

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**RSA-3156-2014 (O&M)**

Reserved on:- 11.08.2023

**Pronounced on:- 19.09.2023**

**Amar Singh**

....Appellant

Versus

**Angrej Singh**

...Respondent

**CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI**

Present:- Ms. Seemantika Jindal, Advocate  
for Mr. Sachin Mittal, Advocate  
for the appellant.

Mr. Pritam Singh Saini, Advocate with  
Ms. Vibha Nagar, Advocate  
for the respondent.

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**AMARJOT BHATTI, J.**

1. The appellant/defendant – Amar Singh has filed Regular Second Appeal against impugned judgment and decree dated 18.04.2014 passed by learned Additional District Judge, Kurukshetra vide which the appeal preferred by Amar Singh – appellant/defendant has been dismissed and the judgment and decree dated 03.08.2012 passed by learned Civil Judge (Senior Division), Kurukshetra in favour of Angrej Singh – respondent/plaintiff was upheld.

2. Angrej Singh – respondent/plaintiff had filed suit for possession by way of specific performance of agreement to sell dated 09.06.2004 regarding the land measuring 15B-4B, being 2/3rd share, comprised in khewat no. 65/67, khatoni no. 135/139, khasra no. 709(4-0), 719(4-0), 725(4-0), 737(4-0), 738(4-0), 1436/720(2-16), kittas-6 of total

area 22B-16B as per jamabandi for the year 1999-2000 situated at Village Jalkheri, Tehsil Thanesar, District Kurukshetra.

3. The plaintiff submitted that the defendant Amar Singh is the owner of aforementioned land. The defendant entered into an agreement to sell dated 09.06.2004 in favour of the plaintiff at the rate of Rs. 2 lacs per acre (that is of 4 Bigha). The defendant had executed/thumb marked the said agreement in the presence of witnesses vide which a sum of Rs.5 lacs was paid as earnest money. The sale deed was to be executed and registered on 08.06.2005. The defendant had also agreed that he would clear the loan taken from State Bank of India (Shahabad Branch) before execution of the sale deed. All the terms and conditions were duly mentioned in the Agreement to Sell dated 09.06.2004. On 08.06.2005, the plaintiff remained present in the office of Sub Registrar/Executive Magistrate along with balance sale consideration, but the defendant did not turn up. Ultimately, on the same day, the plaintiff got his affidavit attested from Executive Magistrate, Thanesar. Afterwards, the defendant was requested to execute and register the sale deed as per the terms and conditions of Agreement to Sell dated 09.06.2004. Not only this, the defendant was also seen negotiating with some strangers to alienate the suit land after defeating the rights of the plaintiff. The plaintiff was always been ready and willing to perform his part of contract. The plaintiff also requested the defendant to execute and register the sale deed but the defendant refused do to so in the first week of May, 2008. Ultimately, the plaintiff filed the present suit.

4. Notice of the suit was given to the defendant who appeared in this case and filed the written statement taking the stand that the suit is not maintainable; the plaintiff has no locus standi to file the present suit; the

plaintiff has concealed the true and material facts from the Court; the plaintiff is estopped to file and maintain the present suit by his own act and conduct; the Court has no jurisdiction to try the present suit. On merits, it is admitted that he is owner in possession of land in dispute. It is submitted that the agreement was obtained by playing fraud upon the defendant as the answering defendant and the plaintiff were customer of M/s Mam Chand Khushi Ram, Commission Agent and in collusion with the said Commission Agent, the plaintiff obtained the thumb impression of the defendant. The defendant never received any amount nor intend to sell his property nor entered into any agreement to sell. Even otherwise, the rate of the land in the village at the time of alleged agreement was Rs. 20 lacs per acre. The alleged Agreement to Sell is result of fraud, therefore, there is no question of readiness and willingness. All the facts are wrong and denied. It was prayed that the suit filed by the plaintiff may be dismissed.

5. From the pleadings of the parties, following issues were framed by the trial Court on 22.09.2008:-

*(1) Whether plaintiff is entitled to possession of suit land by way of specific performance of agreement to sell dated 09.06.2004 after payment of balance sale consideration?*

*OPP*

*2) Whether suit of plaintiff is not maintainable in the present form?*

*OPD.*

*3) Whether plaintiff has no cause of action and locusstandi to file and maintain the present suit?*

*OPD.*

*4) Whether plaintiff has concealed the true and material facts from the court?*

*OPD.*

*5) Whether plaintiff has estopped by his own act and conduct from filing the present suit?*

*OPD.*

6) *Whether suit is bad for mis-joinder and non-joinder of necessary parties?*

*OPD.*

7) *Relief.*

6. In order to prove the suit, the respondent-plaintiff Angrej Singh examined himself as PW-2 and submitted his affidavit Ex.PW2/A. He also examined Suresh Kumar Sharma, Deed-writer as PW-1, Harbans Lal as PW-3 and Ram Saran, Reader to Tehsildar, Thanesar as PW-4. Thereafter, learned counsel for the plaintiff closed the evidence.

7. In order to rebut the case of the respondent-plaintiff, the appellant-defendant Amar Singh himself stepped into the witness box as DW-1 and submitted his affidavit Ex.DW-1/A. He also examined Ramesh Kumar as DW-2. Thereafter, learned counsel for the defendant closed the evidence.

8. No witness was examined in rebuttal evidence. However, certified copy of sale deed No. 1431/1 dated 05.06.2002 has been tendered in rebuttal evidence as Mark-A. Thereafter, rebuttal evidence was closed on 03.08.2012.

9. After hearing the arguments advanced by learned counsel for the parties, the civil suit filed by the plaintiff Angrej Singh was decreed with costs by passing impugned judgment and decree dated 03.08.2012. Feeling aggrieved of this suit, the defendant Amar Singh filed civil appeal before the learned Additional District Judge, Kurukshetra which was dismissed by passing impugned judgment and decree dated 18.04.2014. Feeling aggrieved of the judgment and decree passed by the two Courts below, the present regular second appeal has been filed by appellant-defendant.

appellant-defendant as well as learned counsel representing the respondent-plaintiff. The learned counsel for the appellant/defendant argued that the judgment and decree dated 18.04.2014 passed by learned Additional District Judge, Kurukshetra dismissing the appeal filed by the appellant and confirming the judgment and decree dated 03.08.2012 passed by the trial Court is inherently arbitrary, unjust and not sustainable in the eyes of law. Infact, the agreement to sell in dispute dated 09.06.2004 is result of fraud. The appellant/defendant took specific stand in his written statement that the plaintiff as well as the appellant/defendant were the customers of M/s Mam Chand Khushi Ram, Commissioner Agents. The said commission agent took his thumb impression on a blank paper in good faith and later on the said blank paper was converted into agreement to sell dated 09.06.2004 in connivance with the respondent/plaintiff. He never received Rs. 5 lacs as earnest money. It is wrongly claimed in the agreement to sell that the rate of land was Rs. 2 lacs per acre. Infact, the value of the land in the said area was about Rs. 20 lacs per acre. The respondent/plaintiff failed to prove the execution of agreement to sell dated 09.06.2004 Ex.P-1. No reliance could have been placed on the said document. Harbans Lal, the marginal witness examined by the plaintiff as PW-3 is interested witness and his testimony cannot be safely relied upon. The learned counsel for the appellant/defendant also referred to the statement of Harbans Lal PW-3 where he claimed that the scribe of the document was Surinder Singh. Infact, as per the plaintiff's own version, the scribe was namely Suresh Kumar Sharma, who is examined as PW-1. The learned counsel for the appellant/defendant also referred to the statement of Suresh Kumar Sharma, Deed Writer PW-1 who further claimed that it was got typed from Pawan Sharma, Typist who is not

examined in the present case. The version of appellant/defendant regarding fraud has remained un rebutted. The learned counsel for respondent/plaintiff never cross-examined Amar Singh DW-1 on this point. The learned counsel for appellant/defendant also referred to the conduct of respondent/plaintiff who filed the suit seeking possession by way of specific performance of agreement to sell just few days before the expiry of period of limitation. He has failed to explain why the suit was not filed earlier. The appellant/defendant Amar Singh stepped into the witness box as DW-1 to prove his own version. His version is also supported by Ramesh Kumar DW-2. The entire evidence of the appellant/defendant has been wrongly ignored without any basis. It is prayed that the regular second appeal preferred by the appellant/defendant may kindly be accepted and the judgment and decree passed by both the Courts below may kindly be set aside and the suit filed by the respondent/plaintiff may kindly be dismissed.

11. The learned counsel for the respondent/plaintiff in his brief arguments pointed out that the facts of the case and the documents are duly proved on record by leading convincing evidence. The execution of agreement to sell dated 09.06.2004 Ex.P-1 and payment of earnest money is duly proved on record by examining the plaintiff Angrej Singh as PW-2 as well as the deed writer Suresh Kumar Sharma as PW-1 and marginal witness Harbans Lal as PW-3. On the date fixed for the execution and registration of sale deed i.e. 08.06.2005, the respondent/plaintiff was present in the office of Sub-Registrar, Thanesar with the balance sale consideration but it was the appellant/defendant who did not turn up, therefore, the respondent/plaintiff got his presence marked by way of affidavit attested by Executive Magistrate, Thanesar dated 08.06.2005

Ex.P-2. Ram Saran, Reader to the Tehsildar, Thanesar is also examined as PW-4 to prove this fact. Therefore, all the facts narrated in the plaint were duly proved on record. It was for the appellant/defendant to establish the stand taken by him regarding fraud which he has miserably failed. The learned counsel for the respondent/plaintiff to support his argument has relied upon the authority cited in **2014(62) R.C.R.(Civil) 807, Punjab and Haryana High Court** in case titled **“Khem Chand Versus Narender Singh and others”**, where in that case *“the appellant had raised the plea that the agreement propounded by the plaintiffs-respondents was result of fraud as thumb impressions of the appellant and his son were obtained under the influence of liquor. In that case also, the appellant did not lodge any report with any authority against Joginder Singh and others that they were forced to consume liquor and thereafter, their thumb impressions were obtained without making them to know the contents of the documents. It was held that plea of fraud is required to be proved by a party beyond the shadows of reasonable doubt even in civil litigation.”*

The facts of the case and the evidence on record were rightly considered by the Court of learned Civil Judge (Senior Division), Kurukshetra and the suit filed by the respondent/plaintiff was rightly decreed and the appeal preferred by the appellant/defendant Amar Singh was also rightly dismissed vide impugned judgment and decree dated 18.04.2014. The consistent finding of both the Courts below do not require any interference. It is prayed that the appeal preferred by the appellant/defendant may kindly be dismissed.

12. I have considered the arguments advanced before me and have gone through the trial Court file carefully with the able assistance of both the learned counsels. In this case, Angrej Singh – plaintiff filed suit

for possession by way of specific performance of agreement to sell dated 09.06.2004 Ex.P-1 regarding 15B-4B, being 2/3rd share, regarding the land bearing Khasra Nos. 709(4-0), 719(4-0), 725(4-0), 737(4-0), 738(4-0), 1436/720(2-16), Kittas-6 of total area 22B-16B, as per jamabandi for the year 1999-2000 situated in village Jalkheri, Tehsil Thanesar, District Kurukshetra against the defendant Amar Singh. As per the terms of agreement to sell dated 09.06.2004 Ex.P-1, the land was agreed to be sold by the present appellant Amar Singh at the rate of Rs. 2 lacs per acre. As per the terms of aforesaid agreement to sell, Rs. 5 lacs were received by the appellant/defendant as earnest money and the date fixed for the execution and registration of sale deed was 08.06.2005. So far as the ownership of land in dispute is concerned, the same is not disputed. Admittedly, the land in question was owned by appellant/defendant Amar Singh. Copy of jamabandi for the year 1999-2000 is Ex.P-3. The onus was on the plaintiff to prove the execution of agreement to sell dated 09.06.2004 Ex.P-1 and in order to discharge this onus, Angrej Singh – plaintiff has stepped into the witness box as PW-2. He confirmed the facts stated in the plaint. Thereafter, he examined Suresh Kumar Sharma, Deed-writer as PW-1 who confirmed that the agreement to sell dated 09.06.2004 Ex.P-1 was scribed by him at the instance of Amar Singh in favour of Angrej Singh. After writing, it was read over and explained to both the parties in the presence of marginal witnesses. He further confirmed that Amar Singh received Rs. 5 lacs as earnest money in his presence and thereafter, affixed his thumb impression and it was also signed by Angrej Singh as well as by the marginal witnesses. He further confirmed that the said agreement to sell dated 09.06.2004 Ex.P-1 was duly entered in his register at serial No. 198 dated 09.06.2004 and the said entry was also

thumb marked by Amar Singh. Apart from this, one of the marginal witness Harbans Lal PW-3 has also stepped into the witness box to confirm the aforesaid facts. Therefore, the respondent/plaintiff examined the scribe as well as the marginal witness to prove the due execution of agreement to sell dated 09.06.2004 Ex.P-1.

The appellant/defendant has taken the stand that this agreement to sell is a result of fraud as M/s Mam Chand Khushi Ram, Commission Agent managed to obtain his thumb impression on a blank paper and thereafter, the said blank paper was converted into an agreement to sell in dispute. He denied to have received the earnest money. He further took the stand that the marginal witness examined by the plaintiff i.e. Harbans Lal PW-3 is an interested witness and his testimony cannot be looked into. The onus was heavily on the appellant/defendant to prove his stand taken in the written statement regarding fraud. Amar Singh has stepped into the witness box as DW-1 and Ramesh Kumar as DW-2 further confirmed that Amar Singh used to sell his produce with M/s Mam Chand Khushi Ram, Commission Agent where the respondent/plaintiff was also selling his crop. Mere fact that Amar Singh and Angrej Singh were selling their produce with M/s Mam Chand Khushi Ram, Commission Agent cannot be treated as a suspicious circumstance. In the execution of aforesaid agreement to sell, M/s Mam Chand Khushi Ram, Commission Agent are not the beneficiary. The aforesaid agreement to sell dated 09.06.2004 Ex.P-1 was executed between the two individuals. It is commonly seen that the marginal witnesses are either known to the seller or the purchaser. Obviously, no stranger would come forward to be a marginal witness in a document to whom he is not known. Therefore, the witnesses are usually known to the parties and this fact cannot be treated

as a suspicious circumstance. Apart from this, mere fact that Harbans Lal PW-3 by mistake named the Deed-writer as Surinder Singh is not sufficient to brush aside the entire evidence led by the respondent/plaintiff. In this case, Suresh Kumar Sharma Deed-writer has stepped into the witness box as PW-1 to prove his own version being scribe of agreement to sell dated 09.06.2004 Ex.P-1. In the case in hand, the agreement to sell dated 09.06.2004 Ex.P-1 is scribed by regular Deed-writer who is examined as PW-1 and he has also confirmed that this document was duly entered in his register at serial No. 198 dated 09.06.2004 and the said entry was also thumb marked by Amar Singh. This fact is sufficient to discard the stand taken by the appellant/defendant that his thumb impression was obtained on a blank paper by his commission agent in good faith. Therefore, the appellant/defendant has failed to prove the stand taken by him in the written statement regarding fraud. The cross-examination of Amar Singh DW-1 further shows that the stand taken by him is after-thought. Once he came to know about the agreement to sell dated 09.06.2004 Ex.P-1, he did not try to convene any panchayat nor he filed any complaint to the police. Therefore, considering the aforesaid factual position, the stand taken by the appellant/defendant regarding fraud was rightly disbelieved by both the Courts below.

The respondent/plaintiff as PW-2 confirmed that he was always ready and willing to perform his part of agreement to sell. As per the terms of agreement to sell dated 09.06.2004 Ex.P-1, the date fixed for the execution and registration of sale deed was 08.06.2005. On that day, he was present in the office of Executive Magistrate, Thanesar with balance sale consideration to perform his part of agreement to sell but the appellant/defendant Amar Singh did not turn up. Thereafter, he got his

affidavit attested from Executive Magistrate, Thanesar on the same day which is Ex.P-2. This fact is also proved on record by examining Ram Saran, Reader to the Tehsildar, Thanesar as PW-4. The conduct of respondent/plaintiff clearly shows that he was ready and willing to perform his part of agreement to sell on the date fixed. It is not disputed that the suit filed by the respondent/plaintiff is well within the period of limitation.

In view of the facts and circumstances of the present case, as discussed above the verdict given by the Courts below is based on proper appreciation of the facts and the evidence on record. I do not find any reason to dis-agree with the findings given by the Courts below. Accordingly, the judgment and decree dated 03.08.2012 passed by learned Civil Judge (Senior Division), Kurukshetra and the judgment and decree dated 18.04.2014 passed by learned Additional District Judge, Kurukshetra dismissing the appeal, are accordingly upheld. There is no substantial question of law or fact arising in this appeal. Consequently, the Regular Second Appeal filed by the appellant – Amar Singh stands dismissed with costs.

The photocopied records received from the two Courts below be sent back to the concerned quarter.

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

19.09.2023  
*lalit*

**(AMARJOT BHATTI)**  
**JUDGE**

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned: | Yes    |
| Whether reportable:        | Yes/No |