

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

RSA-1388 of 2023 (O&M)

Reserved on: 13.10.2023

Pronounced on: 31.10.2023

Jagdish Singh

.....Appellant

vs.

Gurinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. J.S. Grewal, Advocate,
for the appellant.

NAMIT KUMAR, J.

CM-5178-C of 2023

1. This application has been filed by the applicant-appellant under Section 5 of the Limitation Act, 1963 read with Section 151 CPC for condonation of delay of 31 days in filing the appeal.

2. In view of the averments made in the application, which is duly supported by an affidavit, same is allowed. Delay of 31 days in filing the appeal is condoned.

RSA-1388 of 2023

1. This regular second appeal is directed against the judgment and decree dated 09.02.2021 passed by Additional Civil Judge (Senior Division), Fatehgarh Sahib, whereby suit for possession by way of specific performance of agreement to sell dated 05.11.2013, filed by the plaintiff-respondent, has been decreed as well as against the judgment and decree dated 07.12.2022 passed by Additional District Judge, Fatehgarh Sahib, whereby appeal filed by the defendant-appellant, challenging the judgment

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that the plaintiff-Gurinder Singh instituted the suit for possession by way of specific performance of agreement to sell dated 05.11.2013 to the effect that the defendant agreed to sell land measuring 5 marlas in favour of the plaintiff for consideration of Rs.7 lakh. The defendant received total sale consideration in the presence of marginal witnesses and had agreed that sale deed would be registered in his favour as and when he would like. It was also agreed that in case, the defendant would fail to execute the sale deed as per the agreement to sell, he would have right to execute the sale deed. It is further pleaded that the plaintiff requested the defendant to execute the sale deed on various occasions, but the defendant had refused to do the same and wanted to alienate the suit property and dispossess the plaintiff from the suit property. The plaintiff had also got issued legal notice to the defendant to execute the sale deed in his favour on 26.03.2018, but the defendant did not turn up on the said date in the office of the Sub Registrar. The plaintiff got his presence marked before Sub Registrar. Now, the defendant has refused to admit the claim of the plaintiff. Hence, this suit.

3. Upon issuance of notice, defendant appeared through counsel and filed the written statement controverting all the averments made in the plaint by taking number of preliminary objections on the grounds of maintainability of the suit; concealment of facts and the agreement to sell is a forged document. On merits, the relevant averments made in the plaint are denied. It is pleaded that the defendant had borrowed an amount of Rs.70,000/- from the plaintiff and at that time, the plaintiff had got signatures of the defendant on blank papers. At that time, the defendant had also given original sale deed of his residential house to the plaintiff as

security. The defendant had paid an amount of Rs.52,000/- alongwith interest to the plaintiff. The defendant had never executed any agreement to sell in favour of the plaintiff. The marginal witnesses are created by the plaintiff to gain benefit to himself and to cause loss to him. Except the suit property i.e. residential property, the defendant has no other property to reside and he is residing there alongwith his family.

4. Replication was filed by the plaintiff wherein he controverted the averments made in the written statement and reiterated those of the plaintiff.

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

1. Whether agreement to sell dated 05.11.2013 was executed by defendant in favour of plaintiff? OPP
2. Whether plaintiff was and is still ready to perform his part of contract? OPP
3. Whether plaintiff is entitled to relief of possession by way of specific performance of agreement to sell dated 05.11.2013? OPP
4. Whether in alternate, the plaintiff is entitled to recovery alongwith interest? OPP
5. Whether plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP
6. Whether suit is not maintainable in the present form? OPD
7. Whether plaintiff has not come to the court with clean hands? OPD
8. Whether agreement to sell is forged and fabricated document? OPD
9. Relief.

6. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record decreed the suit filed by the plaintiff with costs.

7. Feeling aggrieved against the said judgment and decree of the trial Court, defendant preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 07.12.2022.

8. Learned counsel for the appellant contended that the judgments and decrees passed by both the Courts below are against law and the evidence on record. He further contended that both the courts below have not appreciated the evidence in right perspective. He contended that suit for possession and specific performance of agreement to sell dated 05.11.2013 in the year 2018 has been filed after a period of five years and in order to avert the restrictions imposed under the Limitation Act, respondent-plaintiff sent a legal notice to the appellant-defendant whereby appellant-defendant has been called upon to perform his part to get registered agreement to sell by 26.03.2018. In fact, no agreement to sell was entered and executed by the defendant in favour of the plaintiff. The signatures shown in the agreement to sell was forged and fabricated. Furthermore, in the agreement to sell, no specific date and time has been fixed for registration of the sale deed and no legal notice has been properly served upon the appellant-defendant.

9. I have heard the learned counsel for the appellant and perused the record.

10. To prove the execution of agreement to sell in his favour, the plaintiff examined himself as PW 1 and attesting witness-Amandeep Singh as PW-2 and on the basis of evidence, both the courts below have rightly held that signatures of the defendants on the agreement to sell are not forged and fabricated. DW 2 Navdeep Gupta, handwriting and fingerprint expert admitted that there is no addition alteration in the body text of disputed agreement. It is not proved that the agreement to sell has been converted by the plaintiff on blank papers. As per jamabandi Ex.P5, name of the owner has been shown as Gurinder Singh (plaintiff). In agreement to sell, it has

been written that he (appellant-defendant) has taken Rs.7 lacs in lieu of sale of his 5 marlas property and possession has been given to respondent-

plaintiff. So far as contention raised by learned counsel for the appellant that agreement to sell is of the year 2013 and the suit was instituted in the year 2018, the said contention cannot be given effect to as no such issue was framed before the trial Court.

11. Concurrent findings have been recorded by both the Courts below that the defendant has entered into an agreement to sell in favour of the plaintiff after receiving the entire sale consideration. Learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

12. In view of above, no question of law, muchless substantial question of law arises for consideration in the present appeal. No other point has been urged.

13. Dismissed.

14. Pending application(s), if any, stand disposed of accordingly.

31.10.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No