

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

**Reserved on 11<sup>th</sup> of September, 2024  
Pronounced on 8<sup>th</sup> November, 2024**

**RSA No.830 of 1994 (O&M)**

Bhupinder Singh

....Appellant

Versus

Karnail Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Krishan Singh Dadwal, Advocate with  
Ms. Neha Jain, Advocate for the appellant.

Mr. Solomon Partap Singh, AAG, Punjab.

**PANKAJ JAIN, J.**

Defendant is in second appeal

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the defendant and the respondent as the plaintiff.

3. Plaintiff filed suit seeking decree of possession by way of specific performance of agreement to sell dated 8<sup>th</sup> of March, 1989 in respect of land measuring 8 Kanals fully described in the head-note of the plaint. In the alternate, decree of recovery of Rs.10,000/- by way of refund of earnest money, was claimed.

4. Plaintiff pleaded that Karnail Singh defendant, owner in possession of the suit land agreed to sell the same in his favour. Written agreement to sell dated 8<sup>th</sup> of March, 1981 was executed on receipt of

amount of Rs.5,000/- as earnest money. The total sale consideration was agreed to be Rs.30,000/-. It was further agreed between the parties that the defendant shall execute the sale deed in favour of the plaintiff on or before 20<sup>th</sup> of June, 1989 on receiving the remainder consideration. Plaintiff further claimed that he always remained ready and willing to perform his part of the contract. On the agreed date i.e. 20<sup>th</sup> of June, 1989, he remained present in the office of Sub Registrar throughout the day with the remaining sale consideration, but the defendant failed to turn up. Plaintiff claimed that despite repeated requests, defendant has failed to perform and filed the present suit.

5. Suit was contested by the defendant. Defendant denied execution of the agreement to sell. The receipt of earnest money was denied. It was claimed by the defendant that the agreement to sell was result of fraud played by the plaintiff.

6. Parties went to trial on the following issues:

- “1. Whether the defendant executed an agreement to sell dated 8-3-89 after receiving the amount of Rs.5000/-? OPP.
2. Whether the plaintiff was ready and willing to perform his part of the agreement on the day of execution of the sale deed and on the date of filing of the present suit and the plaintiff is still ready and willing to perform his part of the agreement to sell dated 8-3-89? OPP
3. Whether the plaintiff is entitled to recover Rs.10,000/- in the alternative if the relief of specific performance of agreement is not granted to the plaintiff? OPP.
4. Whether the suit is not maintainable in the present form? OPD.
5. Whether the agreement is the result of fraud? OPD.
6. Whether the plaintiff is estopped by his act and conduct

from filing the present suit? OPD.

7. Whether the plaintiff has got no locus standi to file the present suit? OPD.
8. Whether the plaintiff has no cause of action to file the present suit? OPD.
9. Relief.”

7. On issue No.1, Trial Court came to the conclusion that the plaintiff successfully established that defendant Bhupinder Singh executed agreement to sell in his favour after receiving earnest money of Rs.5,000/- in the presence of attesting witnesses namely Jhirmal Singh and Rachhpal Singh. Jhirmal Singh appeared as PW-3 and fully proved the agreement to sell. Balkar Singh the scribe appeared as PW-2. The fraud alleged by the defendant in execution of the agreement to sell could not be proved as the defendant failed to lead any cogent evidence.

8. On Issue No.2, Trial Court returned the finding in favour of the plaintiff holding that he proved his readiness and willingness. By way of affidavit Exhibit P-3, the plaintiff successfully proved his presence in the office of Sub Registrar on the appointed date i.e. 20<sup>th</sup> of June, 1989. The present suit was filed on 5<sup>th</sup> of August, 1989 i.e. within 2 months from the appointed date.

9. On issue No.5, Trial Court held that apart from the bald statement made in Para No.3 of the written statement that 'the plaintiff has played a fraud upon the defendant by fabricating and manipulating the agreement to sell', the defendant failed to give any details of the fraud pleaded and, thus, issue No.5 was answered against the defendant. Trial Court thus decreed the suit of the plaintiff for the main relief and granted

him decree of possession by way of specific performance.

10. In appeal preferred by the defendant, defendant filed application under Order VI Rule 17 CPC seeking amendment of the written statement. Defendant sought amendment setting up a plea of being minor. Defendant proposed to incorporate plea to the effect that the defendant was minor at the time of execution of agreement to sell as his date of birth is 10<sup>th</sup> of April, 1971. Thus, the agreement to sell dated 8<sup>th</sup> of March, 1989 propounded by the plaintiff was *void ab initio*.

11. The plaintiff filed reply to the application. It was pleaded that on the same day i.e. 8<sup>th</sup> of March, 1989, a sale deed was also executed by the appellant. The same is on the file. In the sale deed, age of the defendant was recorded as 23 years and thus, the plea being raised at this stage is without any basis.

12. The application filed by the defendant seeking amendment of written statement was dismissed vide order dated 11<sup>th</sup> of February, 1994. Ld. Lower Appellate Court held that the defendant has not assigned any reason for not setting up plea of minority before the Trial Court. It is not his case that he came to know of the correct date of birth after decree was passed against him. Ld. Lower Appellate Court further held that on the day the agreement was executed, the defendant executed a sale deed in respect of other land which has come on record. In the said sale deed, his age has been mentioned as 23 years. He appeared as DW-1 in the present suit on 26<sup>th</sup> of March, 1991. He admitted the factum of mentioning his age in the said sale deed as 23 years. Taking all these facts into consideration, lower Appellate

Court dismissed the application filed by defendant seeking amendment of the written statement. Defendant also filed an application to place on record correct school certificate claiming that inadvertently due to clerical mistake, a wrong certificate was filed along with amendment application. Thus, Lower Appellate Court affirmed the findings recorded by the Trial Court and dismissed the appeal.

13. Assailing the impugned judgment and decree passed by the Courts below, counsel for the appellant/defendant submits that the Courts below erred in decreeing the suit. Application filed under Order VI rule 17 CPC seeking amendment of the written statement remained undecided. Further application filed, dated 25<sup>th</sup> of October, 1993 for placing on record correct date of birth certificate also remained undecided. It is being argued that since the application filed seeking amendment of the written statement remained undecided, the impugned judgment passed by the Lower Appellate Court deserves to be set aside. The matter needs to be remanded back. It has been further claimed that mere affidavit Exhibit P-3 does not prove readiness and willingness on part of the respondent. Courts below have thus erred in deciding issue No.2 in favour of the plaintiff/respondent.

14. I have heard counsel for the parties and have carefully gone through records of the case.

15. Plaintiff propounded agreement to sell executed by the defendant dated 8<sup>th</sup> of March, 1989. In order to prove the same, scribe of the agreement to sell, Balkar Singh appeared as PW-2. Balkar Singh proved copy of register Exhibit P-2 showing entry made by him at Serial No.121.

Vidya Sagar, Stamp Vendor appeared as PW-1. He produced his Register. He proved that defendant Bhupinder Singh purchased stamp-paper for execution of agreement. Entry was made at Serial No.5842 dated 7<sup>th</sup> of March, 1989 in the Register against which defendant appended his signatures. The said stamp-paper was identified by him as the one used for scribing original agreement dated 8<sup>th</sup> of March, 1989, Exhibit P-1. Attesting witness Jhirmal Singh (PW-3) fully established that Bhupinder Singh signed and executed agreement to sell, Exhibit P-1, in favour of the plaintiff after having heard and admitting the contents of the same and after receiving Rs.5000/- as earnest money.

16. The defendant originally pleaded fraud without giving any details thereof. Apart from bald statement made in the written statement claiming that the agreement to sell was result of fraud and manipulation, neither were the particulars of the fraud played revealed, nor was any cogent evidence led to dislodge the agreement to sell.

17. Plea raised by the counsel for the appellant that the application filed by the defendant before the Appellate Court seeking amendment of the written statement remained undecided, is also against record. It is discernible from the record that a detailed order dated 11<sup>th</sup> of February, 1994 was passed by District Judge, Hoshiarpur dismissing the application filed by the appellant seeking amendment of the written statement. The said application also has not served the cause of the defendant/appellant. While originally the defendant pleaded fraud, by way of amendment he sought refuge under the plea of minor age. Admittedly, the said order passed by the

Trial Court dismissing the application seeking amendment of the written statement was never challenged. Even though the appellant could have challenged the same in the present appeal in view of the law laid down by Supreme Court in the case of **‘Satyadhyan Ghosal and others vs. Sh. Deorajin Debi and another’**, 1960 AIR Supreme Court 941, but no such challenge has been raised in the grounds of appeal. The plea raised is that the application remained undecided which is against the record.

18. Plea raised by Mr. Dadwal w.r.t. application dated 25<sup>th</sup> of October, 1993 having remained undecided is also without merit and the same deserves to be rejected. Application dated 25<sup>th</sup> of October, 1993 was filed before the District Judge for placing on record correct copy of the school leaving certificate accompanying the earlier application filed under Order VI Rule 17 CPC seeking amendment of the written statement. Since the Appellate Court dismissed the application seeking amendment of the pleadings at the appellate stage, the prayer for placing on record corrected copy of the school leaving certificate is inconsequential.

19. Coming on to the plea w.r.t. readiness and willingness, the plaintiff proved his presence before the Sub Registrar on the appointed date by way of affidavit Exhibit P-3. Thus, so far as willingness is concerned, same stands proved. The present suit was filed within 2 months pleading readiness and willingness. In plaint, the plaintiff pleaded as under :

“6) That the plaintiff is ready and willing, was ready and willing and will remain ready and willing to execute the sale deed in his favour from the defendant after payment of balance sale consideration.”

20. The response thereto in the written statement, reads as under:

“6. That the para No 6 is denied being wrong, false and baseless. The plaintiff has got no legal right or authority to get the sale deed executed.”

21. Plaintiff Karnail Singh appeared as PW-4 wherein he specifically pleaded that he remained present on the appointed date in the premises of Sub Registrar, Dasua office from 9.00 am to 5.00 pm along with balance sale consideration. Defendant did not turn up. He further stated that he remained ready and willing to get the sale deed executed and is still ready and willing to get the sale deed executed in his favour on payment of balance sale consideration. He was cross-examined. Not even a suggestion was put to him that he was not ready or willing to get the sale deed executed or was not in possession of the finances to execute the sale deed.

22. In view of above, this Court does not find any reason to interfere in the well reasoned findings recorded by the Courts below. Resultantly, the present appeal is ordered to be dismissed.

23. Pending application, if any, shall also stand disposed off.

November 08, 2024  
Dpr

(Pankaj Jain)  
Judge

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No