



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

**RSA-5-2025 (O&M)
Reserved on : 08.01.2025
Pronounced on : 21.01.2025**

DHAN SINGH @ DHANA SINGH AND ANRAppellants

VERSUS

HAMIR KAUR AND ANRRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN1

Present : Mr. J.K. Singla, Advocate for the appellants.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants challenging the judgments and decrees dated 22.10.2019 and 26.11.2024 passed by the Trial Court and the First Appellate Court, respectively, dismissing the suit filed by the plaintiff-appellants herein.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellants herein filed a suit for possession by way of specific performance of agreement to sell dated 25.05.2010 qua land measuring 16 Kanals comprised in Killa No.80//2(8-0), 9(8-0) situated at Danewala, Tehsil Sardulgarh, District Mansa for a total sale consideration of ₹10,50,000 (rupees ten lakh fifty thousand) out of which ₹6,00,000 (rupees six lakh) was alleged to have been paid as earnest money. In the alternative, the suit was for recovery of ₹12,00,000 (rupees twelve lakh) - ₹6,00,000 (rupee six lakh) being earnest money and ₹6,00,000 (rupees six lakh) being penalty with interest @12% per annum as also for permanent injunction restraining defendant-respondent

No.1 from transferring the property to anyone. It was averred in the plaint that on 25.05.2010 the defendant-respondent No.1 entered into an agreement to sell the suit land for a total sum of ₹10,50,000 (rupees ten lakh fifty thousand) out of which ₹6,00,000 (rupees six lakh) was paid as earnest money. The agreement to sell was alleged to have been executed in the presence of witnesses and after admitting the contents, the defendant-respondent No.1 had appended her thumb impressions. It was further averred that defendant-respondent No.1 – Hamir Kaur – had agreed that the sale deed would be executed immediately after the decision of the Civil Suit titled ‘Jaswinder Kaur and Others V/s Hamir Kaur’. It was further the case set up that defendant-respondent No.1 undertook to execute and get the sale deed registered in favor of the plaintiff-appellants on receipt of the balance sale consideration. The suit filed by Jaswinder Kaur against Hamir Kaur was dismissed vide judgment and decree dated 21.04.2014. It was further the case set up that the plaintiff-appellants were always ready and willing to execute the sale deed and to pay the balance sale consideration. Notice was alleged to have been sent on 07.05.2014. However, since the address was not correct, the notice was received back unserved. Thereafter, a second notice was sent on 12.05.2014. On 17/18.05.2014 it was Saturday and Sunday and the offices were closed. The plaintiff-appellants went to the Office of Joint Sub-Registrar, Jhunjhunnir on 19.05.2014, but the defendant-respondent No.1 did not turn up. The plaintiff-appellants got their presence marked by way of affidavit. Hence, the present suit.

3. Defendant-respondent No.1 appeared through counsel and filed her written statement. It was the stand taken that the agreement to sell dated 25.05.2010 was forged, fabricated and an outcome of fraud and the agreement to sell had been prepared by the plaintiff-appellants in connivance with the Scribe and the witnesses. Defendant-respondent No.1 had neither entered into any agreement to sale nor had received any amount. It was further the case set up that an FIR had been lodged against the plaintiff-appellants for the offence under Section 420 IPC.

4. In replication, the averments made in the written statement were denied and the ones taken in the plaint were reiterated.

5. On the basis of the pleadings of the parties the following issues were framed :

1. Whether defendant executed an agreement to sell dated 25.05.2010 in favour of the plaintiffs at the rate of ₹10,50,000 ? OPP
2. Whether the plaintiffs were always ready and willing and are still ready and willing to perform his part of contract ? OPP
3. Whether the plaintiffs are entitled to get relief of specific performance of the agreement to sell or in the alternative relief of recovery of ₹12,00,000 i.e. double of the earnest money of ₹6,00,000 ? OPP
4. Whether the plaintiffs have no *locus standi* and cause of action ? OPD

5. Whether the suit of the plaintiffs is not maintainable ? OPD
6. Whether the alleged agreement to sell is forged and fabricated document and without consideration ? OPD
7. Relief.

6. The Trial Court vide judgment and decree dated 22.10.2019 dismissed the suit. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 26.11.2024. Hence, the present regular second appeal by the plaintiff-appellants.

7. The learned counsel for the plaintiff-appellants would contend that both the Courts have erred in dismissing his suit. It is urged that the agreement to sell had been proved by examining the attesting witness – PW3 Surinder Kumar – who categorically stated that the agreement was entered into between the parties under which ₹6,00,000 (rupees six lakh) was paid as earnest money to defendant-respondent No.1 in his presence and that defendant-respondent No.1 – Hamir Kaur – had appended her thumb impressions. It was further the contention of the learned counsel that plaintiff-appellant No.1 himself appeared as PW2 and deposed qua the entire transaction. The learned counsel would contend that there was no forgery in the agreement to sell and that merely because the thumb impression was put at two places, the same would not amount to forgery. It was further the

contention that since there was no notary available at Jhunir, the presence was got notarized from the notary at Sardulgarh.

8. Heard.

9. In the present case the agreement to sell alleged to have been executed on 25.05.2010 reveals that the thumb impression of defendant-respondent No.1 appears at two places. On the second page of the agreement to sell, one of the thumb impressions is right in the middle of the agreement to sell for which no cogent explanation is forthcoming. Further still, the plaintiff-appellants have woefully failed to prove the payment of the earnest money of ₹6,00,000 (rupees six lakh). The case set up by the plaintiff-appellants was that the amount was paid to defendant-respondent No.1 – Hamir Kaur – at her residence. It is further to be noticed that in the cross examination of plaintiff-appellant No.1 he specifically stated that he had never ever gone to the house of Hamir Kaur. An FIR was lodged by Hamir Kaur qua the forged agreement to sell even prior to the filing of the suit. Surinder Kumar, who appeared as the attesting witness to prove the execution of the agreement to sell, admitted in his cross examination that he had entered into an agreement to sell with the plaintiff-appellants which fact itself was not disclosed in the plaint. In the cross examination, Surinder Kumar (PW3) stated that the amount of earnest money was given before the Deed Writer. The Deed Writer, however, completely denied that any amount was paid in his presence. Further still, there are material contradictions. There is not an iota of evidence led by the plaintiff-appellants to show that from where the said amount of ₹6,00,000 (rupees six lakh) was arranged. It has further come in evidence that

the stamp papers stated to have been purchased by Hamir Kaur were for the purpose of *Yadast Nama* and not for an agreement to sell for which there is no explanation forthcoming. Yet further still, plaintiff-appellant No.1 in order to show his readiness and willingness had produced his affidavit (Ex.P-5) which was alleged to have been executed to mark his presence, however, the same affidavit had not been executed at Jhunir but had been executed at Sardulgarh whereas the stamp paper had been purchased at Jhunir on 19.05.2014. There is no explanation as to why plaintiff-appellant No.1 was present at Sardulgarh when the sale deed was to be executed at Jhunir. The plaintiff-appellants have also failed to show that they were in possession of the balance sale consideration.

10. The Hon'ble Supreme Court in the case of **R. Shama Naik Vs. G. Srinivasiah [2024 SCC Online SC 3586]** has reiterated the well settled principle of law that not only is it obligatory for the plaintiff to make specific statement and averments in the plaint but also obliged to adduce necessary oral and documentary evidence to show the availability of funds to make payment in terms of the contract in time.

11. In view of the above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

21.01.2025
Aman Jain

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No