

[123] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1047-2023 (O&M)
Date of Decision : 09.07.2025

Daljeet Singh ...Appellant

versus

Mukhtiar SinghRespondent

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

Present: Mr. Vikram Singh, Advocate and Mr. Abhinav Sood, Advocate
for the appellant.

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Abhishek Shukla, Advocate and Mr. S.S. Momi, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

[1] Defendant is in regular second appeal.

[2] For convenience, parties hereinafter are referred to by their original position as in the Court of the First Instance, i.e. the appellant as defendant and respondent as plaintiff.

[3] Plaintiff filed a suit seeking decree for possession by way of specific performance of agreement to sell dated 05.08.2011, claiming that defendant agreed to sell land measuring 25 kanals 13 marlas, i.e. 1/6th share of total land i.e. 154 kanals as detailed out in the plaint in his favour for a valuable consideration of Rs.15 lacs per acre and received earnest money of Rs.17 lacs in the presence of witnesses.

[4] As per the plaintiff, the agreement to sell was scribed on the instructions of defendant by Miha Singh, Document Writer, Thanesar and the same was entered in the register of the Deed Writer. Defendant also signed and thumb marked the revenue stamp affixed on the agreement in receipt of Rs.17 lacs. The agreement to sell was thereafter attested by Notary Public and the same was also mutated in the register of Notary Public

as well. The parties agreed to get the sale deed executed on or before 04.07.2012. On the target date, the plaintiff remained present before the office of the Sub-Registrar, Thanesar and got his presence marked. However, defendant failed to appear to perform his part of the contract. A legal notice dated 21.06.2013 was served upon the defendant on instructions of the plaintiff. However, defendant having failed to perform his part, plaintiff approached Court of law by filing the present suit.

[5] Suit was contested by the defendant.

[6] Signatures were admitted. However, it was claimed that agreement propounded by the plaintiff was a *sham* transaction. The agreement to sell was executed as security to secure borrowed amount. As per the defendant, the land of the defendant abuts that of Kulbir Singh and Paramjeet Singh. Kulbir Singh and Paramjeet Singh are the commission agents and are running a shop in the name and style of M/s Josan Trading Company at New Grain Market, Pipli. Plaintiff is also a partner in the said trading company. Defendant previously had monetary transactions with Kulbir Singh and Paramjeet Singh. It was a usual practice that defendant at the time of borrowing amounts from Kulbir Singh was asked to execute such agreement to sell to secure the amount. Defendant relied upon two transactions in the year 2007 and that dated 08.01.2009 wherein similar agreements to sell were executed by him in favour of Kulbir Singh. Defendant further pleaded that regarding his monetary transaction with Kulbir Singh and Paramjeet Singh, Panchayat was also convened on 21.11.2012 where defendant paid the whole amount in the presence of witnesses.

[7] On the basis of the pleadings, Court of the First Instance framed the following issues:-

- “1. *Whether plaintiff is entitled to decree for possession by way of specific performance of agreement to sell dated 5.8.2011 with consequential relief of permanent injunction as prayed for? OPP*
2. *Whether present suit is not maintainable? OPD*
3. *Whether the plaintiff has no locus standi to file and maintain the present suit? OPD*
4. *Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD*
5. *Whether the present suit is hopelessly time barred? OPD*
6. *Whether plaintiff has not come to the Court with clean hands and has concealed the true and material facts from the Court? OPD*
7. *Relief. ”*

[8] While deciding Issue Nos.1 to 6, Court found that the plaintiff successfully proved execution of agreement to sell by examining Deed Writer-Miha Singh as PW-1, Notary Public-Krishan Kant Sharma as PW-2, Attesting Witness-Kulbir Singh as PW-4. It has been held that plaintiff successfully proved his presence before Sub Registrar on appointed day by way of affidavit (Exhibit P-5). In order to prove the same, he examined Gurnam Singh as PW-5 and Ram Pal Numberdar as PW-6. Trial Court after considering the evidence threadbare came to the conclusion that the plaintiff proved agreement to sell dated 05.08.2011 and that he paid earnest money of Rs.17 lacs. Having proved his readiness and willingness, he is entitled to decree of specific performance.

[9] The aforesaid findings stand affirmed in appeal preferred by the defendant.

[10] Counsel for the appellant has assailed the findings recorded by the Courts below. He submits that Miha Singh was examined by defendant as well as DW-3. It was proved from the testimony of Miha Singh that earlier also defendant executed agreement to sell dated 30.05.2007 by

proving Entry No.289 (Exhibit D-1), that dated 08.01.2009 by proving Entry at Serial No.13 (Exhibit D-2), that dated 07.04.2010 by proving Entry at Serial No.187 (Exhibit D-3) and that dated 18.03.2011 by proving Entry at Serial No.185 (Exhibit D-4). He submits that the series of agreements to sell executed by defendant in favour of Kulbir Singh, one of the partners of M/s Josan Trading Company, prove that the parties were having financial relations. In order to secure the borrowed amount repeated agreements to sell were executed by defendant. He thus submits that the aforesaid documentary evidence proves that the intent between the parties was to secure the borrowed amount and not to sell the land.

[11] *Per contra*, Mr. Jindal, Senior Counsel for the respondent submits that there is no evidence on record to establish that Mukhtiar Singh is one of the partners in M/s Josan Trading Company. He further submits that the plea raised in the written statement that in fact no earnest money was received, gets falsified from the document that has come from the custody of defendant himself in the form of Mark 'PX'. This document when read with Mark 'D5' in light of the statement of defendant, sufficiently proves that not only was the amount received by the defendant, but account thereof was also kept by none else, but his wife. He thus submits that concurrent findings of fact recorded by the Courts below need not be reversed in second appeal. Re-appreciating the evidence, is beyond the scope of the second appeal.

[12] I have heard counsel for the parties and have carefully gone through records of the case.

[13] This Court finds that the controversy between the parties is quite narrow. So far as execution of document (Exhibit P-1) and the signatures thereon is concerned, the same is not in dispute. The defence raised by the defendant-appellant is that the document was not created as an

agreement to sell as propounded by the defendant, but was executed with an intent to secure loan transaction. In order to prove the defence, the defendant relied upon series of agreements to sell executed by him in favour of Kulbir Singh. The aforesaid defence of the defendant could have been of some credence only when defendant had succeeded to prove that Kulbir Singh, Paramjeet Singh and present plaintiff Mukhtiar Singh were partners in M/s Josan Trading Company. The heart and soul of the defence raised by the defendant lies in relationship between Mukhtiar Singh and M/s Josan Trading Company.

[14] Counsel for the defendant-appellant does not dispute that there is nothing on record to link Mukhtiar Singh with M/s Josan Trading Company. In view thereof, this Court does not find any reason to believe the defence raised by the defendant that too by substituting the finding recorded by the Courts below after appreciating the entire evidence. The statement of the defendant admitting the execution of the document and testimony of PW-3/Notary Public and the admission of signatures on the register of Notary Public is another fatal blow to the case of the defendant. If that was not enough, Mark 'D5' completely demolishes the case of the defendant. Finding no merits in the present appeal, the same is **dismissed**.

[15] All pending miscellaneous application(s), if any, stands *disposed off*.

(PANKAJ JAIN)
JUDGE

09.07.2025
'R. Sharma'

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