.

4. On notice, the defendant appeared and filed a written statement contesting the suit contending that alleged agreement is illegal, invalid, fake and a fabricated document; the agreement is without consideration; this agreement has been forged by the plaintiff in

connivance with Rajinder Singh, a brother of the defendant, who had obtained signatures of defendant on blank stamp papers and the defendant had put such signatures in good faith; as a matter of fact, no cause of action had arisen in favour of the plaintiff to file the suit. As the version of the defendant goes, she is not owner of khasra no.2372 and 2373/2, therefore, there was no question of her agreeing to sell any portion out of these khasra numbers to the plaintiff. Refuting the remaining assertions, the defendant prayed for dismissal of the suit.

5. The plaintiff had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

6. On the pleadings of the parties, following issues were framed:

1. Whether the defendant executed an agreement to sell dated 4.9.1989 in favour of the plaintiff after obtaining an amount of Rs.10,000/- as earnest money? OPP.

2. If issue No.1 is proved, whether the plaintiff had been ready and willing to act upon his part of the contract? OPP.

3. Whether the agreement to sell in dispute is a fake and fictitious document? OPD.

4. Relief.

The following additional issue was framed:

3A Whether the defendant is not the owner of the suit property? If so its effect? OPD.

7. In order to prove his case, the plaintiff himself got his

statement recorded as PW2 besides examining Ishan Chander Sharma as PW1, Baldev Singh as PW3 and Rajinder Singh as PW4.

8. In rebuttal, the defendant herself got her statement recorded as DW2 besides examining Dial Singh as DW1 and Kedar Nath Prasad as DW3.

9. After hearing the learned counsel for the parties, the trial Court of Senior Sub Judge, Kapurthala vide judgment and decree dated 3.5.1994 by giving issue-wise findings had decreed the suit of the plaintiff for refund of earnest money of Rs.10,000/- with interest @ 12% per annum from the date of the agreement till the date of the suit and future interest @ 6% per annum on the principal amount of Rs.10,000/- from the date of the filing of the suit till actual realization of the amount

10. Feeling aggrieved by the said judgment and decree vide which relief of specific performance had been denied to the plaintiff, the plaintiff had preferred an appeal before District Judge, Kapurthala. The defendant also felt aggrieved by the judgment and decree passed by the trial Court and she had also filed an appeal before District Judge, Kapurthala. Both the appeals were assigned to learned Additional District Judge, Kapurthala, who vide single judgment and decree dated 13.12.2000 had disposed of the appeal inasmuch as both the appeals were dismissed.

11. Being dissatisfied with the judgments and decrees passed by the Courts below, both plaintiff and the defendant have filed separate regular second appeals before this Court, notice of which was issued to the respective parties and they have put in appearance through counsel.

12. I have heard learned counsel for the parties besides going

through the records.

13. Both the Courts below on proper appraisal and appreciation of evidence and correct interpretation of law had found that the defendant had executed an agreement to sell dated 4.9.1989 in favour of the plaintiff, receiving Rs.10,000/- as earnest money and that the plaintiff has been ready and willing to perform his part of contract. The version set up by the defendant denying the execution of agreement to sell and rather claiming that her brother Rajinder Singh had got her signatures on blank stamp papers and other papers and the stamp paper was later on converted into agreement to sell and that she has not received any consideration amount was considered and it was not found to be believable and plausible, as such the version was rejected. But then specific performance of agreement to sell was denied to the plaintiff for the reason that in the jamabandi Ex.DX, the defendant is not shown to be owner of khasra nos.2372/7-14 and 2373/2/1-12 when in the agreement to sell Ex.P2, it is specifically mentioned that the defendant had agreed to sell 1 kanal of land out of those khasra numbers, total measuring 19 kanals 6 marlas. Since the defendant was not owner of the land, which she had agreed to sell to the plaintiff, therefore specific performance of agreement with regard to that piece of land could not possibly be granted in favour of the plaintiff against the defendant. Hence the trial Court had ordered refund of earnest money of Rs.10,000/- along with interest and cost.

14. The First Appellate Court of Additional District Judge, Kapurthala found itself in agreement with the trial Court on that point.

15. No substantial question of law arises in both the appeals.

16. Therefore, I do not find any merit in both the appeals and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

17. The appeals stand dismissed accordingly.

Since both the appeals stand dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

15.5.2023  
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**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking: Yes/No**

**Whether reportable : Yes/No**