IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-390-2024 (O&M)
Reserved on :- 17.09.2025
Date of Pronouncement:-19.09.2025

LEKH SINGH AND ANR.

… Appellants

Versus

KULDIP SINGH

... Respondent

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-
Mr. Hitesh Ghai, Advocate
for the appellants.

Mr. Ashish Pal Kaushal, Advocate
for respondent.
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VIRINDER AGGARWAL, J.

1. The appellants/defendants have filed the present Regular Second Appeal (hereinafter to be referred as 'RSA') challenging the concurrent judgments of the Courts below, whereby the suit seeking possession through specific performance of the agreement to sell dated 03.06.2013, in respect of the suit land measuring 43 Kanals 14 Marlas together with an additional 8 Kanals of land, was decreed in favor of the plaintiff.

2. Briefly stated, the facts of the present case are that the respondent/plaintiff instituted the suit seeking possession of the suit property by way of specific performance of the Agreement to Sell dated 03.06.2013, in respect of land measuring 43 Kanals 14 Marlas, for a total sale consideration of ₹15 lakh per acre, and having paid earnest money of

₹30,85,000/- in cash. The sale deed was originally agreed to be executed on or before 18.12.2013 upon receipt of the balance sale consideration. Subsequently, the plaintiff remitted an additional sum of ₹10 lakh on 12.12.2013, and the date for execution of the sale deed was extended to 15.07.2015. On the said date, the plaintiff appeared at the office of the Sub-Registrar along with the balance sale consideration and other incidental expenses; however, the defendants failed to appear. The plaintiff marked his attendance through an application before the Sub-Registrar, but the defendants' non-compliance necessitated the filing of the present suit.

3. The defendants contested the suit by filing their written statement, raising preliminary objections *inter-alia* that the suit is not maintainable in its present form and that the plaintiff has no cause of action. On merits, the defendants denied having executed any agreement to sell or having received any earnest money from the plaintiff, further alleging that the purported agreement is forged and fabricated, resulting from misrepresentation and fraud allegedly committed by the plaintiff. It was contended that, prior to the present suit, Jagdev Singh, son of Harjit Singh, had forged three Agreements to Sell in respect of the suit land and instituted a civil suit titled 'Jagdev Singh v. Lekh Singh' for specific performance of an agreement dated 12.08.2005. After his demise, his legal representatives pursued another suit titled Jaswinder Singh & Ors. v. Nahar Singh for specific performance of a separate agreement dated 01.09.2015, which was subsequently withdrawn. The present plaintiff is a relative of Jagdev Singh and had acted as a commission agent, through whom the defendants sold their crop. It is further contended that while the earlier suits were pending,

the plaintiff, under the pretext of facilitating withdrawal of those cases, obtained the defendants' thumb impressions and signatures on stamp papers, which were later misused for the present transaction.

4. Based on the pleadings of the parties, the following issues were accordingly framed for determination:-

(1) Whether the plaintiff is entitled to the decree of possession/ joint possession by way of specific performance as prayed for? OPP

(2) Whether the plaintiff is entitled to the decree of alternative suit for recovery of Rs. 53,73,050/- as prayed for? OPP

(3) Whether the plaintiff is entitled to the decree of consequential relief of permanent injunction as prayed for? OPP

(4) Whether the suit of plaintiff is not legally maintainable? OPD

(5) Whether the plaintiff has got no cause of action to file the present suit? OPD

(6) Whether the alleged agreement to sell dated 03.06.2013 is forged and fabricated document? OPD

(7) Whether the suit of the plaintiff is bad for the act and conduct of the plaintiff? OPD

(8) Whether the plaintiff has got no locus standi to file the present suit? OPD

(9) Relief.

5. The parties were afforded ample opportunity to lead evidence, and upon hearing the arguments, the suit filed by the plaintiff for specific performance of the agreement to sell dated 03.06.2013 was decreed. Aggrieved by the said judgment and decree, the appellants/defendants preferred an appeal, which was subsequently dismissed by the learned Additional District Judge, Ludhiana, vide judgment and decree dated

26.07.2023. Being dissatisfied with the concurrent findings of the courts below, the appellants/defendants have preferred the present RSA.

6. I have carefully considered the submissions advanced by the learned counsel for the parties and have perused the record in its entirety with meticulous attention to detail, including the pleadings, evidence on record, and the judgments and decrees passed by the courts below, in order to arrive at a reasoned conclusion in the present appeal.

7. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the case of **Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

8. Learned counsel for the appellants primarily assails the judgments and decrees of the courts below on multiple grounds. It is contended that both courts erred in holding that the plaintiff had paid earnest money to the defendants, and that the testimonies of PW-1 and PW-2 were misconstrued and improperly relied upon. It is further argued that there is no evidence on record to establish that the respondent/plaintiff remained ready and willing to perform his obligations under the contract at all material times, nor has it been demonstrated that he possessed the requisite financial

capacity to discharge the balance sale consideration. Counsel also pointed out that the stamp-vendor, whose testimony was material, was not examined as a witness. Learned counsel submitted that the courts below misused their discretion in passing the decree, purportedly in contravention of Section 20 of the Specific Relief Act, and, therefore, the concurrent findings recorded by the courts below are liable to be set aside.

9. Conversely, learned counsel for the respondent/plaintiff contended that there is no illegality or infirmity in the concurrent findings of the Courts below. It is submitted that while the appellants/defendants have pleaded fraud and misrepresentation, they have admitted the thumb impressions and signatures on the agreement to sell. Consequently, it was incumbent upon the appellants/defendants to prove, on the basis of cogent evidence, that the agreement in question was procured by fraud or misrepresentation. The onus to establish such fraud and misrepresentation lay squarely upon the appellants/defendants, who were required to discharge it beyond reasonable doubt. Learned counsel contended that the appellants/defendants have failed to lead any such evidence, and in the absence of any such proof, there exists no justification to interfere with the well-reasoned judgments and decrees of the Courts below. It was, therefore, prayed that the appeal be dismissed.

10. The primary contention advanced by learned counsel for the appellants is that both the Courts below have erroneously placed reliance on the testimonies of PW-1 and PW-2 regarding the payment of earnest money and execution of the agreement to sell. It is contended that PW-1, Komaljit Singh, in his cross-examination, deposed that the plaintiff had made payments in currency notes of denominations of ₹2,000 and ₹500. The

agreement in question is alleged to have been executed in the year 2013, at which time ₹2,000 notes were not in circulation. Learned counsel further submitted that PW-2, in his cross-examination, stated that he was unaware of the exact number of currency notes of ₹500 and ₹1,000 paid by the plaintiff. It is thus argued that when both witnesses were unable to provide precise details regarding the denomination and quantity of the currency notes tendered as earnest money, the Courts below erred in placing undue reliance on the testimonies of these marginal witnesses to validate the agreement to sell.

11. A careful perusal of the cross-examination of Komaljit Singh reveals that it was recorded on 01.02.2018, nearly five years after the execution of the agreement to sell. It cannot reasonably be expected of the marginal witnesses to recall with precision the denominations or exact number of currency notes paid as earnest money after such a lapse of time. Notably, both witnesses have deposed that the defendants had the agreement to sell scribed in favour of the plaintiff and that the deed-writer read the agreement aloud to the parties as well as the witnesses. Upon acknowledging the correctness of the agreement, defendant-Lekh Singh affixed his thumb impression, and defendant-Nahar Singh likewise affixed his thumb impression and signatures. It is significant that Komaljit Singh was not cross-examined on the critical point that the defendants had affixed their thumb impressions and signatures after admitting the contents of the agreement to sell. The Courts below, therefore, acted correctly in relying on the substantive aspects of the witnesses' testimony regarding execution and

acknowledgment of the agreement, notwithstanding minor discrepancies regarding currency denominations.

12. Learned counsel for the appellants has further contended that both courts erred in recording a finding that the plaintiff was ready and willing, and remained so, to perform his obligations under the contract throughout. It was argued that mere financial capacity to pay the balance sale consideration would not, by itself, constitute readiness and willingness on the part of the respondent/plaintiff. Reliance was placed on the judgment of the Hon'ble Apex Court in **U.N. Krishnamurthy (Since Deceased) Through LRs v. A.M. Krishnamurthy, AIR 2022 SC 3361**, wherein, at paras 24 and 25, the Court held that a plaintiff is required to specifically plead that he possessed sufficient funds or was in a position to raise the necessary funds to discharge his contractual obligations. In the absence of such funds, the plaintiff must plead and prove the existence of arrangements with a financier to ensure timely performance of the contract. Paras 24 and 25 of the judgment are reproduced hereunder:-

> "24. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in Court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.

25. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money."

13. He further contended that the mere fact of the plaintiff's appearance before the Sub-Registrar and marking of his presence would not, by itself, demonstrate that he remained ready and willing to perform his part of the contract. In support of this contention, reliance was placed on the judgments of the Hon'ble Apex Court in **Jagjit Singh (D) Through LRs v. Amarjit Singh, 2018 (4) RCR (Civil) 827**, and **Ravi Setia v. Madan Lal & Others, 2019 AIR (SC) 479**, wherein, at para 5, the Court observed as follows:-

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"The sale deed was to be executed on or before 30.04.1990. The Trial Court and the First Appellate Court arrived at the finding of readiness and willingness on part of the plaintiff solely on basis of a certificate produced by them from the Sub-Registrar confirming their presence before him on 30.04.1990 for execution. Apart from the same, no further evidence was

> led by the plaintiff to demonstrate readiness and willingness including the continuous capacity for discharge of the balance consideration. The plaintiff in its application before the Sub-Registrar stated that he had required defendants 1 and 2 to be present for registration on 25.06.1990. No evidence whatsoever has been led by the plaintiff in support of the same. We are of the considered opinion that in the circumstances the certificate from the office of the Sub-Registrar cannot be construed as conclusive evidence to non-suit defendants 1 and 2. The findings to that effect are therefore held to be unsustainable."

14. It is, no doubt, the plaintiff's primary duty to prove that he was ready and willing to perform his obligations under the contract. In the present case, the plaintiff placed on record a copy of his bank account statement as Ex.P6, showing funds to the tune of ₹11,75,000/-. Learned counsel for the appellants contended that this document, having been proved during rebuttal evidence, should not be taken into consideration. However, once a document is formally admitted into evidence, it must be considered irrespective of whether it was tendered in affirmative or rebuttal evidence. Further, both courts below have relied upon the statement of the respondent-plaintiff regarding his financial capacity, including that one of his sons resides in Canada and his own annual income was approximately ₹55,00,000/-, and the appellants were unable to extract any material during cross-examination to impeach the plaintiff's financial capacity. Moreover, the respondent-plaintiff appeared before the Sub-Registrar on the stipulated date and marked his presence, demonstrating his willingness to perform his part of the agreement. He also issued a legal notice (Annexure P-4) sent via postal receipt (Annexure A-5). On the other hand, the appellant-defendant has denied the execution of the Agreement to Sell, alleging that it was obtained by fraud. It

was contended that during ongoing litigation between the defendant and Jagdev Singh and subsequently his son regarding the suit land, the plaintiff approached the defendant under the pretext of facilitating the withdrawal of the pending cases and, on that basis, obtained the defendant's thumb impressions and signatures on stamp papers, which were later misused in the present transaction.

15. Now, considering the fact that the appellant-defendants have admitted their thumb impressions and signatures on the stamp papers upon which the Agreement to Sell was executed, and have merely pleaded fraud allegedly committed by the plaintiff, it was incumbent upon the appellant-defendants to prove such alleged fraud by leading cogent evidence. It is settled that allegations of fraud must be established with a high degree of certainty, although not to the standard of criminal proof beyond reasonable doubt. In the present case, the appellant-defendants have failed to adduce any evidence to substantiate their claim that the plaintiff obtained their thumb impressions and signatures by fraudulent means.

15.1 To establish execution of the Agreement to Sell, the plaintiff examined marginal witnesses, both of whom were subjected to cross-examination by the appellant-defendants. Notably, during cross-examination, no suggestion was put to the witness Komaljit Singh that the thumb impressions and signatures were already present on the stamp papers or that the plaintiff obtained them on blank stamp papers. Similarly, when the plaintiff himself was examined, he categorically denied any acquaintance with Jagdev Singh and any knowledge of litigation between Jagdev Singh and the appellant-defendants. Although it was suggested that the plaintiff took advantage of the alleged illiteracy of the defendants, a perusal of the Agreement to Sell (Ex.P1) clearly shows that the thumb impression of Lekh Singh and the signature of Nahar Singh were affixed on 03.06.2013. The appellant-defendants have not proved that any litigation between them and Jagdev Singh was pending on that date. The First Appellate Court has also recorded that the earlier suit had been withdrawn well before the execution of the agreement to sell.

15.2 Learned counsel for the appellant further contended that the stamp vendor was not examined to prove the purchase of the stamp papers, which, according to him, is fatal to the plaintiff's case. In response, learned counsel for the respondent contended that there was no necessity to examine the stamp vendor, as the marginal witnesses had been examined and the Agreement to Sell had been duly proved on record. Reliance was placed on the judgment of this Court in ***Kuljeet Singh v. Lakhvir Singh, 2010 (24) RCR (Civil) 24***, wherein it was held as under:-

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> "There is no such requirement in law, that stamp vendor or scribe is also required to be examined to prove the agreement once the agreement is proved by the attesting witnesses, who stood the test of cross-examination. Furthermore when the signatures were also proved by the handwriting expert."

15.3. Further, in **Swaranjit Singh v. Jatinder Kaur, 2022 (2) CivCC 578,** it was reiterated. Mere allegations of fraud, in the absence of supporting evidence, are insufficient to invalidate a duly executed agreement. Accordingly, both Courts below have rightly concluded that the appellant-defendants have failed to prove that the agreement to sell was obtained through any fraud perpetrated by the respondent-plaintiff.

16. Learned counsel for the appellant further contended that the learned Courts below failed to consider that the Court has a discretionary power to grant or refuse a decree for specific performance in accordance with the facts and circumstances of each case, and that such discretion was allegedly not exercised in a judicious and informed manner. However, upon careful perusal of the record, it is evident that both courts below have meticulously considered the relevant facts and circumstances and have rightly granted the primary relief of specific performance. The grant of such relief cannot be deemed inequitable, and the discretion exercised by both courts is grounded in a correct and balanced appraisal of the evidence and the law. In view of the foregoing, the judgments and decrees of the courts below do not warrant any interference. Consequently, the appeal is devoid of merit and is hereby dismissed.

17. Since the main appeal has been finally adjudicated and disposed of, any pending miscellaneous application(s), if remaining in the matter, shall also stand disposed of in consequence thereof.

(VIRINDER AGGARWAL)
JUDGE

19.09.2025
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No