

1

AT CHANDIGARH

RSA No. 1376 of 1993 (O&M)

Reserved on : 26.08.2025

Date of Pronouncement :- 02.09.2025

Kewal Singh and another

...Appellants

Versus

Dalip Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Amit Jain, Senior Advocate with

Mr. Varun Parkash, Advocate for the appellants.

Respondent proceeded ex-parte vide order dated 07.08.2025.

VIRINDER AGGARWAL, J.

1. Appellant-plaintiff filed a suit for mandatory injunction for direction to respondent-defendant to get the sale deed dated 16.12.1986 registered on the grounds that the parties entered into an agreement to sell suit land for a sale consideration of Rs.24,000/- and parties executed the sale deed and sale deed was to be presented before Sub Registrar for registration but respondent-defendant refused to get the sale deed got registered. Appellant-plaintiffs moved application under Section 36 of Indian Registration Act before Sub-Registrar where respondent-defendant made statement that he would get the sale deed registered but thereafter resiled, hence the suit. Notice of the suit was served upon respondent-defendant, who contested the same. He denied that there was an agreement to sell suit land to the plaintiff for a consideration of Rs.24,000/- and pleaded that suit land can fetch a price of Rs.50,000/- per acre and that respondent-defendant

**RSA No. 1376 of 1993 (O&M) 2**

agreed to sell suit land to one Lal Singh @ Sucha Singh for a consideration of Rs.70,000/- and executed agreement to sell in favour of Lal Singh on 30.10.1986 and date for execution of sale deed was fixed as 01.12.1986. Father of the plaintiff purchased some papers in the name of the defendant who acted in good faith and he along with Lal Singh approached defendant to execute the sale deed in favour of plaintiffs on the basis of agreement to sell dated 03.10.1986 after receipt of remaining balance consideration of Rs.62,000/-. Defendant agreed and executed the sale deed for total consideration of Rs.70,000/- but plaintiffs and their father along with Lal Singh scribed the sale deed for a total consideration of Rs.24,000/- instead of Rs.70,000/- in violation of terms of the agreement and got thumb impressions on some papers which were never read over to him. Defendants put his thumb impressions on account of misrepresentation and concealment of facts being an illiterate person. When he came to know that sale deed has not been got scribed as per the terms of agreement dated 03.10.1986, he refused to get the same registered. Plaintiffs moved application before Sub-Registrar. Defendant made statement denying the execution of the sale deed as the same was not scribed in terms of agreement dated 03.10.1986. The application was dismissed by the Sub-Registrar. Defendant prayed for dismissal of the suit.

2. Plaintiff filed replication reiterating the contents of the plaint and denying the averments of the written statement.

3. From the pleadings of the parties, the following issues were framed :-

1) Whether the suit is not maintainable in the present form?

OPD

**RSA No. 1376 of 1993 (O&M) 3**

2) Whether the suit is not properly valued for the purposes of Court fee and jurisdiction ?OPD

3) Whether the defendant executed a sale deed of the land in disputed in favour of the plaintiffs?OPP.

4) Whether the plaintiffs are entitled to the mandatory injunction as prayed for?OPP

5) Relief.

4. After affording opportunities to the parties to lead evidence the learned Sub Judge First Class, Sultanpur Lodhi decreed the suit of the appellant-plaintiff and directed defendant to execute the sale deed within a period of one month failing which appellant-plaintiffs can get the sale deed registered through Court of law.

5. Aggrieved by the judgment and decree so passed, respondent-defendant preferred the appeal before District Judge, Kapurthala. Learned Additional District Judge, Kapurthala allowed the appeal by observing that sale deed Ex.P1 being unregistered document can be taken at the most as agreement to sell and that compromise Ex.P6 during the pendency of the suit does not amount to adjustment of the suit and that findings on issues No. 1 and 4 were set aside in view of the same being against the provisions of Section 49 of the Indian Registration Act.

6. Aggrieved by the judgment and decree so passed, the present appeal has been filed.

7. Notice of motion was issued and the records were requisitioned.

8. I have heard learned counsel for the parties and perused the record.

9. 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 Punjab Courts Act, 1918 and not



under Section 100 of 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.

10. Learned counsel for the appellant has assailed the judgment and decree so passed by the learned First Appellate Court that the learned First Appellate Court has misread the provisions Section 49 of Indian Registration Act and has misconstrued that provisions of Section 49 of Indian Registration Act has any relevance in the present case. The learned First Appellate Court has not taken care of the fact that suit was for getting the sale deed registered and document Ex.P1 is a sale deed executed between the parties and the same was not got registered by the respondent-defendant and appellant-plaintiff has filed the suit for issuance of mandatory injunction directing respondent-defendant to get the sale deed registered whereas the learned First Appellate Court held that the sale deed Ex.P1 being an unregistered document and in view of provisions of Section 49 of the Registration Act, the same can at the most be considered and taken as agreement to sell and the learned Sub Judge First Class, Sultanpur Lodhi has ignored the provisions of Section 49 of the Registration Act, so the judgment and decree passed by the learned First Appellate Court be set aside and the well reasoned judgment and decree passed by Sub Judge First Class, Sultanpur Lodhi be restored.

**RSA No. 1376 of 1993 (O&M) 5**

11. Findings have been recorded by the learned First Appellate Court in para No. 10 of the impugned judgment which reads as under :-

“10.Having considered the respective submissions of both the parties, I find that the specific is a equitable relief. The Courts in India are not only courts of law but also the to equity as well. All the equitable reliefs have been enacted in the specific Relief Act. In the present case the sale-deed is Ex.P1 and the alleged documents executed performance during the pendency of the suit is Ex.P6 dated 15.11.1988. The proviso of section 49 of the India Registrate Act interalia lays down:-

"Provided that an unregistered document effecting immoveable property and required by this Act or the Transfer of Property Act, 1982, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, of as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument.

Admittedly in the present case, the sale-deed Ex.P1 is unregistered document of title of immoveable property and as such, it is to be taken as an agreement of sale at the most. As regards Ex.P6, when a compromise is arrived between the parties during the pendency of the suit, the same must be presented in Court on the next date of hearing and the comprise if lawful, should be got attested and exhibited from the court under Order 23 C.P.C. This method was not resorted to by the either party. Ex. P6, do not amount adjustment of the suit. In view of the legal proposition involved in the suit which had been over looked by the learned trial court of Shri G.D.Dhaliwal, Sub Judge Ist Class, Sultanpur Lodhi, the findings of the trial court on issues No.1 and 4 are patently erroneous and against the provision of Section 49 of the Indian Registration Act. The suit for mandatory injunction would not



be maintainable under Section 41 of the Specific Relief Act, Since equal efficacious remedy of a suit for specific performance was available to the plaintiffs. Resultantly, the verdict of the trial court on issue No. 1 and 4 are hereby set aside and the verdict of the same is returned in favour of the appellant/defendant.”

12. I am of the considered opinion that the learned First Appellate Court has misdirected itself and has not taken into consideration the pleadings and evidence of the parties in right earnest. The suit was not for claiming ownership on the basis of unregistered sale deed Ex.P1.

13. The learned First Appellate Court has decided the appeal and set aside the well reasoned judgment and decree passed by learned Sub Judge First Class Sultanpur Lodhi presuming that plaintiff is claiming ownership on the basis of sale deed Ex. P1 and has held that sale deed can be taken as agreement to sell on account of its non-registration in view of the provisions of Section 49 of the Indian Registration Act but the case of the appellant-plaintiff was not of claiming himself to be owner in possession of suit property on the basis of sale deed Ex.P1 rather it was for issuance of directions to respondent-defendant for getting alleged sale deed Ex.P1, which was executed between the parties, registered as per the provisions of Indian Registration Act, 1908. The learned First Appellate Court has not taken into consideration that execution of the sale deed has not been denied by the respondent-defendant. Respondent-defendant has taken a stand in cross-examination that he appeared before Sub-Registrar but there was dispute with regard to sale consideration so the sale deed could not be got registered. He has admitted that he has stated before Sub-Registrar that he is ready to get the sale deed registered but he be paid the balance consideration



RSA No. 1376 of 1993 (O&M) 7

of Rs.62,000/-. He is claiming that there was an agreement to sell between him and one Lal Singh for sale of suit land for consideration for Rs.70,000/- but he has failed to produce on record any such agreement to sell. Plaintiff has led evidence on record that during the pendency of the suit a compromise was effected between the parties and respondent-defendant has received a sum of Rs.24,000/- on 15.11.1988 from plaintiffs and executed receipt Ex.P6. The learned Sub Judge First Class has rightly appreciated the pleadings and evidence on record. The findings of learned First Appellate Court on issues No. 1, 4 and consequently on issue No. 3 are not sustainable. The same are set aside and appeal of the appellants-plaintiffs is allowed and judgment and decree passed by the learned First Appellate Court is set aside and that of the learned Sub-Judge First Class, Sultanpur Lodhi is restored.

14. Since the main appeal stands decided, the miscellaneous application(s), if any, stand disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

02.09.2025
P.Singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No